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

OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
CUSTOM HOUSE, 1ST FLOOR,
NAVRANGPURA, AHMEDABAD-380009

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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/4-09/O&A/SATYAM/2017-18 आदेश की तारीख़/Date of Order:- 29.01.2018

जारी करने की तारीख़/Date of Issue :- 09.02.2018

द्वारा पारित/Passed by:- जी. सी. जैन /G. C. Jain

अपर आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 06/JC/2018/GCJ

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

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015-को प्रारूप संख्या इ.ए-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रू .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

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

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (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. CEA-II/ST/15-27/C-VI/AP-XXVIII/FAR dated 30.03.2017 issued to M/s Satyam Developers,** Satyam House, S.G. Highway, B/h Rajpath Club, Bodakdev, Ahmedabad, Gujatat-380059.

Brief facts of the case:

M/s. Satyam Developers Limited, Satyam House, B/h Rajpath Club, S. G. Highway, Ahmedabad-380059 (hereinafter referred to as "the assessee") is engaged in providing taxable service viz. Construction Services in respect of Commercial or industrial buildings and civil structures, Transport of goods by road and Construction of residential complex service falling under Section 65(105) (zzq), (zzp) and (zzzh) of the Finance Act, 1994. They were registered with the erstwhile Service tax department and holding Service Tax Registration No. AAKCS9247CSD001 dated 02.03.2011. The assessee had availed the benefit of Notifications No.01/2006 dated 01.03.20016 and 26/2012 dated 20.06.2012 effective from 01.07.2012.

2. During the course of audit of the records of the assessee for the period 2012-13 & 2013-14 and as detailed at para 02 & 08 of FAR No.607/2016-17 dated 01.02.2017 issued by the Assistant Commissioner, Circle- VI, Central Excise & Service Tax, Audit-II, Ahmedabad, it was noticed that the assessee had availed Cenvat Credit of service tax paid on various Input services on the invoices issued by M/s Shree Krushna Construction and M/s Aahir Construction. During the scrutiny of cenvat credit invoices issued by M/s.Shree Krushna Construction and M/s Aahir Construction, it was observed that the invoices issued by the said service providers were not proper documents for taking cenvat credit in terms of Rule 9(1) of the Cenvat Credit Rules, 2004 read with Rule 4A(1) of the Service Tax Rules, 1994.

3. Perusal of the invoices issued by M/s Shree Krushna Construction and M/s Aahir Construction revealed that Service Tax Registration Numbers of both assesses were not mentioned in the invoices and invoices were not serially numbered hence cenvat credit availed by the assessee on such ineligible documents was not permissible.

3.1 During the period 2012-13 and 2013-14 the assessee had availed cenvat credit of Rs. 66,53,204/- on ineligible invoices in terms of Rule 9(1) of Cenvat Credit Rules, 2004 read with Rule 4A(1) of Service Tax Rules, 1994 as per the details hereunder:-

Sr. No.	Name of the Input Service provider	RA Bill No.	Date	Value of service (Rs.)	Service Tax/ Cenvat credit involved	Total amount (Rs.)
1	M/s Shree Krushna Construction	1	01.07.2012	6708747	829201	7537948
2	-do-	2	01.07.2012	988516	122181	1110697
3	-do-	3	01.07.2012	537289	66409	603698
4	-do-	4	30.07.2012	759510	93875	853385
5	-do-	5	06.08.2012	2678311	331039	3009350
6	-do-	6	08.08.2012	2082447	257390	2339837
7	-do-	7	08.09.2012	971876	120124	1092000
8	-do-	8	19.09.2012	1425821	176231	1602052
9	-do-	9	24.09.2012	2576796	318492	2895288
10	-do-	10	18.10.2012	1645178	203344	1848522
11	-do-	11	05.11.2012	4730108	584641	5314749
12	-do-	12	12.11.2012	1180136	145865	1326001
13	-do-	13	18.12.2012	1974214	244013	2218227
14	-do-	14	12.02.2013	2568530	317470	2886000

