


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</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/4-40/O&A/Rajdeep/DGCEI/2016-17 आदेश की तारीख/Date of Order:- 20.12.2017
जारी करने की तारीख/Date of Issue :- 20.12.2017

द्वारा पारित/Passed by:- आर. एम. गौतम / *R.M.Gautam*
अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 17/ADC/2017/RMG

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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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 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/36-50/2016 dated 20.12.2017 issued to M/s. Rajdeep Project Force Pvt. Ltd., 316, Shukan Mall, Sabarmati Gandhinagar Highway, Motera, Ahmedabad – 380 005.

Brief facts of the case:

On the basis of an intelligence gathered by the Ahmedabad Zonal Unit of Directorate General of Central Excise Intelligence, to the effect that M/s Rajdeep Enterprise, a Partnership firm, (hereinafter referred to as 'Rajdeep') having administrative office at 316-317, Shukan Mall , Near Vishat Petrol Pump , Motera , Ahmedabad have provided Manpower Outsourcing & Cleaning Services but did not pay appropriate amount of Service Tax, a search was carried out on 23.11.2015 at the premises of M/s. Rajdeep Enterprise, 316-317 Shukan Mall, Nr. Visat Petrol Pump, Sabarmati, Ahmedabad which revealed that four other firms (M/s. Rajdeep Project Force Pvt. Ltd, M/s Lucky Management Services, M/s. Rajdeep Enterprise (Proprietor), M/s. Care Enterprise) are also operating from the said premises. During the search, some documents in respect of M/s. Rajdeep Project Force Pvt. Ltd. (herein after referred to as "M/s. RPFPL" for the sake of brevity) were seized from the premises of M/s. Rajdeep. The scrutiny of records & documents withdrawn and submitted by M/s. RPFPL revealed that M/s. RPFPL a private Company registered with service tax department (Registration No. AAECR5530MSD001) was not paying Service Tax on 'Manpower Recruitment or Supply Agency Service' and 'Cleaning Service' provided to Government.

2. The enquiry carried out further has revealed that M/s. RPFPL had provided Manpower Recruitment or Supply Agency Service and Cleaning/Housekeeping Service to Government Body/Offices, Government Educational Institutes and in some cases to the private parties, during the period 01.04.11 to 30.09.15. They filed ST-3 returns showing lump sum amount as gross value received and paid service tax on such gross value of services without claiming service tax exemption for any income received.
3. On scrutiny of invoices issued by M/s. RPFPL, it was noticed that in some cases they have charged service tax while for same kind of services rendered to other clients, they have not charged service tax under the guise of non-taxability or availability of exemption.
4. During the period 01.04.2011 to 30.06.2012 Cleaning / House Keeping Services provided to the Government Offices was not taxable as the services have been provided to non – commercial or non- industrial premises as defined under section 65 (24 b) of the Finance Act , 1994. However after introduction of Negative List , service tax is levied on all services other than those mentioned in the negative list. Since no exemption was

available to the above service , M/s RPFPL was liable to pay the service tax as per below chart , on the services rendered to the Government offices .

Table-A
Cleaning Services

Sr No	Description	Bill Amount	Service Tax charged in Bill Rs.	Total Service Tax Payable Rs.	Net Service Tax Payable Rs.
1	2	3	4	5	6 (5-4)
1	Government Body/Non-Commercial Buildings/Premises (01.07.2012 to 30.09.2015)	1,62,78,685/	0	20,65,660/	20,65,660/
2	Commercial Premises/Body Corporates (From 01.04.11 to 30.09.15)	49,66,709/	5,28,334/	6,31,945/	1,03,611/
	Total	21245394	528334	2697605	2169271

5. They have also provided 'Manpower Recruitment or Supply Agency' Service to Government Body/Officers during the period (01.4.2011 to 30.9.2015) for which they have not charged and paid service tax under the belief that service provided to such organizations are either non-taxable or exempted from service tax. A small amount of short payment of service tax in respect of 'Manpower Recruitment or Supply Agency' Service provided to Private Body/ Body Corporates was also noticed for the said period. Further, it was also noticed that Manpower Recruitment or Supply Agency Service was also provided to Educational Institutes. Since no exemption is available to this service during period (01.4.2011 to 30.6.2012), M/s. RPFPL is required to pay service tax. Further, during the period (01.07.2012 to 10.07.2014) and (11.07.2014 to 30.9.2015), they claimed exemption under Sl.no-09 of Notfn. No. 25/2012-ST dated 20.06.2012 for rendering Manpower Recruitment or Supply Agency Service to Educational Institutes. However, w.e.f 11.07.2014, in view of the amendment vide entry Sl.no.09 of Notif.No.06/2014-ST dated 11.07.2014, the exemption was restricted to specific services and did not include the above service, hence exemption was not available to M/s. RPFPL. Accordingly, quantification of service tax was done as under:-

TABLE—B Manpower Agency Service

Sr No	Description	Bill Amount Rs	Service Tax charged Rs.	Total Service Tax Payable Rs.	Net Service Tax Payable Rs.
1	Government Body/Offices (From 01.04.11 to 30.09.15)	1,11,17,652/	6,71,719/	14,10,079/	7,38,360/
2	Commercial Premises/Body Corporates (From 01.04.11 to 30.09.15)	6,09,15,931/	75,40,457/	75,56,680/	16,223/
3	Government Educational Institute (From 01.04.11 to 30.06.12)	2,27,600/	0	25,786/	25,786/
4	Government Educational Institute (From 11.07.14 to 30.09.15)	1,13,46,485/	0	14,04,503/	14,04,503/
	Total	8,36,07,668/	82,12,176/	1,03,97,048/	21,84,872/

6. The scrutiny of documents withdrawn and as submitted by M/s. RPFPL also revealed that they did not pay Service tax of **Rs.49,44,864/-** which they had charged and collected from the service recipients for providing Cleaning / House Keeping service. Year wise service Tax liability is as under ;

