

<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./ F.No. **STC/4-09/O&A/2015-16**

आदेश की तारीख/Date of Order:- 26.12.2017

जारी करने की तारीख/Date of Issue :- 27.12.2017

द्वारा पारित/Passed by:-

आर. एम. गौतम / **R.M.Gautam**

अपर आयुक्त / *Additional Commissioner*

**मूल आदेश संख्या / Order-In-Original No. 18/ADC/2017/RMG**

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 गेमां 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।

(7) उक्त अपील की प्रति।

(8) 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:

(7) Copy of accompanied Appeal.

(8) 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/36-03/2015-16** dated **17.04.2015** issued to **M/s. Jigar Construction, B-202, Swaminarayan Park, Nr. Mangaldeep High School, Nava Vadaj, Ahmedabad, State : Gujarat.**

**Brief facts of the case:-**

On the basis of an intelligence, gathered by the officers of Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad ( DGCEI ) to the effect that M/s. Jigar Construction (herein after referred to as "M/s. Jigar" for the sake of brevity) having registered office at 1, Near Baliyadev Temple, Below Chandlodiya Bridge, Ahmedabad and functioning from 432A-434, Supermall-1, Infocity, Gandhinagar ,holding service tax registration No.AIRPP3949AST001 on 09-07-2007 under Commercial or Industrial Construction Service, are engaged in the activity of laying of gas pipeline work and construction of civil works for various clients charged service tax in their bills but failed to deposit the same into the Central Government account , a search was conducted in the office premises of M/s. Jigar situated at 432A-434, Supermall-1, Infocity, Gandhinagar on 05-12-2014.

2. During the search, relevant documents such as work orders received from various clients, few copies of bills issued, audited balance sheets for the years 2009-10 to 2012-13, copies of trial balance for the years 2009-10 to 2012-13, copies of Form 26AS for the years 2009-10 to 2013-14, ledger accounts for few clients, copies of GAR-7 challans evidencing deposit of service tax of ₹. 28,34,212/-, etc were withdrawn for further examination.

3. After the search was over, a statement of Shri Dinesh Paddhariya, Proprietor of M/s. Jigar was recorded on 05.12.14 wherein he has stated that M/s. Jigar was engaged in business activity of construction of laying of MDPE pipeline and PNG domestic and industrial connection and civil works for pipeline gas distributing companies such as M/s. Sabarmati Gas Ltd, M/s. Gail India Ltd, M/s. Green Gas Ltd, M/s. Mahanagar Gas Ltd, M/s. Central UP Gas Ltd, etc. They obtained service tax registration by declaring office address at Office No.1, Nr. Baliyadev Temple, Below Chandlodia Bridge, Ahmedabad which was found to be non-existent. Shri Dinesh Padhariya, admitted that he had been functioning at 434, 4<sup>th</sup> Floor, Super Mall-1, Infocity, Gandhinagar since 2009 onwards and have used different addresses in the works orders entered with their clients but none of the given addresses were declared to the department. Besides, they have also not maintained documents relating to services provided by them such as copies of work orders / agreements, copies of bills, ledger accounts, etc in their current office situated at 432A & 434, 4th Floor, Supermall-T, Infocity, Gandhinagar. Further, Shri Dinesh Paddhariya in his further statement recorded on 02-02-2015, stated that in



case of some of his clients, they have provided services as per the understanding reached through personal discussions but no bills were issued. However, payments received from such clients were accounted for in their books of accounts. They have entered into written agreements with only Government companies such as M/s. Sabarmati Gas Ltd, M/s. GSPC Gas Co. Ltd, M/s GAIL India Ltd, M/s Green Gas Ltd, M/s Mahanagar Gas Ltd and M/s Gujarat Gas Co. Ltd. Even for the services provided to these Government companies like M/s. Sabarmati Gas Ltd, M/s. GSPC Gas Co. Ltd, M/s. GAIL India Ltd, M/s. Green Gas Ltd, M/s. Mahanagar Gas Ltd, and M/s. Gujarat Gas Co. Ltd, they have not maintained documents properly . They have only copies of work orders / agreements and some copies of bills issued to their clients , which were withdrawn under panchnama dated 05-12-2014. In order to ascertain the value of work done by M/s. Jigar and to determine service tax liability, information was, therefore , called for from their service recipients viz., M/s. Sabarmati Gas Ltd, M/s. Central UP Gas Ltd, M/s. GSPC Gas Co. Ltd, M/s. GAIL India Ltd, M/s. Green Gas Ltd, M/s. Mahanagar Gas Ltd and M/s. Gujarat Gas Co. Ltd. The information received in this regard from all the above clients except M/s. Gujarat Gas Co. Ltd and M/s. Sabarmati Gas Ltd were found to be in order.