15	-do-	15	08.03.2013	2083892	257569	2341461
16	-do-	16	14.03.2013	4454215	550541	5004756
17	-do-	17	30.06.2013	2782794	343953	3126747
18	-do-	17A	30.06.2013	332439	40813	373252
19	-do-	18	30.09.2013	1334995	165005	1500000
20	M/s Aahir Construction	1	21.03.2013	2572388	317947	2890335
21	-do-	2	26.03.2013	987598	122067	1109665
22	-do-	3	30.09.2013	6674973	825027	7500000
23	-do-	4	31.12.2013	1779993	220007	2000000
Total				**53830766**	**6653204**	**60483970**

3.2 The assessee was issued a query memo by audit team on 25.05.2015 and 05/12/2016. They in their reply dated 16.12.2016 had supplied copy of service Tax Registration Number of M/s Shree Krushna construction and M/s Aahir Construction. On verification of the said documents it was found that both the input service providers were registered under construction services. However, from the reply it was also not clear that the service providers had paid service tax for the above invoices or not. Therefore, the Cenvat Credit availed on the above invoices appeared to be not admissible to the assessee.

4. Further, Notification No. 1/2006-S.T., dated 1.3.2006, interalia, provided that exemption from payment of Service tax for Commercial or industrial construction service (zzq) and Construction of complex (zzzh), amongst other services, was admissible subject to the condition that the cenvat credit of duty on inputs or capital goods or the cenvat credit of service tax on input services, used for providing such taxable service, had not been taken under the provisions of the cenvat Credit Rules, 2004.

4.1. Further in terms of Notification No. 26/2012 ST dated 20.06.2012, which was effective from 01.07.2012, the condition for availing exemption from payment of Service tax on the services viz. Construction of a complex, building, civil structure or a part thereof, was modified to read (i) cenvat credit on inputs used for providing the taxable service has not been taken under the provisions of the cenvat Credit Rules, 2004 and (ii) The value of land is included in the amount charged from the service receiver. The relevant text of the said notification is as under:-

S.No.	Description of taxable No. service	Percent-age	Conditions
12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent	25	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The value of land is included in the amount charged from the service receiver.

4.2 On plain reading of the above notifications it was observed that Cenvat Credit on input services and Capital Goods used for providing services of Construction of a complex, building, civil structure or a part thereof, could be availed only from 01.07.2012, if exemption in terms of the said notification is availed.

4.3 It was not in dispute that the assessee had availed exemption from payment of Service tax in terms of the aforesaid notifications dated 01.03.2006 and

20.06.2012. Prior to the issuance of notification dated 20.06.2012 effective from 01.07.2012, Cenvat credit of input service, Capital goods and inputs, used for providing the taxable service as mentioned above was not admissible to the assessee, as they had availed exemption from payment of service tax in terms notification dated 01.03.2006 above. However post 01.07.2012 the Cenvat credit on input services and capital goods was available despite of their availing exemption from payment of Service tax under notification dated 20.06.2012 effective from 01.07.2012.

5. On verification of the invoices at serial number 1 to 3 of the table at para 3.1 above, said to have been issued on 01.07.2012, and the ledger of M/s Shree Krushna Construction of Ahmedabad, in the books of assessee for the period 01.04.2012 to 31.03.2014, it was noticed that the R.A. bills were shown to be issued on 01.07.2012 i.e. for completion of the services before 01.07.2012 (as without completion of service it is not possible to mention the work done and RA bills could not be issued) by the service provider and the payment of Rs. 90.00 lacs had also been made between 01.04.2012 to 26.06.2012 as against total amount of Rs. 92,52,341/- due vide the said Bills .

5.1 It was also seen from the above 3 invoices that the same were issued for various works such as Cellar Slab Block, Cellar wall, etc. work of which would have been performed over a period and completed prior to 01.07.2012, on which date the said R.A. bills were stated to be issued. Hence, also on this count the assessee was not eligible to take the Cenvat Credit for the above mentioned 3 invoices.

6. Further, in view of Rule 4A (1) of the Service Tax Rules ,1994, invoices are to be issued within thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, by the input service provider.