Table- C

Financial Year	Service Tax amount charged in invoices Rs.	Service Tax amount actually paid Rs.	Differential Service Tax which has not been paid Rs.
2011-12	4,13,050/	2,86,456/	1,26,594/
2012-13	17,36,405/	3,23,865/	14,12,540/
2013-14	18,67,554/	3,64,896/	15,02,658/
2014-15	24,70,974/	16,01,102/	8,69,872/
2015-16 (up to 30.09.15)	22,52,527/	12,19,327/	10,33,200/
Total	87,40,510/	37,95,646/	49,44,864/

7. The total service tax liability as mentioned above in Para 4,5 and 6 works out to Rs 92,99,007/ as shown below ;-

Table- D

Description	Rs.
On Cleaning Services – Para- 4 above	21,69,271
On Manpower Supply Agency Service – Para- 5 above	21,84,872
Service Tax collected but not paid during 01.04.11 to 30.09.15 as mentioned above. ----Para – 6 above	49,44,864
Total	92,99,007

8. The above investigation led into recording of a statement of Shri Pravinbhai Ganeshbhai Chaudhary, Director of M/s. RPFPL on 28.09.2016. Wherein he accepted the service tax liability of **Rs.49,44,864/-** and made the payment of **Rs.25,00,000/-** against the said service tax liability. However on non-payment of service tax under manpower supply service & cleaning services provided to Government Body/Offices during the period from 01.04.11 to 30.09.15, he stated that they were under the belief that the above services provided to government is either non-taxable or exempt from service tax. He however accepted the entire tax liability of **Rs.92,99,007/-**

9. In view of above, a notice dated 13.10.2016 was issued to M/s. Rajdeep Project Force Pvt. Ltd., 316, Shukan Mall, Sabarmati Gandhinagar Highway, Nr. Visat Petrol Pump, Motera, Ahmedabad to show cause to the Additional/Joint Commissioner of Service Tax, Ahmedabad having office at Excise Bhavan, Near Polytechnic, Ambawadi, Ahmedabad – 380015 as to why:-

- (i) The Service Tax amounting **Rs.92,99,007/-** [Rupees Ninety Two Lakh Ninety Nine Thousand and Seven Only] including Education Cess and Higher Edu. Cess, should not be demanded and recovered from them for the period from

April, 2011 to September, 2015 under **Section 73** of the Finance Act, 1994, by invoking extended period of limitation as per the provisions under sub-section (1) of said Section 73 of the Finance Act, 1994;

- (ii) Interest at an appropriate rate for delayed payment of Service Tax should not be demanded and recovered from them under **Section 75** of the Finance Act, 1994 for (i) above;
- (iii) Penalty should not be imposed upon them under **Section 77** of the Finance Act, 1994 (as amended) for wrong filing of the ST-3 returns in terms of section 70 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 and for failure in proper accounting for invoices in books of accounts;
 - (a) Penalty should not be imposed upon them under **Section 78** of the Finance Act, 1994, for the contraventions as mentioned in foregoing paras;
 - (b) The amount of **Rs. 25,00,000/-** (Rupees Twenty Five Lakhs only) already deposited by them during the investigation towards their above said liability, should not be appropriated against the said demand.

10. Defence Reply

In response to above notice, M/s. RPFPL vide letter dated 28.01.2016 submitted their written submission wherein they *inter alia* submitted that;

- Cleaning service prior to 01.07.2012 provided to non-commercial or industrial building was not taxable. The definition of the term 'cleaning activity' given under Section 65 (24b) of the Finance Act 1994 read as under:

"Cleaning Activity" means cleaning, including specialized cleaning services such as disinfecting, exterminating or sterilizing of objects or premises, of-

- (i) Commercial or industrial buildings and premises thereof; or
- (ii) Factory, plant or machinery, tank or reservoir of such commercial or industrial building and premises thereof, but does not include, such services in relation to agriculture, horticulture, animal husbandry or dairying;

- In view of the above definition, cleaning service to non-commercial and government buildings was not taxable. In respect of commercial or industrial building, the service provided was taxable and had paid service tax on the same. Their service was being provided mainly to Government Hospitals, Educational Institutions and Government Offices.

- Even after the amendments made in the Finance Act 1994 w.e.f 01.07.2012, the services provided to Educational Institution, Government, local authority or a government authority in relation to cleaning are exempted. However on perusal of Annexure-A of the show cause notice it is observed that service tax has been demanded on the cleaning service provided to government hospitals/health center/community center during this period also.

- As per SI. No.25 of Notification No.25/2012-ST dated 20.06.2012, any service

provided to the Government, local authority or a governmental authority in relation to water supply, public health, sanitation conservancy, solid water management or slum improvement and up-gradation is exempted. The notification provides that;

SI. No.25. Services provided to Government, a local authority or a governmental authority by way of-

(a) Carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or

➤ From the plain reading of the above notification, it is evident that any service provided to Government, a local authority or a governmental authority in relation to water supply, public health, sanitation conservancy etc. is eligible for exemption from payment of service tax. The notification cannot be interpreted in a way which defeats the purpose of the exemption notification. The intention of the legislature in issuing the notification is to give exemption to all services provided to Government, a local authority or a governmental authority in relation to water supply, public health, sanitation conservancy. It does not imply that only those services provided by a municipality are exempted from service tax. The inference drawn in the show cause notice that Municipality has been entrusted for spraying of DDT, action during epidemics, distribution of polio drops to children, cleanliness of public road, public places and only those services would be eligible for exemption is totally fallacious and incongruous.