4. On examination of the documents withdrawn on 05.12.14 under panchanama from M/s.Jigar and other documents received from their service recipients, it is noticed that they have charged service tax at full rate on the gross amount charged in the bills except in the cases of bills issued to M/s. Sabarmati Gas Ltd and M/s. Central UP Gas Ltd where they have not charged service tax appropriately.

5. Date-wise and client-wise details of payments received, amount of taxable value, and amount of service tax payable during the period from **2009-10 (From October, 2009) to 2010-11** showed that M/s. Jigar have received payment of ₹ 9,15,08,354/- and taxable value works out to ₹ 8,29,63,150/- against 'Commercial or Industrial Construction' Service provided by them to their clients on which they should have paid service tax of ₹. 85,45,204/- (which includes education cess and secondary & higher education cess). But they have paid service tax of ₹ 28,34,212/-only (which includes education cess and secondary & higher education cess ) without mentioning the period for which service tax was deposited. They have also not filed any ST-3 returns for the above said period till date. Therefore service tax to be recovered from them for the period 2009-10(from October, 2009) to 2010-11 worked out is ₹ **57,10,992/-** (which includes education cess and secondary & higher education cess) under Commercial or Industrial Construction Service. They have not paid any interest on delayed payments.



**5.A** During the period from **2011-12 to 2012-13 (up to 30-06-2012)**, M/s. Jigar have provided services worth valued at ₹ 6,17,40,950/- and the amount of service tax payable worked out is ₹.63,62,760/- (which includes education cess and secondary & higher education cess) under Commercial or Industrial Construction Service.

**5.B** For the period from **2012-13 (from 01-07-2012) to 2014-15 (up to September, 2014)** M/s. Jigar have provided services worth valued at ₹ 5,26,63,056 /- and the amount of service tax payable worked out is ₹ **50,08,216/-** (which includes education cess and secondary & higher education cess) under **Works Contract Service**.

**6.** Thus, from the foregoing para, it can be seen that M/s. Jigar have failed to pay service tax of ₹. **1,20,73,752/-** (which includes education cess and secondary & higher education cess) under commercial or industrial construction service during the period from **2009-10 (from October, 2009) to 2012-13 (up to June, 2012)**. Further, M/s. Jigar also failed to pay service tax of ₹ **50,08,216/-** (which includes education cess and secondary & higher education cess) under Works Contract Service during the period from **2012-13 (from July, 2012) to 2014-15 (up to September, 2014)**

**7.** In view of above M/s. Jigar Construction having residence-cum-office at B-202, Swaminarayan Park, Nr. Mangaldeep High School, Nava Vadaj, Ahmedabad were therefore called upon to show cause to the Commissioner, Service Tax, Ahmedabad having his office at Central Excise Bhavan, Nr. Panjrapole, Ambawadi, Ahmedabad - 380 015 as to why:-

- i. Service Tax of ₹ **1,20,73,752/-** [Rupees One Crore Twenty Lakh Seventy Three Thousand Seven Hundred Fifty Two only] (includes education cess and secondary & higher education cess), which was not paid **under Commercial or Industrial Construction Service during** the period from 2009-10 (from 01-10-2009) to 2012-13 (Up to 30-06-2012) as per ANNEXURE - A.1 and ANNEXURE - A.2 of the notice, should not be demanded and recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994;
- ii. Service Tax of ₹ **50,08,216/-** [Rupees Fifty Lakh Eight Thousand Two Hundred Sixteen only] (includes education cess and secondary & higher education cess), which was not paid **under Works Contract Service** during the period from 2012-13 (from 01-07-2012) to 2014-15 (Up to 30-09-2014) as per ANNEXURE - B of the notice, should not be demanded and recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994;
- iii. Interest at the appropriate rate should not be demanded and recovered from them on the amount of service tax not paid as per Annexure **Annexure - A.1, A.2 & B**



and service tax paid late as per **Annexure – C** of the notice, for the period of delay of payment of service tax under Section 75 of the Finance Act, 1994;

- iv. Penalty under the provisions of Section 77 of the Finance Act, 1994, as amended, should not be imposed on them for contravention of provisions of the Finance Act, 1994 as explained herein above;
- v. Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material facts from the department resulting into non-payment/late payment of Service Tax.

8. In response to above notice ,M/s. Jigar filed a written reply vide letter No.CAT-CL-271 dated 12.05.2015 wherein they contested the SCN on following grounds:-

- They disagree with the computation & calculation of the tax liability. They argued that each contract is unique as the service provided in each contract is different. In some the service provided in Industrial and Commercial construction service, in some repair and maintenance service is provided while in others supply of labour service is involved.
- In many of contracts they are only supplying the material thus exempted from service tax.
- In industrial & commercial constructions service as per Notif.No.15/2004 they were eligible for abatement of 67% and liable to pay tax only on 33% of the work amount.
- In contracts where there is supply of material bundled with supply of service (i.e works contract service), they are eligible for abatement of 60% being individual and providing services to corporate covered under partial reverse charge mechanism, wherein they are required to pay service tax only on 50% after abatement as per notif.No.30/2012 dated 20.6.2012.
- In some there is supply of labour or repair maintenance service where assessee is covered under Manpower service reverse charge mechanism is applicable where service is provided to corporate and tax on 25% is required to be paid as per Notif.No.26/2012 dated 20.6.2012.
- Time period covered under demand is Oct, 2009 to Sept, 2014 and there has been major shift in the taxation which should be considered while deciding the demand.
- At least three months time may be granted to calculate correct tax liability.