6.1 In view thereof, although the aforesaid 3 invoices were shown to be issued on 01.07.2012, they should had been actually issued much before 01.07.2012 in terms of Rule 4A(1) supra. Therefore in view of the fact that the assessee had already received the service and availed exemption prior to issuance of notification dated 20.06.2012 effective from 01.07.2012, they were not entitled for availing the credit in respect of these 3 invoices involving Rs.10,17,791/-.

7. On being pointed out the objection, the assessee disagreed with the objection and not paid/reversed the Cenvat Credit wrongly availed. The assessee contended vide their letter dated 01.06.2015 that they had taken the Cenvat Credit as per Rule 4(7) which reads as under:

> "Rule 4 Conditions for allowing CENVAT credit:
>
> (7) The cenvat credit in respect of input service shall be allowed, on or after the day which payment is made of the value of input service and the service tax paid or payable as is indicated in invoice, bill or, as the case may be, challan referred to in rule 9 is received:"

7.1 The assessee had further stated that "Whereby above rule has been allowed the cenvat credit on the date of invoice received as per Rule-9, So there were no question of the wrong availment of the cenvat credit".

8. In terms of Boards instructions issued by the Directorate of Legal Affairs from F.No.1080/11/DLA/CCConference/2016 dated 08.07.2016, pre show cause consultation in the matter was held with the representative of the assessee on 01.03.2017 and they submitted their written submissions on 01.03.2017, interalia, reiterating their submissions referred to in paras herein before.

9. The reply of the assessee to the query memos issued, was not acceptable in as much as Rule 4(7) only laid down the condition as to when the Cenvat credit can be availed and thereby implies that Cenvat credit could not be availed prior to making the payment of the value of input services. This did not imply that credit can be availed in spite of inadmissibility of credit prior to the specified date. Moreover, the assessee had made payment as mentioned above for the service provided in respect of above mentioned 3 invoices prior to 01.07.2012, as was clearly shown in their ledgers and without completion of service it was not possible to mention the work done by the service provider. Moreover in terms of proviso to Rule 3 of Point of Taxation Rules, 2011 enumerated above;

> *"In case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract which required the receiver of service to make any payment to service provider the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service. "*

9.1 Therefore in respect of the aforementioned 3 invoices, the date of completion of service by the service provider of the assessee was prior to 01.07.2012, when the Cenvat credit was not admissible in terms of notification No. 1/2006 dated 01.03.2006.

10. Rule 14 of the Cenvat Credit Rules, 2004 stipulates that:
Rule 14 - Recovery of cenvat credit wrongly taken or erroneously refunded

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

11. Section 70 of the Finance Act, 1994, provides that every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. Rule 7 of the Service Tax Rules, 1994, prescribes that every assessee shall submit a half-yearly return in Form ST-3 or ST-3A as the case may be, alongwith a copy of the Form TR-6, in triplicate for the months covered in the half-yearly returns. Further sub-rule [2] thereto also provides that every assessee shall submit the half yearly return by the 25th of the month following the particular half-year. The assessee by availing and utilising the inadmissible credit for payment of service tax, had short paid the service tax to that extent. For this reason, they also appeared liable to penalty under Section 77(2) of the Finance Act, 1994 for failure to assess their tax liability correctly and failure to file ST-3 returns with correct and full details.

12. The assessee by wrongly availing the Cenvat Credit inadmissible to them had contravened the provisions of Rule 4(7) and 9 of the Cenvat Credit Rules 2004 read with Rule 4A(1) of Service Tax Rules, 1994 and the exemption Notifications ibid and thereby had rendered themselves liable for penal action under the provisions of Rule 15 of the Cenvat Credit Rules, 2004 read with Section 76 & 78 of the Finance Act, 1994.

13. In view of the foregoing paras, it appeared that the said assessee had contravened the provisions of the Act and rules made there under as below:

(i) the provision of Section 68 of the said Act read with Rule 6 of the said Rules in as much as they have not discharged their service tax liability properly by the way of availing & utilizing the ineligible Cenvat Credit;
(ii) the provision of Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994in as much as they had failed to file correct ST-3 Return;
(iii) the provision of Rule 4(7) read with 9(1) of the Cenvat Credit Rules, 2004 by way of wrongly availIng ineligible Cenvat Credit and on ineligible documents/invoices.