➤ Prior to 01.07.2012 the cleaning service provided to all Government and non-commercial buildings was exempted. Only with this intent, the SI. No.25 of Notification No.25/2012-ST was incorporated granting exemption to sanitation conservancy, solid waste management, public health etc which are the service provided by Government and Government bodies and Government authorities. The intention of the legislature is more evident from the amendment made in the SI. No.25 of the said notification by Notification No.6/2014-ST dated 11.07.2014. After the amendment w.e.f 11.07.2014 SI. No.25 of Notification No.25/2012-ST reads as under:

SI. No. 25. Services provided to Government, a local authority or a governmental authority by way of-

(a) Water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or

➤ The Government has consciously, removed the ambiguity in the said notification which created doubt that only the activities carried out by a municipality is exempted from service tax. By amending the notification, the ambiguity in this regard has been removed and it became dearer that any service provided to Government, Government bodies and Government authorities by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation is covered under the exemption.

➤ Show cause notice has demanded service tax on the 'housekeeping service' provided to Government Educational Institutions. But the demand has been made under the category of 'manpower supply'. The service provided to an educational institution in respect of education is exempted from service tax by SI. No.9 of Notification No.25/2012-ST which reads as under:

Services provided to or by an educational institution in respect of education exempted, from service tax, by way of-

(a) auxiliary educational services; or

(b) *renting of immovable property,*

- The said serial number 9 was amended by notification dated 11.07.2014 and after amendment it reads as under:

"9. Services provided,-

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to. or conduct of examination by, such institution; "

- From the above Notification and clarification issued by the Board vide Circular No.172/7/2013-ST dated 19.09.2013 made it clear that cleaning service, housekeeping service and security service provided to an 'educational institution' is exempted from service tax.

- The service provided to the educational institution is housekeeping service and not manpower supply service. The perusal of the work order would reveal that the service was for complete housekeeping like cleaning, gardening and security. In the bill issued it is clearly mentioned as 'housekeeping service' and has given the name of work performed. Therefore the service provided is not falling under the category of 'manpower supply service', but on the contrary, it falls appropriately under 'housekeeping service' and hence exempted by virtue of SI.No.9 of Notification No.25/2012-ST.

- As per Annexure to the show cause notice an amount of Rs.14,04,503/ is demanded towards the service provided to various ITIs. Industrial Training Institutes are providing education which is exempted as the service is included in the negative list under Section 66D of the Finance Act 1994. Section 66D of the Finance Act contains a negative list of services and clause (I) thereof reads as under:

"services by way of -

(i) pre-school education and education upto higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;

(iii) education as a part of an approved vocational education course; "

- In view of the above the service provided by us to ITIs by way of housekeeping service is exempted and hence Rs.14,04,503/ demanded on these services is required to be dropped.

- They relied on following decisions:-

a) *Hemraj Gordhandas v. H.H. Dave, -1978 (2) E.L.T (1350) (S.C)]*

b) *Mangalore Chemicals & Fertilizers Ltd. -1991 (55) E.L.T. 437 (S.C.)*

c) *Bombay Chemical Pvt. Ltd. Vs CCE-1995 (77) E.L.T. 3 (S.C),*

d) *Gujarat State Fertilizers Co. v. C.C.E 1997 (91) E.L.T. 3 (S.C.)*

e) *Novopan India Ltd.-1994 (73) E.L.T. 769 (S.C)*

- The show cause notice has been issued without considering the legal provisions and factual facts by the investigating officers. The show cause notice has adopted an interpretation of notification and statute which defeats the very purpose of the legislature granting such exemption. Cleaning service provided to non-commercial and Government offices was exempted prior to 01.07.2012 by the

definition of cleaning service given in the statute itself. After deleting Section 65(105) with effect from 01.07.2012, the exemption was granted to the services provided in relation to sanitization and public health by mega exemption notification No.25/2012-ST. The ambiguity in the wordings of the notification has been rectified by amending the said notification on 10.07.2014. Thus the intention of the Government is very much clear that the said notification was issued for granting the benefit of exemption to those services which were exempted or not included in the definition of taxable service provided in the statute itself. However the investigating officers has arbitrarily demanded service tax on such services in the show cause notice defeating the purpose and intention of the legislature granting the exemption to those services provided to non-commercial and Government hospitals.

- The documents available with the department show that in certain cases already service tax was charged and paid like in the case of service provided to Dairies. However in the work sheet where the service tax has been computed, the investigating officers have not considered the service tax already charged and paid and demanded service tax on the entire value of service which has been suffered service tax.
- As per Section 67 of the Finance Act, 1994 the gross value charged should be considered as the value inclusive of service tax. But in the instant case the benefit granted by the statute itself has not been given while computing the service tax liability. Therefore the service tax liability is required to be recalculated after removing the value of services which have already been suffered service tax, the value of services which are exempted from service tax, after giving the benefit of cum-tax price as per Section 67 of the Finance Act 1994 and after reducing the service tax which we have already paid.
- The value of housekeeping service provided in relation of educational institutions, which is wrongly included in the category of manpower supply in the show cause notice, is Rs.14,04,503.
- The demand is also time barred as it has been issued after period of limitation prescribed under Section 73 of the Finance Act 1994. The ST- 3 returns were filed regularly hence no suppression can be alleged. There was no intention to evade service tax and was paid wherever it appeared to be liable. They had neither charged nor paid service tax on the services provided to Government Hospitals/Health Centers, Government offices and Educational Institutions on the understanding and belief that service provided to these offices/institutions was not liable to tax. In such cases there is no element of willful evasion of service tax in part. Therefore the show cause notice beyond the normal period of limitation is not sustainable under Section 73 *ibid*. They relied on case law of *Pahwa Chemicals Pvt. Ltd - 2005 (189) ELT.257 (S.C)*.
- Hon'ble Supreme Court has held that mere failure to furnish information is not suppression of facts and extended period cannot invoke in such cases. The Apex Court has held that there should be some positive and deliberate withholding of information or giving false information so as to invoke extended period. Neither any information was withheld from the department nor was false information provided with intent to evade payment of service tax. In such cases there cannot be any suppression and hence extended period of limitation cannot be invoked.
- The show cause notice did not enumerate on what counts they had suppressed the facts. Mere mention of word 'suppression' in the notice does not make a case of invoking extended period. Hon'ble Supreme Court in various decisions had

held that mere failure to give information is not suppression. There should be some positive misstatement with an intention to evade payment of duty. They relied on following decisions:-