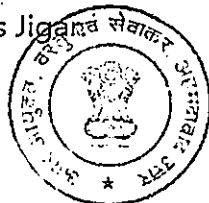
9. However before this case could be taken up for final decision , this case was re-assigned to Commissioner, Central Excise, Audit-I, Ahmedabad for adjudication by the Chief Commissioner vide Order No.03/2015 dated 20.10.2015 under the power conferred under Section 37A of the CEA, 1944 as made applicable to Service Tax by Section 83 of the Finance Act, 1994 read with Notif.No.06/2009-ST dated 30.01.2009. Thus the said SCN was made answerable to Commissioner, Central Excise, Audit-I,



Ahmedabad. Accordingly, a Personal Hearing (P.H.) was granted to M/s. Jigar on **18.02.2016, 22.03.2016, 07.04.2016** however no one turned up. M/s. Jigar vide letter No.CAT-CL-600 dated 07.04.2016 attached copies of challan evidencing payment of ₹ 28,36,911/- and also informed that rest of the computation is under way and shall get completed within three months period. Once again P.H was granted on **19.05.2016, 14.07.2016** but nobody appeared to defend the case. Subsequently, vide Notif.No.44/2016-S.T dated 28.09.2016 & Cir.No.1049/37/2016-CX dated 29.09.2016, the monetary limit of adjudication was revised and the case was transferred within the competency of Additional Commissioner/Joint Commissioner, Service Tax. A corrigendum dated 29.11.2016 to this effect was also issued to M/s. Jigar.

**9.A** However the said case could not be taken up by the Service Tax and in the meantime GST Regime came in to effect w.e f 01.07.17 and Service Tax Commissionerate was abolished. The CBEC vide Notification No.12/2017-CE(NT) dated 9.6.2017, 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 Commissionerates. The present case thus got transferred to Central Excise & Central GST Commissionerate, Ahmedabad North. Consequent to this, a corrigendum dated 31.07.2017 vide F.No: STC/4-09/O&A/15-16/(DGCEI) intimating M/s Jigar regarding transfer of this case to Additional Commissioner, Central Excise & Central GST Commissionerate Ahmedabad ( North ) was issued.

**9.B** Therefore a fresh date for personal hearing vide letter No.STC/4-09/O&A/15-16(DGCEI) dated 01.11.2017 addressed to M/s. Jigar, 432A-434, Supermall-I, Infocity, Gandhinagar, Gujarat communicating to appear on **15.11.2017** was also dispatched through post. The said letter was also mailed to their email-id [Jigar\\_construction2004@yahoo.co.in](mailto:Jigar_construction2004@yahoo.co.in). The postal letter has been received back with the remark as undelivered from the postal department . However no reply through e-mail has been received from M/s Jigar



10. It is noticed that enough time has already been lapsed . I am left with no other option but to take up the matter for adjudication. In terms of Section 33A of the Central Excise Act, 1944, an adjudicating authority shall give an opportunity of being heard to the party in the proceeding, if the party so desires. The personal hearing shall be granted time to time and no such hearing shall be granted more than three times to a party during the proceeding. Section 33A is reproduced below:-

***Section 33A. Adjudication procedure. -***

*(1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.*

*(2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:*

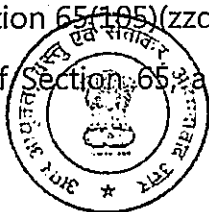
**Provided that no such adjournment shall be granted more than three times to a party during the proceeding.**

11. In the instant case, department has already granted personal hearing in terms of Section 33A of the Central Excise Act, 1944 on 18.02.2016, 22.03.2016, 07.04.2016 19.05.2016, 14.07.2016 & 15.11.2017. After four adjournments the case finally came up for hearing for the 5th time also. Though sufficient time to work out the correct calculation was granted to M/s. Jigar and sufficient opportunities were granted by the department, no efforts were made from the side of M/s Jigar to produce any documentary evidence in support of their claim. Finally, after the transfer of case to the undersigned, one more personal hearing was granted for the 5th time, yet again nobody turned up which showed total disregard of government machinery. Since four adjournments have already been granted as per the law, I am not inclined to consider any further adjournment in the matter and proceed to adjudicate the SCN on the basis of the submissions made in the written submission.