14. It further appeared that the said assessee at no point of time disclosed the material facts to the department in any manner and evaded the payment of service tax by wrongly availing the ineligible input service credit as discussed above, which was not in accordance with the provisions of law. The assessee had also not declared about the wrong availment in their ST-3 Returns. Moreover in the present regime of liberalization, self-assessment and filing of ST-3 returns online, no documents- whatsoever were submitted by the assessee to the department and therefore the department would come to know about such wrong availment of Cenvat credit resulting in short payment of service tax only during audit or preventive/other checks. Government in its wisdom had incorporated the provisions of Sub Rule 5 & 6 of Rule 9 of the Cenvat Credit Rules, 2004 to cast upon the burden of proof of admissibility of Cenvat credit on the manufacturer or output service provider taking such credit. Therefore, it appeared that the assessee had deliberately suppressed the material facts from the Department with an intention to evade payment of service tax. Hence, it appeared that this was a fit case for invoking the extended period of limitation of five years under the proviso to Section 73 (1) of the Finance Act, 1994 read with Rule 14 of Cenvat Credit Rules, 2004 to recover the Cenvat credit wrongly availed & utilised along with interest under Section 75 of the Finance Act, 1994 read with Rule 14 of Cenvat Credit Rules, 2004. In the case of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241, it had been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of Lalit Enterprises vs CST Chennai, it was held that extended period can be invoked when department comes to know of Service charges received by appellant on verification of his accounts. Therefore, in this case, all essential ingredients existed to invoke the extended period in terms of proviso to Section 73 (1) of the Finance Act, 1994.

15. Therefore, it appeared that Cenvat credit amounting to Rs.66,53,204/- wrongly availed and utilized, as described above, by the assessee was required to be reversed/recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with the proviso to Section 73(1) along with interest under Rule 14(ii) of the Cenvat Credit Rules, 2004 read with Section 75 of the Finance Act, 1994. The act of contravention of the provisions of the Cenvat Credit Rules, 2004 read with Notifications ibid appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 read with Rule 15 (3) of the Cenvat Credit Rules, 2004. The assessee was also liable for penal action under Section 76 and 77 of the Finance Act, 1994.

16. The government had from the very beginning placed full trust on the assessee so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence were in place. Further, a taxable service provider/recipient was not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider/recipient and private records maintained by him for normal business purposes were accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any

provision was contravened or there was a breach of trust placed on the assessee. From the evidence, it appeared that the assessee had availed and utilized Cenvat Credit which was not admissible to them which was availed on incorrect invoices and service received prior to 01.07.2012 and thereby they had kept away themselves from payment of their correct tax liability. The deliberate efforts to suppress the correct facts and taking of cenvat credit which was otherwise not admissible to them is in utter disregard to the requirements of law and breach of trust deposed on them. Such outright act in defiance of law appeared to have rendered them liable for penal action as per the provisions of Rule 15 of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act 1994 for suppression of the facts and with intent to avail cenvat credit wrongly and thereby evaded the payment of service tax.

17. Therefore, a show cause notice No. CEA-II/ST/15-27/C-VI/APXXVIII/FAR-607/RP-02&08/16-17 dated 30.03.2017 was issued to M/s. Satyam Developers Limited asking thereunder to show cause to the Additional/Joint Commissioner of erstwhile Service tax, Ahmedabad as to why the amount of Rs.66,53,204/- (Rupees Sixty Six Lakhs Fifty Three Thousands Two Flundred Four only) of Cenvat Credit availed and utilized wrongly as discussed above should not be recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 read with Rule 14 of the Cenvat Credit Rules 2004 by invoking extended period; Interest at prescribed rate should not be demanded and recovered from them under Rule 14(ii) of Cenvat Credit Rules 2004 read with Section 75 of the Finance Act, 1994; Penalty should not be imposed upon them under Rule 15(1) of Cenvat Credit Rules, 2004 read with Section 76 of the Finance Act, 1994 as amended as they have failed to pay Service Tax within prescribed time limits as per Section 68 of Finance Act, 1994 read with Rule 6 of Service tax; Penalty should not be imposed under Section 77(2) of the Finance Act, 1994 for failure to self assess the tax liability correctly and failure to file ST-3 returns with correct and full details; Penalty should not be imposed upon them under Rule 15 (3) of Cenvat Credit Rules, 2004 read with Section78 of the Finance Act, 1994.