- a) *Continental Foundations Jt. Venture - 2007 (216) E.L.T.177 (S.C)*
- b) *Mysore Kirloskar Ltd - 2008 (226) E.L.T.161 (S.C),*
- c) *Cosmic Dye Chemical - 1995 (75) E.L.T.721 (S.C)*
- d) *H.M.M Limited - 1995 (76) E.L.T.497 (S.C)* followed by the Apex Court in the case of *Raj Bahadur Narain Singh Sugar Mills - 1996 (88) ELT.24 (S.C)* also.

➤ In view of the above settled legal position it is evident that the show cause notice is time barred as there is no suppression of facts, fraud, wilful misstatement or intention to evade service tax when all the ingredients required for invoking extended period of limitation is absent, the show cause notice is hit by limitation under Section 73 of the Finance Act 1994.

➤ No penalty should be imposed where the *mens rea* is absent. They rely upon the following decisions in this regard.

- a) MALAY I NET COMMUNICATION - 2010 (18) S.T.R. 451 (Tri. Del.)
- b) ADHUNIK STEELS LTD.- 2009 (13) S.T.R. 487 (P & H)
- c) JIVANBHAI D. MAKWANA - 2010 (20) S.T.R. 605 (Guj.)
- d) PANKAJ TYRE RETREADS - 2010 (19) S.T.R. 829 (Tri. - Ahmd.)
- e) COSMOS DETECTIVE & SECURITY SERVICES - 2010 (19) S.T.R. 414 (Tri. - Ahmd.)

➤ There was clear doubt about the taxability of the work done. As it was a matter of interpretation of statute and had acted on the *bona fide* belief that he was not liable to pay service tax, the situation is covered by decision of Hon'ble Supreme Court and decision of Tribunal that no penalty is imposable. They relied on following decisions

- a) *GRASIM INDUSTRIES LTD. - 2005 (183) E.L.T. 123 (S.C.)*
- b) *GABBAR ENGINEERING CO. - 2009 (244) E.L.T. 552 (Tri. - Ahmd.)*

➤ The proceedings initiated may be set aside as they are not sustainable under law and as we have acted under *bona fide* belief that we are not legally bound to pay any service tax. They have paid service tax with interest once it was pointed out by the department about the service tax liability to be discharged even though we do not agree with the same. Hence no penalty should be imposed on us. All the reasons for non-payment of service tax and therefore the benefit of Section 80 of the Finance Act 1994 may be granted. The demand is not sustainable on merits as well as on limitation and the same may be vacated. They requested to be heard in person before the case is decided.

11. However before this case could be taken up for adjudication, the CBEC vide Notification No.12/2017-CE (NT) dated 9.6.2017, dismantled the Service Tax formations and merged the same with jurisdictional Central Excise Commissionerates now known as GST Commissionerates. The CBEC appointed officers of Central Excise Department as Central Excise Officers and vested them with the power under the Central Excise Act, 1944 (1 of 1944) and the rules made there under, with respect to the jurisdiction specified in the notification issued under Rule-3 of the Central Excise Rules 2002. The said notification was made effective from 22.6.2017 vide Notification No.16/2017-CE

(NT) dated 19.06.2017. With the Amendment of Act 32 of Finance Act, 1944, Chapter V (Service Tax) of the Finance Act, 1994 has been omitted hence all the service tax cases have been transferred to concerned jurisdictional Central Excise & Central GST Commissionerate.

12. In light of above, the present case has been transferred to CGST & Central Excise Commissionerate, Ahmedabad-North. On receipt of the said case for adjudication, personal hearing was granted to M/s RPFPL on 10.10.2017. Shri M.H.Raval, Consultant, appeared and represented the case on behalf of the party. He reiterated the written submissions made by them vide reply dated 28.12.2016 and also submitted the additional submissions vide letter dated 10.10.2017.

DISCUSSION AND FINDINGS:

13. I have carefully gone through the facts of the case on record, submissions made vide defense reply dated 28.12.2016 and 10.10.2017 and also the case laws relied upon by M/s. RPFPL. The issue before me to decide is whether the Cleaning service & Manpower Supply services rendered by M/s. RPFPL during the period 01.07.2012 to 30.9.2015 is liable to service tax?

14. M/s. RPFPL is contesting the case basically on three points that;

- a. Even after the introduction of negative list, 'Cleaning service' provided to educational institution, Government, local authority or government authority is exempted from levy of service tax.
- b. The services provided to government education institutes is housekeeping service and not Manpower Supply service hence exempted by virtue of Sl.no.9 of Notif.No.25/2012-ST.
- c. As ST-3 returns were filed suppression cannot be invoked hence demand is time barred.

15. The SCN proposes recovery of Service Tax under following three categories:-

- a) demand of **Rs.21,69,271/-** under 'Cleaning Service' ,
- b) demand of **Rs.21,84,872/-** under 'Manpower Supply Service' and
- c) demand of **Rs.49,44,864/-** towards Service Tax collected but not paid during the period 01.4.2011 to 30.9.2015.

16. First we shall take the cleaning services . '**cleaning activity**' has been defined under Section 65(24b) of Finance Act ,1994 as under:-

"Cleaning activity" means cleaning, including specialized cleaning service such as disinfecting, exterminating or sterilizing of objects or premises, of -

- (i) Commercial or industrial buildings and premises thereof; or
- (ii) Factory, plant or machinery, tank or reservoir of such commercial or industrial building and premises thereof, but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying".