**Discussion & Findings:**

12. The notice proposes demand of ₹.1,20,73,752/- under 'Commercial or Industrial Construction' service from October, 2009 to June, 2012 and demand of ₹. 50,08,216/- under 'Work Contract' service from July, 2012 to September, 2014.

13. The service tax on 'Commercial or Industrial Construction' service was made taxable in the year 2005 under Section 65(105)(zzq) of the Finance Act, 1994. In terms of sub-clause (zzq) of clause (105) of Section 65, any service rendered to any person in



relation to commercial or industrial construction shall be taxable. Relevant text is reproduced below:-

*(zzq) to any person, by [any other person], in relation to [commercial or industrial construction [\* \* \*];*

**[Explanation.** — For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;]

14. The term 'Commercial or Industrial Construction' has been defined under Section 65(25b) of the Finance Act, 1994 and the same is reproduced below:-

25b) [*"commercial or industrial construction"*] means —

- (a) *construction of a new building or a civil structure or a part thereof; or*
- (b) *construction of pipeline or conduit; or*
- (c) *completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or*
- (d) *repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is —*
  - (i) *used, or to be used, primarily for; or*
  - (ii) *occupied, or to be occupied, primarily with; or*
  - (iii) *engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;]*

15. From the above definition, it transpires that construction of pipeline or conduit i.e. construction of long distance pipeline, repair, alteration, renovation or restoration of pipeline or conduit would be liable to service tax. This levy would also be applicable for such activities performed on the old pipeline or conduits constructed.

16. M/s. Jigar is engaged in the activity of construction of laying of MDPE pipeline and PNG domestic and industrial connection and civil works for pipeline gas distributing companies such as M/s. Sabarmati Gas Ltd, M/s. Gail India Ltd, M/s. Green Gas Ltd, M/s. Mahanagar Gas Ltd, M/s. Central UP Gas Ltd, etc. and are registered with service tax department under 'Commercial or Industrial Construction Service'. Shri Dinesh Paddhariya, Proprietor of M/s. Jigar in his statement recorded on 05.12.17 has stated that most of the services were provided as per the understanding reached through personal discussions for which no bills were issued. However, payments received from such clients were also accounted for in their books of accounts. M/s. Jigar have entered into written agreements with only Government companies such as M/s. Sabarmati Gas Ltd, M/s. GSPC Gas Co. Ltd, M/s. GAIL India Ltd, M/s. Green Gas Ltd, M/s. Mahanagar Gas Ltd and M/s. Gujarat Gas Co. Ltd and even for such companies documents were not





maintained properly. The ledger account received from M/s. Gujarat Gas Co. Ltd showed bill-wise gross amount paid to M/s. Jigar where 50% of service tax on gross amount was charged in the bills. Whereas in the case of M/s. Sabarmati Gas Ltd, it was found that for the bills issued for operation & maintenance of gas pipeline network, M/s. Jigar have charged service tax at full rate. Thus in both the cases M/s Jigar have charged service tax in the bills & collected service tax from their clients but failed to deposit the service tax to the government account.

17. In terms of Section 65(105)zzq of the Finance Act, 1994, any service provided or to be provided to any person by any other person in relation to commercial or industrial construction is taxable under 'Commercial or industrial construction' service and service tax is to be paid in terms of Section 67 of the Finance Act, 1994, on the gross amount charged by the service provider for such service provided or to be provided by him at the appropriate rate. As per Sl. No. 7 of **Notification No. 1/2006-ST dated 01-03-2006**, where the value of work order includes the service portion and supply of material and the value of service portion is not separately known, then service tax is to be paid on the 33% of the value of gross amount charged for the services provided or to be provided subject to the condition that the gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service.

18. However after introduction of negative list w.e.f. 01.07.2012, all services which are not covered under negative list are to be considered as taxable service. All services provided under work orders are chargeable to service tax on service portion in the execution of a works contract under clause (h) of Section 66E of the Finance Act, 1994.

**SECTION [66E. Declared services.** — *The following shall constitute declared services, namely:—*

(a) ... (g)

(h) *service portion in the execution of a works contract;*

19. In terms of Section 67(1)(iii) in a case where the provision of service is for a consideration which is not ascertainable, then the amount may be determined in the prescribed manner. In the instant case since the value of service portion of work contract is not separately notified, then the valuation of work contract has to be determined as per Rule-2A (quoted below) of Service Tax (Determination of Value) Rules, 2006, as amended.

**RULE [2A. Determination of value of service portion in the execution of a works contract.** — *Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:—*

(i) *Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods or in goods and land or*



undivided share of land, as the case may be] transferred in the execution of the said works contract.

**Explanation.** - For the purposes of this clause,-

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

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

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;
- (vi) cost of establishment of the contractor relating to supply of labour and services;
- (vii) other similar expenses relating to supply of labour and services; and
- (viii) profit earned by the service provider relating to supply of labour and services;

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

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

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

[**Provided** that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on **thirty per cent** of the total amount charged for the works contract.]