17.1 However, in pursuance of Notification No. 12/2017 C.Ex (NT) to Notification No. 14/2017-C.Ex (NT) all dated 09.06.2017 issued by the CBEC, the said show cause notice is to be adjudicated by an Officer in the rank of Additional/Joint Commissioner of Central Goods and Service Tax & C.Excise of Ahmedabad-North Commissionerate and accordingly a corrigendum dated 28.07.2017 is issued to that effect.

WRITTEN SUBMISSIONS:

18. The assessee filed written submissions through their authorized representative, Shri. Vipul Khandhar, Chartered Accountant, who submitted the same on 02.11.2017 when he came for hearing.

18.1. Vide the written submissions dated 02.11.2017, the assessee denied all the allegations/ observations raised in the show cause notice and stated that the show cause notice was not sustainable on the basis of their following submissions made therein which are independent and without prejudice to each other.

18.2.(i) <u>On the proposal of denial of cenvat credit under Rule 9(2) of Cenvat Credit Rules, 2004 as cenvat invoices issued by the service providers had no reference of service tax registration number and serial number</u>, it is submitted by the assessee, interalia, that during the course of audit of the records of the noticee for the period 2012-13 & 2013-14 and as detailed at para 02 & 08 of FAR No.607/2016-17 dated 01.02.2017 issued by the Assistant Commissioner, Circle-VI,

Central Excise & Service Tax, Audit-II, Ahmedabad, the department noticed that the assessee had availed Cenvat Credit of service tax paid on various Input services on the invoices issued by M/s Shree Krushna Construction and M/s Aahir Construction and during the scrutiny of CENVAT credit invoices issued by M/s. Shree Krushna Construction and M/s Aahir Construction, the department observed that "the invoices issued by the said service providers are not proper documents for taking cenvat credit in terms of Rule 9(1) of the Cenvat Credit Rules, 2004 read with Rule 4A(1) of the Service Tax Rules, 1994 as no reference of STC No. on the face of invoices and Invoices had not been in serial no. In this matter it is stated by them that there were no dispute relating to the fact of the case:i.e. they had availed such service, they had utilized such service in providing of the output service, they had paid service tax to the service provider, service provider had deposited the service tax with the department and there were no allegation that, such service had not utilized & provided by the service provider; that only reason that, STC No has not printed on the face of the Invoice, which can be correctible & revise it; that furthermore they had also provided the STC no certificate copy of the service provider, so there were no justification to disallow the cenavt credit only on the reason i.e. non-mentioning of the STC no on the face of the invoice. They then by quoting the provisions of Rule 9 of Cenvat Credit Rules, 2004 and Rule 4A (1) of the Service Tax Rules, 1994, submitted that all the particulars as required vide rule 9(2) of CCR-2004 & vide Rule 4(a)(1)of CCR-2004 had been fulfilled except registration No, which can be correctible and regarding the sr no. of the invoices, it is stated that invoices had been issued as a continuous supply service having reference of RA bill i.e. running bill, which suffice the purpose of the rule for availing the cenvat.

They relied on the following citations in support of their contention and argued that in view of these decisions of Tribunal, proposal for denial of cenvat credit requires to be set aside.