The above definition suggests that cleaning activities relate to cleaning and includes specialized cleaning activities. Thus, cleaning includes cleaning activity itself and specialized cleaning service includes disinfecting, exterminating, sterilizing etc.

16.A. Section 65(105)(zzzd) of Finance Act, 1994 defines taxable service as under :-

'any service provided or to be provided to any person, by any other person, in relation to cleaning activity'.

For cleaning activities to be taxable, service should be provided to other person or undertaken on behalf of others against a consideration. Cleaning activities in only commercial and industrial buildings or their premises shall be covered for taxability of cleaning services. Thus, the cleaning service for the non-commercial or non-industrial buildings and premises thereof will not be taxable.

16.B. After the introduction of Negative List regime w.e.f. 01.07.2012, there has been a paradigm shift from the way in which the services have been taxed. Section 65 of the Finance Act, 1994 defining various taxable services has ceased to apply w.e.f. 01.07.2012 vide Notif.No.20/2012-ST dated 5.6.2012, hence all services would be subject to service tax unless specified in the Negative List or are specifically exempted from the levy of service tax. Section 65(B)(51) of the Finance Act,1994 defines "**taxable service**" as any service on which service tax is leviable under section 66B. The term '**service**' defined under Section 65(B)(44) has been defined as any activity carried out by a person for another for consideration, and includes a declared service, but shall not include (a) to (c) mentioned therein.

16. C. However after issuance of Mega exemption Notification No.25/2012-ST dated 20.06.2012, exemption from payment of service tax was granted to Cleaning service vide serial no. 9 of the notification, which reads as under-

*"9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-
(a) auxiliary educational services; or
(b) renting of immovable property;"*

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

16. D. In terms of Sl.no.9 of notfn no 25/ 2012 – ST dt 20.06.12, cleaning services provided to educational institution is exempted from service tax which is not disputed in

the SCN. However, the SCN proposes that after the introduction of Negative list w.e.f. **01.7.2012**, cleaning service provided to Government Body/Officers during the period from 01.7.2012 to 30.09.2015 is liable to service tax in terms of the definition of 'service' under Section 65(24b) of the Finance Act, 1994. The demand is proposed considering Sl.no.12 of Mega Notification which was amended vide Notif.No.06/2015-ST dated 01.03.2015 wherein entry at clause (a) (c) & (f) has been omitted w.e.f. 01.04.2015. Sl.No. 12 of the notification is reproduced below for reference:-

SI No. 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;]*

16.E I find that there is no relevance of (sr.no.12 of the Mega Notification) in the instant case as the service rendered by M/s. RPFPL is cleaning service hence has no connection to the services of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of civil structure, monuments, educational/clinical/cultural establishment, canal, dam, irrigation works etc. M/s. RPFPL has however relied on Sl.No.25 of the said notification claiming exemption.

16.F As per Sl.no.25 of the mega notification, cleaning services provided to a Government, local authority or a government authority is exempted. Relevant text reads as under:-

"25. *Services provided to Government, a local authority or a governmental authority by way of-*

(a) *carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or*

(b) *repair or maintenance of a vessel;".*

16.G From the above wordings, it is understood that cleaning activity provided to Government, local authority or a government authority in relation to water supply, public health, sanitation, solid waste management or slum improvement ordinarily entrusted to municipality is exempted. In the instant case, cleaning services carried out is not in relation to function ordinarily entrusted to municipality. Since the service is rendered in government premises of Anti Corruption Bureau, District Court, Lower Courts, Guest House etc the same cannot be considered to have been carried out in relation to public health or sanitation for general public which otherwise is entrusted to the municipality. Even the mechanical cleaning of station, rail wagon, railway office is covered by the taxable entry – “cleaning activity”. Directorate of General of Service Tax, in the Frequently Asked Questions on Service Tax, 5th Edition, September, 2010, at para-8.6 while clarifying the issue “Is there any exemption from payment of Service tax if the receiver/provider of the service is the Central/State Government organization and Public Sector Undertakings?” stated as under:-

“8.6.1. No. There is no such exemption. All service providers, including the Central/State Government Organisations and the public sector undertakings rendering the specified taxable service, are liable to pay Service tax.

8.6.2. If a Government Department (sovereign)/public authorities performs any mandatory or statutory function under the provisions of any law and collect any fees, such activity shall be treated as activity purely in public interest and will not be taxable. (Refer Board’s Circular No. 96/7/2007-S.T., dated 23-8-2007)

8.6.3 However, if such authority performs a service, which is not in the nature of statutory activity, for a consideration, the same shall be taxable.

8.6.4 The taxable services provided by a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person, to the Government of India or the Government of a State, in relation to collection of any duties or taxes levied by the Government of India or the Government of a State, are exempted from the payment of Service tax. (Notifn. No. 13/2004-S.T., dated 10-9-2004 as amended).”

16.H In light of above clarification, the services provided or rendered to a Government body is not exempted if it is rendered against a consideration and not in the nature of statutory activity. The cleaning services provided by M/s. RPFPL to the government, local authority or a governmental authority is not statutory in nature hence not exempted from service tax. Thus the demand of **Rs.20,65,660/-** (para - 4 above) shall sustain on above grounds.

16.I Shri Pravinbhai Ganeshbhai Chaudhary, Director of M/s RPFPL in his statement dated 28.09.2016 has admitted that they have neither charged nor paid the service tax for services rendered to Steel Authority of India Ltd by considering them as Government Body. Since Steel Authority of India Ltd is a limited Company, no exemption is available as they are commercial entities. Hence service tax demand of **Rs.1,03,611/-** would also sustain. Thus total demand of Rs 21,69,271/ { Rs 20,65,660 + Rs 1,03,611 } on cleaning services would sustain.