[(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for, -

- (i) maintenance or repair or reconditioning or restoration or servicing of any goods; or
  - (ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,
- service tax shall be payable on **seventy per cent** of the total amount charged for the works contract.]

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

(a) "original works" means-

- (i) all new constructions;
- (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

- (i) the amount charged for such goods or services, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon :

**Provided** that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles



**Explanation 2.** - For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.]

[(2) Where the value has not been determined under sub-rule (1) and the gross amount charged includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the gross amount charged for the works contract, subject to the following conditions, namely:—

(i) the CENVAT Credit of duty paid on inputs or capital goods or the CENVAT Credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004;

(ii) the service provider has not availed the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503(E), dated the 20th June, 2003].

**Explanation.** - For the purposes of this sub-rule, the gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.]

20. Thus, in terms of above provisions, value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract. Where the value of property in goods transferred is not known, the person liable to pay tax on the service portion involved in the execution of works contract shall pay service tax on (40%) forty percent of the total amount charged for the works contract. The word total amount means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract. It is to further state that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

21. It is alleged in the notice that M/s. Jigar have charged service tax at full rate on the gross amount charged in the bills except in the cases of bills issued to M/s. Sabarmati Gas Ltd and M/s. Central UP Gas Ltd. In the contract entered with M/s. Sabarmati Gas Ltd, M/s. Jigar received materials such as MDPE pipe of 32mm and above, MDPE valve, gas meters and regulators from M/s. Sabarmati Gas Ltd as free issue materials. Thus M/s. Jigar should have issued a separate bill for labour charges and for free material supplied and should have charged service tax at full rate on the labour charges or should have charged service tax @33% of gross amount charged in the bill which includes value of goods / material supplied. But they failed to add the value of free issue material supplied by their clients in the gross amount charged in the bill while claiming exemption under **Notf. No. 01/2006-ST**. The explanation to the notification clearly mentions that the gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service. Since the value of free issue material supplied to them was not included in the gross amount, I find that M/s. Jigar is liable to be charged



service tax at full rate on these bills.

22. Similarly in the Work Order awarded by M/s. Central UP Gas Ltd. , materials were supplied as free issue material by their client and the fact that no work contract tax/VAT is charged in the bills issued by M/s. Jigar proved that there was no sale of goods involved. Even the Work Contract No CUGL/HO/C&P/MDPE- Laying/Sachendi/F-153/WO dated 31-12-2010, showed that MDPE Valve and MDPE Pipe 32mm and above, and GI/copper pipes were supplied by M/s. Central UP Gas Ltd as free issue material. Since no VAT was charged in the bill , it proves that the bills raised by M/s. Jigar were only for the labour charges.

23. Further, as per the definition of Section 65(105)(zzzza) of the Finance Act, 1994, one of the condition for classifying a service under 'Works Contract Service' is that the service provided should involve "*transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods*". In the instant case, materials were supplied as free issue material by their client and the fact that no work contract tax / VAT was charged in the bills issued by M/s. Jigar itself proved that sale of goods was not involved. Thus, classification of services under work contract and payment of service tax under work contract composition scheme is not acceptable. In terms of explanation to Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, the gross amount charged for the works contract shall include the value of all goods used in or in relation to the execution of the works contract whether supplied for a consideration or otherwise and the value of all the services required to be provided for the execution of the works contract. Since M/s. Jigar have not included the value of free issue materials in the gross amount charged in the bills, I find that the services provided by them could neither be classified under Works Contract service nor considered for composition scheme. Hence has to be classifiable under 'Commercial or Industrial Construction service'.

24. M/s. Jigar has claimed 75% exemption under **Notif.No.26/2012 dated 20.6.2012**, which I find is not admissible to them as there the exemption is for construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly. In the instant case M/s. Jigar is laying MDPE pipeline and PNG domestic connection for various gas distributing companies which are not sold directly to the customer.

25. Further in terms of Section 68(2) of the Finance Act, 1994 read with **Notification No.30/2012-Service Tax dated 2006-2012**, under reverse charge mechanism in cases of service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons,



located in the taxable territory to a business entity registered as body corporate, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory, liability to pay service tax is cast on both service provider and service receiver in the ratio of **50:50**. M/s. Jigar being a proprietorship firm, therefore wherever service is provided to body corporate, their service tax liability would be 50% of the service tax payable. However, for the services provided to others such as proprietorship firms, partnership firms, HUFs & association of persons, they are liable to pay entire service tax.