17. In respect of the demand under **Manpower Supply Services**, the SCN alleges that M/s. RPFPL provided Manpower Supply Services to Government Body/ Offices, private party/Body Corporate during the period 01.04.2011 to 30.09.2015 and to educational institutes for the period 01.04.2011 to 30.9.2015 which is taxable. M/s. RPFPL on the other hand is contending that the services provided to government educational institutes is 'House Keeping Service' and not 'Manpower Supply Service' (as alleged in the notice) hence exemption is available by virtue of Sl.no.9 of Notif.No.25/2012-ST.

17 A. As per clause (68) of Section 65 of the Finance Act 1994, "**manpower recruitment or supply agency**" means any [person] engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, [to any other person]. Thus services provided in any manner for recruitment or supply of manpower shall be covered under Manpower supply service.

Section 65(105)(k) of the Finance Act with effect from May 16,2008 provides as under:

Taxable service means any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate"

With effect from July 1, 2012, Section 65(68) and Section 65(105)(k) have been rescinded and new definition of supply of Manpower has been inserted under **Rule 2(1) (g) of the Service Tax Rules, 1994 ("the STR")**, which is reproduced here in below:

"Supply of Manpower means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control."

17.B On going through the Invoice no. 01 dtd 01.03.2013, issued to the Gujarat Social Inter Structural Development Board Society, Gandhinagar, I find that the charges

collected therein are towards supply of **Sevak**. Similarly charges collected under Invoice No.01 dated 01.7.2013 issued to Director (Relief), Gandhinagar is towards supply of **Peon cum Driver & Peon cum Xerox Operator**. M/s. RPFPL supplied manpower as per the requirement of the service recipient who had control over such person and get the required work done. Manpower supplied is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower and deployment of manpower normally rests with the service recipient. As the service rendered was towards supply of manpower (i.e Peon and Driver), the same cannot be treated as 'Housekeeping Service' (as claimed by M/s. RPFPL) hence is rightly classifiable under Manpower Supply Service.

17.C The notice also alleges that while rendering same service to two different clients, different practices have been followed. In the case of Gujarat Inter Structural Development Board Society, Gandhinagar, service tax was charged and paid whereas in the case of Director (Relief), Gandhinagar, service tax was neither charged nor paid. I have gone through the work orders and find that the Work Order No. GSDBS/Peon/2011/1004-1006 dated 3/7.5.2013 issued by Member Secretary, GSDBS (referred in para 8.5.1 of the SCN) reveals that M/s. RPFPL has to provide **Peon** to Gujarat Social Inter Structural Development Board Society, Gandhinagar at the rate of Rs.4882/- (exclusive of Service Tax). In such cases, M/s. RPFPL has charged service tax separately in the invoice dated 01.03.2013. However, in the Work Order No.01/Outsource/Vashi 375-376/6/2013 dated 04.06.2013 issued by Deputy Collector, Directorate Relief, Gandhinagar revealed that M/s. RPFPL has to provide **Peon cum Xerox Operation/Driver** at the rate of Rs.4500/- & Rs.5300/-per servant per month (inclusive of all charges). In the absence of separate clause mentioning service tax in work order, establishes the fact that M/s. RPFPL has not charged service tax separately in the invoice dated 01.07.2013. Shri Pravinbhai in the statement dated 28.09.2015, also deposed that as almost all the contracts price is inclusive of taxes, service tax was neither charged nor paid on the amount received against the service rendered under the impression that they are not taxable.

17.D Section 67 of the Finance Act, 1944 stipulates that where the service rendered is for a consideration in money, the value of the taxable service is the gross amount charged by the service provider for such service provided or to be provided. If the gross amount charged by the service provider, for the service provided or to be provided is inclusive of service tax payable, then the value of such taxable service shall

be an amount with the addition to tax payable, is equal to the gross amount charged. Since no exemption is available to Manpower Supply service provided to Government Body/Offices during the period 01.04.2011 to 30.09.2015, the demand of **Rs.7,38,360/-** (para – 5 ,Table – B ,Sr No 1) is sustainable.

17.E Similarly, Manpower Supply Service provided to Private party/Body Corporate during 01.04.2011 to 30.09.2015 for which service tax was charged, collected and deposited in government account, the notice alleges short payment. I find that the Manpower Supply services during said period was rendered to *M/s. Torrent Pharmaceuticals Pvt. Ltd, M/s. Mother Dairy, M/s. Gujarat Livelihood Promotion Pvt. Ltd*, all of which are commercial entities hence not eligible for exemption. Thus the short payment of **Rs.16,223/-**{ para 5, Table – B , Sr no.2 } is required to be recovered. Even in respect of Manpower Supply service rendered to Educational Institutes during 01.4.2011 to 30.6.2012, I find that no exemption was available for such service, hence the demand of **Rs.25,786/-** { Para – 5 , Table – B , Sr No 3 }is also sustainable.

17.F During 01.07.2012 to 10.07.2014, M/s. RPFPL have not charged service tax for the Manpower Supply service rendered to Educational Institutes, claiming exemption under Sl.No.09 of Notif.No.25/2012-ST dated 20.06.2012, which I find is not disputed in the SCN hence not discussed. The SCN however proposes recovery of **Rs.14,04,503/-** { para – 5 , Table – B, Sr No 4 } for the Manpower Supply service rendered to Educational Institutes during 11.07.2012 to 30.09.2015 as exemption under Sl.No.9 of Notif.No.25/2012 was no more available after the amendment.

17. F-1 Notif. No. 25/2012-ST was amended vide Notif. No. 06/2014-ST dated 11.07.2014 wherein following words were substituted.

"9. Services provided, -

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;"

17.F-2 In terms of above amendment transportation, catering, security or cleaning or housekeeping services provided to educational institution is exempted. M/s. RPFPL have contended that the service rendered to education institutes is actually housekeeping and not manpower supply. In support of their argument, they have

provided the copies of various contracts. I have gone through the Contract dated 30.3.2013 (entered with Industrial Training Institute Bilimora), Contract dated March, 2015 (entered with District Court Nadiad) as well as the letter No.724/2013 dated 28.10.2013 issued by Principal Judge, Family Court, Ahmedabad wherein I find that the service required to be rendered by M/s RFPPL is cleaning, security and housekeeping service. Since the demand for the period 11.07.2014 to 30.09.2015 is restricted to educational institutes, I find that the contract entered with the Courts and relied by M/s. RPFPL has no relevance.

17. F-3 After 1.7.2012, all the services are made taxable. However only those services which are mentioned under negative list are exempted. The term "**taxable service**" has been defined under **Section 65B(51)** of the Finance Act, 1994 as "*any service on which service tax is leviable under section 66B*". Section 65B(44) of the Finance Act, 1994 further defines '**service**' as any activity carried out by a person for another against a consideration which includes a declared service. Thus any activity carried out against a consideration is taxable ,if not included in the negative list. In view of this, the service of cleaning, security and housekeeping service rendered by M/s RPFPL is taxable service. M/s. RPFPL has contended that the service rendered to education institutes is actually housekeeping and not manpower supply. In support of their argument, they provided copies of various contracts. From the Contract dated 30.3.2013 referred above, it is apparent that M/s. RPFPL was required to carry out cleaning, housekeeping and security services for ITI, Bilimora. I find that M/s. RPFPL did not supply manpower or charge for labour provided on man-day basis or man-hour basis but carried out work as a contractor employing its own labour for cleaning, housekeeping & security services thus services of security, cleaning or housekeeping though taxable but by virtue of Notif. No. 06/2014-ST dated 11.07.2014 is exempted as provided to an education institution. I therefore find that the demand of **Rs.1,93,182/-** in respect of following bills is not sustainable.

Table-D

Sr.No.	Name of the party	Bill No.	Bill Dt	S.Tax
1	ITI Billimora	12 dtd 01.8.14	239173	29562
2	ITI Billimora	12 dtd 01.8.14	239173	29562
3	ITI Billimora	13 dtd 01.9.14	53092	6562
4	ITI Billimora	13 dtd 01.9.14	239173	29562
5	ITI Billimora	14 dtd 01.10.14	239173	29562
6	ITI Billimora	15 dtd 01.11.14	101288	12520
7	ITI Billimora	15 dtd 01.11.14	53092	6562
8	ITI Billimora	16 dtd 01.12.14	53196	6576
9	ITI Billimora	16 dtd 01.12.14	53196	6576
10	ITI Billimora	18 dtd 01.02.15	53196	6576

11	ITI Billimora	18 dtd 01.02.15	53196	29562
			Total	1,93,182

Since M/s. RPFPL have not provided similar documentary proof to establish that the services rendered to other institutes were in respect of security, cleaning or housekeeping, I am left with no option but to hold that the service rendered to such institutes as taxable service and confirm the demand of **Rs.12,11,321/-** { **Rs 14,04,503-Rs 1,93,182 /** } out of the demand of Rs.14,04,503/-.

18. The notice also proposes demand of Rs.49,44,864/- charged and collected by M/s. RPFPL but not deposited to the Government account. Shri Pravinbhai Ganeshbhai Chaudhary, Director of M/s. RPFPL in his statement dated 28.9.2016 has admitted the fact that though M/s. RPFPL has charged & collected Rs.87,40,510/- during the period from 01.04.2011 to 30.09.2015, they deposited only Rs.37,95,646/- and the remaining service tax liability of Rs.49,44,864/- needs to be paid. Even in the defense reply, I have not come across any argument contending the above allegation. In light of the above, I find that the demand of **Rs.49,44,864/-** is sustainable.

19. Coming to the issue of time bar, I find that mere filing of ST-3 returns cannot be a ground for not invoking suppression. M/s. RPFPL while rendering same services followed different practice with different clients and tried to evade tax. They took shelter of the contract and where separate clause requiring service recipient to pay the tax over and above the charges was not mentioned, they did not charge or collect the service tax thereby evaded the payment of service tax. They tried to mislead the department by claiming inadmissible exemption. All this has led to willful act of suppression and mis-declaration with an intention to evade Service tax hence extended period can be invoked in the present case. The case of Continental Foundations & Pahwa Chemicals cannot be relied in the instant case as in that case facts were known to both the parties. Similarly analogy of all other case laws relied by M/s. RPFPL cannot be made applicable to the present case as the issue discussed therein are different. In the case of Cosmic Dye Chemical, Hon'ble Supreme Court held that mis-statement of facts in the declaration filed by the appellant - or the suppression of facts therein, as the case may be - cannot be called wilful as on the date of filing of his declaration, two High Courts had taken the view that the goods exempted from duty are not includible within the definition of 'excisable goods' as defined in clause (d) of Section 2. Whereas in the instant case I find, no reasoning was given for such *bona fide* belief that the services rendered by M/s. RPFPL are not taxable. A blind belief cannot substitute *bona fide* belief. A belief can be said to be *bona fide* only when it is formed after all the

reasonable considerations are taken into account. Hence the argument that tax was not charged and paid under *bona fide* belief assuming that the service is exempted cannot sustain when no such exemption is granted in the law. Hon'ble Larger Bench in the case of Udaipur Tyre Retreading Co. P.Ltd -**2017 (52) S.T.R. 501 (Tri. - Del.)** held that

"Bona fide belief is not a hallucinatory belief but a belief of a reasonable person operating in an appropriate environment. Thus, there was no scope for a bona fide belief that the impugned service is tantamount to repair or maintenance of motor vehicle and therefore the extended period is rightly invoked and penalty under Section 78 ibid is attracted."