**26.** M/s. Jigar had work orders from Government Companies like M/s. Sabarmati Gas Ltd, M/s. GAIL India Ltd, M/s. Central UP Gas Ltd, M/s. Gujarat Gas Co. Ltd, M/s. Mahanagar Gas Ltd, M/s. Green Gas Ltd, M/s. GSPC Gas Co. Ltd. They used to receive separate work orders of each location but copies of such work order were not maintained location-wise. Only few copies of bills issued in a haphazard manner were maintained. For the services rendered to other clients such as individuals, to main contractors of pipeline gas distributing companies as sub-contractor, Shri Dinesh Paddhariya, Proprietor of M/s. Jigar in his statement dated 24-02-2015 stated that they have not entered into work orders with these clients hence could not produce copies of bills issued to all their clients except few bills. He has also admitted that for some clients where they worked as sub-contractor, bills were not issued. Services were provided as per the personal discussions. However, payments were received in cheques and the same are accounted for in their books of account.

**27.** In terms of Rule 6 of the Service Tax Rules, 1994, M/s. Jigar, being a proprietorship firm was liable to pay service tax by 5<sup>th</sup> of the month immediately following the quarter in which the payments are received, towards the value of taxable services. Since party-wise ledgers showing date-wise receipts from their clients were not produced, the information showing date-wise receipts of payments from their clients towards the value of service provided by them and available in Form 26AS was considered for calculating their tax liability. As the value of payments shown in Form 26AS is inclusive of service tax, amount of service tax is determined by treating the value of payments received as inclusive of service tax.

**28.** As the provisions relating to manner and period of payment of service tax was revised, and date of payment of service tax is to be determined as per Point of Taxation Rules, 2011 w.e.f. **01-04-2011**. As per Rule 3 of Point of Taxation Rules, 2011, point of taxation should be the time when the invoice for the service provided or agreed to be provided is issued or the date of receipt of payment, whichever is earlier. Applicability of point of taxation rules is made effective from **01-04-2011** for the services other than continuous supply of services. Further, Commercial or Industrial Construction Service defined under Section 65(105)(zzq) of the Finance Act, 1994 is notified as continuous

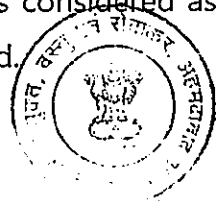


supply of service read with **Notification No. 28/2011-ST dated 01-04-2011**. Since M/s. Jigar is providing commercial or industrial construction services, they should have paid service tax on the basis of date of invoice or date of receipt of payment, whichever is earlier w.e.f. 01-04-2011. As levy of service tax on the basis of defined services was in force till 30-06-2012 i.e. services provided by M/s. Jigar was liable to pay service tax under commercial or industrial construction service during the period from 2011-12 to 2012-13 (up to 30-06-2012) on the basis of date of invoice or date of receipt of payments, whichever is earlier.

29. Thus, I find that during the period from 2009-10 (from October, 2009) to 2010-11 M/s. Jigar have rendered 'Commercial or Industrial construction' service valued at ₹.8,29,63,150/- against which they had received total payment of ₹. 9,15,08,354/- hence are liable to pay service tax of ₹.85,45,204/- along with interest. As they have already made the payment of ₹. 28,34,212/- the said amount needs to be adjusted against their above demand and remaining amount of ₹ **57,10,992/-** is to be recovered from them along with interest.

30. The provisions relating to manner & period of payment of service tax is revised and payment of service tax is to be determined as per the Point of Taxation Rules, 2011 w.e.f. 01.04.2011. As per Rule 3 of Point of Taxation Rules, 2011, point of taxation should be the time when the invoice for the service provided or agreed to be provided is issued or the date of receipt of payment, whichever is earlier. Applicability of point of taxation rules is made effective from 01-07-2011 for the services other than continuous supply of services. 'Commercial or Industrial Construction' Service defined under Section 65(105)(zzq) of the Finance Act, 1994 being notified as continuous supply of service read with Notification No. 28/2011-ST dated 01-04-2011, I find M/s. Jigar providing commercial or industrial construction services, should have paid service tax on the basis of date of invoice or date of receipt of payment, whichever is earlier w.e.f. 01-04-2011.

31. M/s Jigar have failed to furnish the copies of invoices issued to their clients such as M/s. Mahanagar Gas Ltd, M/s. Green Gas Ltd, M/s. GAIL India Ltd, M/s. Central UP Gas Ltd, and M/s. Gujarat Gas Co. Ltd, , especially where they worked as sub-contractor to the main contractors of pipeline gas distributing companies, therefore, service tax liability is determined on the basis of bill-wise information received from them. However, in respect of other clients viz., M/s. Subham Construction, M/s. Vichitra Construction, M/s Om Construction, M/s Techno Construction, M/s. Shayar Construction, M/s. Desai Associates and M/s. HKP Enterprises, value of services provided is available in trial balance of the year 2011-12. But copies of ledger accounts or bill-wise information of these clients were also not provided therefore, value of services shown in trial balance is considered as inclusive of service tax and accordingly, service tax liability is determined.



32. Further, outstanding payments for receipt as on 31-03-2011 from their clients are also liable for service tax as and when such payments were received. But, M/s. Jigar have not maintained any record to show the date-wise receipt of payments from the debtors outstanding as on 31-03-2011 which were received subsequently. I therefore find that the outstanding amount of payment receivable from these clients is required to be considered as received on 01-04-2011, by treating such amount as inclusive of service tax.

33. I find that during the period **2011-12 to 2012-13 (up to 30-06-2012)** M/s. Jigar had rendered 'Commercial or Industrial Construction' Service valued at ₹. **6,17,40,950/-** hence are liable to pay service tax of ₹. **63,62,760/-** along with interest.

**33.A** During the period from **July, 2012 to Sept, 2014** i.e. after the levy of service tax on the basis of negative list, I find that service portion of work contract is a declared service under clause (h) of Section 66E of the Finance Act, 1994. M/s. Jigar is executing work orders of two types viz., 1) works contract where scope includes execution of work with supply of material and labour; and 2) execution of work by employing labour. In the second type of work orders, material is supplied by their clients. Wherever, M/s. Jigar supplied material, they have issued separate bills for materials supplied or mentioned value of materials separately in the bills.

**33.B** In case of services provided to M/s. GSPC Gas Co. Ltd and M/s. GAIL India Ltd, they have provided service with supply of material. In case of M/s. GPSC Gas Co. Ltd, part of material was supplied as free issue material by them. In such cases, value of free issue material has to be included in the gross amount charged in the bills. Therefore, they have charged service tax on 40% of gross amount charged in the bills as per Rule 2A of Service Tax (Determination of Value) Rules, 2006.

**33.C** Further, M/s. Jigar being a proprietorship firm are liable to pay 50% of the service tax payable as specified in **Notification No. 30/2012-ST dated 20-06-2012** for the services provided to business entity registered as body corporate, located in the taxable territory. Information received from their clients such as M/s. GAIL India Ltd, M/s. Green Gas Ltd, M/s. Mahanagar Gas Ltd, M/s. GSPC Gas Co. Ltd confirmed that they were paying 50% of the service tax payable on the services received from M/s. Jigar. Bill-wise information received from the above mentioned service recipients was not provided and looking to the fact that in some bills M/s. Jigar have charged full service tax in the bills issued to their clients instead of charging 50% of service tax payable. Thus, in all such cases, where entire service tax is charged and collected by M/s. Jigar from their clients, entire service tax is to be recovered from them.



**33.D** In respect of the services provided to business entities other than registered as body corporate and for the services provided for maintenance work, M/s. Jigar is liable to pay entire service tax payable on the gross amount charged in the bills. Further, M/s. Jigar have issued three bills to M/s. Central UP Gas Ltd after 01-07-2012 charging service tax under works contract composition scheme without adding the value of free issue materials. Since M/s. Jigar have charged and collected entire service tax from their client, I find that the service tax is to be recovered from M/s. Jigar on the gross amount charged in the bills at full rate. Wherever copies of bills are not produced, value of services as shown in the trial balance is considered as value of services provided and accordingly, service tax is determined by treating such value as inclusive of service tax. That is, in respect of services provided to M/s. JSIW Infrastructure, M/s. Sumeet Gas Agency, M/s. Om Construction, M/s. Techno Construction, M/s. Bharatbhai Solanki, value of services provided is available in trial balance of the years 2012-13 and 2013-14 but copies of bills or ledger account showing bill-wise information is not produced by M/s. Jigar. These service recipients are not body corporate, therefore, M/s. Jigar is liable to pay entire service tax liability. Therefore, value of services shown in trial balance is considered as inclusive of service tax and accordingly, service tax liability is determined. During the period from 2012-13 (from July, 2012) to 2014-15 (up to September, 2014), they provided 'Works Contract Service' valued at ₹. 5,26,63,056 /- on which they are liable to pay service tax of ₹. **50,08,216/-** along with interest.

**33.E** Thus, I find that M/s. Jigar have failed to pay service tax of ₹. **1,20,73,752/-** under 'Commercial or industrial construction' service during 2009-10 (from October, 2009) to 2009-10 to 2012-13 (up to June, 2012) and service tax of ₹. **50,08,216/-** during the period 2012-13 (from July, 2012) to 2014-15 (up to September, 2014) under 'Works Contract' Service. 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.

**34.** Regarding penalty, I find that under Section 77, a person who is liable to pay service tax, or fails to take registration in accordance with provisions of Section 69 shall be liable to pay penalty. In the instant case M/s. Jigar has contravened the provisions of Section 67 by claiming the abatement under Notif.No.01/2006-ST dated 1.3.2006 / works contract composition scheme without adding the value of free issue materials supplied by their clients; by not paying appropriate tax, they contravened the provisions of Section 68; by not filing the ST-3 return within the stipulated time they contravened the provision of Section 70; they changed their registered office but failed to intimate the change of address to the department thereby violated the provisions of Rule 4(5) of Service Tax Rules, 1994; by not preserving and producing the specified records required to be maintained in terms of Rule 5(2) of Service Tax Rules, 1994 and





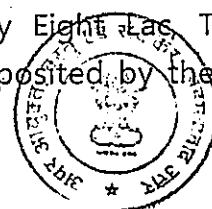
the financial records when demanded have contravened the provisions. Thus in view of all the above contraventions, I find that M/s. Jigar is liable for penalty under Section 77 of the Finance Act, 1994 which pertains to penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere.