19.A M/s. RPFPL failed to pay appropriate amount of service tax for the taxable service provided during the period from 01.04.2011 to 30.9.2015. Thus the amount of Rs. 91,05,825/- is required to be recovered by invoking extended period under provisions of Section 73(1). As the demand is sustainable on above grounds, the same shall be recovered along with interest under Section 75 of the Finance Act, 1994 for the delayed payment. However, I find that during the investigation they have deposited Rs.25,00,000/- towards their tax liability which, I find, needs to be appropriated against the demand confirmed.

20. Penalty:

Section 77 of the Finance Act, 1994, pertains to penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. M/s. RPFPL by not accounting all the invoices in their books of accounts failed to furnish correct value of the taxable service rendered, in their ST-3 return. This has rendered them liable for penalty under Section 77.

20.A As regards penalty under **Section 78**, the same is attracted wherever any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful mis-statement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. However, as per the first proviso to Section 78, if the transactions are available in the specified records, penalty shall be 50% of the service tax short paid. Further where such service tax along with interest is paid within 30 days from the date of communication of the order, penalty would be further reduced to 25% of the service tax so determined. The benefit of reduced penalty shall be available only if such penalty is

also paid within 30 days referred to above.

20.B. Hon'ble High Court of Karnataka at Bangalore in the case of Motor World (2012 (27) S.T.R. 225 (Kar.)) held that

"Section 78 applies to a case where a person has registered himself under the Act and failed to file the prescribed return and in such return filed, he has suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service.

.....Therefore, the argument that once acts of suppression, concealment and furnishing inaccurate particulars are established, the penalty follows as a matter of course or in other words is automatic, is without any substance as it runs counter to the express provision contained in Sections 78 and 80 of the Act. When once it is held that there is no reasonable cause, then the authority is empowered to impose penalty as prescribed under Section 78, for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount of Service tax sought to be evaded by reason of suppression or concealment of the value of taxable service or the furnishing of inaccurate value of such taxable service.

21. When once the ingredients of Section 78 are established and there is no reasonable cause for failure, Section 80 is not attracted. Then the authority has to impose a minimum penalty of the amount of Service tax sought to be evaded and the maximum is double the said amount. Here, there is no discretion, which is vested with the authority. The discretion is only confined to impose a penalty above the minimum and less than the maximum provided for under the Act."

20. C M/s. RPFPL despite being registered with the department, willfully suppressed consideration received against the taxable service rendered with a deliberate intention to evade the service tax. They charged and collected service tax from the service recipient but did not deposit entire amount in the government account to evade service tax. By following different practice to different clients, they intentionally suppressed the value to evade payment of service tax under the guise of claiming exemption. I therefore find that ingredients of Section 78 are established and penalty is imposable for such failure. I also find that the case laws relied by M/s RPFPL are not squarely applicable to instant case as the facts are distinguishable. Moreover M/s. RPFPL has also failed to justify under what bona fide belief they charged and collected

service tax from the service recipient but did not deposit the amount in the government account, why different practice was followed in charging service tax while rendering same service to different client.

21. In view of the above discussions and findings, I pass the following orders:

ORDER

- a) I drop the demand of **Rs.1,93,182/-** [Rupees One Lakh Ninety Three Thousand One Hundred Eighty Two Only) proposed under Manpower Agency Service pertaining to the period 11.07.2014 to 30.09.2015.
- b) I confirm Service Tax recovery of **Rs.91,05,825/-** [Rupees Ninety one Lakh five Thousand eight hundred and twenty five Only] including Education Cess and Higher Edu. Cess, for the period from April, 2011 to September, 2015 under sub-section (1) of said Section 73 of the Finance Act, 1994, by invoking extended period and order appropriation of the amount of **Rs. 25,00,000/-** (Rupees Twenty Five Lakh only) already deposited by M/s. RPFPL during investigation, against the confirmed demand.
- c) I order to recover interest at appropriate rate on the amount of service tax liability confirmed at (a) above, under **Section 75** of the Finance Act, 1994;
- d) I impose penalty of **Rs.10,000/** only (Rs Ten Thousand Only) under **Section 77** of the Finance Act, 1994 (as amended) for wrong filing of the ST-3 returns in terms of section 70 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 and for failure in proper accounting for invoices in books of accounts;
- e) I impose penalty of **Rs. 91,05,825/** (Rupees Ninety One Lakh Five Thousand Eight Hundred & Twenty Five only) under **Section 78** of the Finance Act, 1994, for the contraventions as mentioned in foregoing paras; If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the service tax amount, provided if such penalty is also paid within such period of 30 days.

The Show Cause Notice bearing F. No. DGCEI/AZU/36-50/2016 dated 13.10.2016 is disposed of accordingly.


[R. M. GAUTAM]

Additional Commissioner
C.Ex. & CGST, Ahmedabad-North

F.No: STC/4-40/O&A/Rajdeep/DGCEI/2016-17

Date: 20.12.2017

By Regd. Post A. D./Hand Delivery

To,
M/s. Rajdeep Project Force Pvt. Ltd.,
316, Shukan Mall, Nr. Visat Petrol Pump,
Sabarmati Gandhinagar Highway,
Motera, Ahmedabad-380005.

Copy to:

1. The Commissioner, C.Ex.& CGST, Ahmedabad-North.
2. The Additional Director General, DGCEI , Ahmedabad Zonal Unit, Ahmedabad.
3. The Deputy Commissioner, C.Ex.& CGST, Division-VII, Ahmedabad- North.
4. The Assistant Commissioner (RRA), C.Ex.& CGST, Ahmedabad-North.
5. The Superintendent, C.Ex.& CGST, AR-V, Division-VII, Ahmedabad-North.
- ✓ 6. Guard File.