35. As regards imposition of penalty under Section 78, I find that M/s. Jigar have willfully suppressed the value of taxable service with an intent to evade service tax. Sh. Dinesh Paddhariya, Proprietor of M/s. Jigar in his statement dated 24.2.2015 has admitted that they have not filed the ST-3 returns. The DGCEI officers during the visit had detected the non-payment of the tax. So, the imposition of penalty is warranted. As per Section 78, if the person liable to pay service tax has not paid the tax by reason of fraud; collusion; wilful mis-statement or suppression of facts or in contravention of the provisions of Sections or Rules made there under with an intent to evade payment of service tax shall be liable to penalty equal to the amount of service tax short levied or short paid. If the transactions are available in the specified records, penalty shall be reduced to 50% of the service tax short levied or short paid. Further if the service tax and the interest payable thereon is paid within 30 days from the date of communication of order determining such service tax, the amount of penalty liable to be paid under the first proviso shall be 25% of such service tax. The option to pay penalty 25% of the tax along with the entire amount of tax and interest, within the specified period is available only if the amount of reduced penalty has also been paid within the period of 30 days.

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

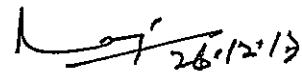
#### ORDER

- (i) I confirm the demand of Service Tax to the tune of ₹.1,20,73,752/- [ ₹ One Crore Twenty Lakh Seventy Three Thousand Seven Hundred Fifty Two only] (includes education cess and secondary & higher education cess), not paid under Commercial or Industrial Construction Service during the period from 2009-10 (from 01-10-2009) to 2012-13 (Up to 30-06-2012) as detailed in ANNEXURE - A.1 and ANNEXURE - A.2 to the show cause notice, under proviso to sub-section (1) of Section 73 of the Finance Act, 1994.
- (ii) I confirm the demand of Service Tax to the tune of ₹. 50,08,216/- [ ₹ Fifty Lakh Eight Thousand Two Hundred Sixteen only] (includes education cess and secondary & higher education cess), not paid under Works Contract Service during the period from 2012-13 (from 01-07-2012) to 2014-15 (Up to 30-09-2014) as detailed in ANNEXURE - B of the show cause notice, under proviso to sub section (1) of section 73 of the Finance Act, 1994.
- (iii) I appropriate an amount of ₹ 28,34,212/- ( ₹ Twenty Eight Lacs, Thirty Four Thousand, Two Hundred & Twelve only) voluntarily deposited by them against



present service tax liability vide cheques during 17.06.2010 to 31.03.2012 as detailed in Annexure-C to the show cause notice.

- (iv) I order to pay the interest at the appropriate rate on the amount of service tax not paid as per Annexure **Annexure-A.1, A.2 & B** and on service tax late paid as per **Annexure-C** of the show cause notice, for the period of delay of payment of service tax under Section 75 of the Finance Act, 1994.
- (v) I impose a penalty of ₹ 10,000 / ( ₹ TEN THOUSAND ONLY ) under provisions of Section 77 of the Finance Act, 1994, for contravention of provisions of the Finance Act, 1994 as explained herein above.
- (vi) I impose a penalty of ₹ 1,70,81,968/ ( ₹ ONE CRORE SEVENTY LAKH EIGHTY ONE THOUSAND NINE HUNDRED SIXTY EIGHT ONLY ) under Section 78 of the Finance Act, 1994, for suppressing the full value of taxable services and material facts from the department resulting into non-payment/late payment of Service Tax as explained herein above.
- (vii) The penalty imposed under (vi) above stand reduced to 25% only , if the entire amount of service tax confirmed above and interest is paid along with the reduced penalty within one month of issue of this order.



[R. M. GAUTAM]  
Additional Commissioner  
C.Ex. & CGST, Ahmedabad-North

F.No: STC/4-09/O&A/2015-16

Date: 26.12.2017

**By Regd. Post A. D./Hand Delivery**

To,  
M/s. Jigar Construction,  
B-202, Swaminarayan Park,  
Nr. Mangaldeep High School,  
Nava Vadaj, Ahmedabad.

**Copy to:**

1. The Commissioner, C.Ex.& CGST, Ahmedabad-North.
2. The Additional Director General , DGCEI , AZU.
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-III, Division-VII, Ahmedabad-North.
6.  Guard File.