(i) 2016 (42) S.T.R. 81 (Tri. - Ahmd.) in CESTAT,Ahmedabad in the case of CCE & ST Vs Meghmani Organics Ltd ; wherein on the issue of denial of credit on the ground that certain documents not indicating registration number of service provider it is held that necessary certificates from jurisdictional Central Excise authorities showing registration number of the service provider subsequently produced by assessee; as per provisions contained in Rule 9(2) of Cenvat Credit Rules, 2004 if documents not containing all particulars but contains details of Service Tax paid, description of taxable services then same can be verified from jurisdictional Central Excise officers; that procedural irregularities ought not to be made basis for denying Cenvat credit and credit admissible to assessee under Rule 9(2) of Cenvat Credit Rules, 2004 and appeal rejected.

(ii) 2014 (36) S.T.R. 445 (Tri. - Del.) in CESTAT, New Delhi in the case of BSNL Versus CCE, Lucknow; wherein on the issue of credit taken before payment of Service Tax by service provider on invoice not containing address or Service Tax amount or registration number it is held that no dispute that Service Tax was paid though belatedly ; Credit against invoice dated 7-3-2007 availed on 31-3-2007 only after making payment of Service Tax to service provider and therefore technical objection that invoice was not in accordance with Rule 9 of Cenvat Credit Rules, 2004 would not survive.On the issue of credit taken before payment of Service Tax by service provider it is also held that if, service provider did not deposit Service Tax on due date, remedy lies at the end of service provider for recovery of Service Tax with interest - Section 73 of Finance Act, 1994; Credit to be allowed on or after the day on which payment is made; that for availing credit, no requirement that Service Tax should have been deposited by service provider before availing credit - Rule 4(7) of Cenvat Credit Rules, 2004 and appeal is allowed

(iii) 2011 (23) S.T.R. 661 (Tri. - Mumbai) in CESTAT, Mumbai in the case of Imagination Technologies India Pvt.Ltd Vs. CCE, Pune-III; wherein it is observed that although registration number of input service provider, not indicated on invoice, However, records indicating receipt of service and its utilisation for output service and held that Cenvat credit could not be denied - Rule 9 Cenvat Credit Rules, 2004 and appeal allowed.

(iv) 2017 (47) S.T.R. 58 (Tri. - Bang.) in CESTAT, Bangalore in the case of Diya Systems (Management) Pvt. Ltd Versus CCE, Mangalore wherein on the issue of denial of refund on the ground of non-mentioning of Service Tax Registration number of service provider in invoices it is held that that, being inadvertent error as such number mentioned in invoices raised for telephone connections, credit not to be denied when Service Tax payment and utilization of services not disputed – and allowed the appeal.

(v) 2016 (41) S.T.R. 80 (Tri. - Mumbai) in CESTAT, Mumbai in the case of Logistics Pvt. Ltd Vs. CCE, Pune-I ; wherein it is held that as no lapse in payment of duty or tax and filing of Service Tax returns, other premises/units also belong to assessee from where output services rendered - Input services utilized in rendering output taxable service and payment for input service utilized along with Service Tax charged by service provider, made by assessee - Proper record maintained in normal course of business and credit taken disclosed regularly in periodical returns - Assessee entitled to avail credit and Appeal allowed

(vi) 2015 (39) S.T.R. 670 (Tri. - Mumbai) in CESTAT, Mumbai in the case of Shivraj Cable Network Vs. CCE, Raigad wherein on the matter of denial of credit for wrongly mentioning of service-recipient name in input service bill it is held that Services received by assessee accounted for in books and payment for services made by assessee to service-provider established on basis of documents submitted - Therefore, case also covered under Rule 9(2) of Cenvat Credit Rules, 2004 - Assessee legally entitled for Cenvat credit on all subject invoices - Therefore, impugned order set aside - Rule 9 of Cenvat Credit Rules, 2004 and appeal allowed

Further, the assessee contended that department had verified the registration of the service provider & found that, the assessee in their reply dated 16.12.2016 had supplied copy of service Tax Registration Number of M/s Shree Krushna construction and M/s Aahir Construction and on verification of the said documents, the department found that both the input service providers were registered under construction services, however, the department contended that from the reply it was also not clear that the service provider had paid service tax for the above invoices or not, therefore, the Cenvat Credit availed on the above invoices appears to be not admissible to the assessee. The assessee then contended that so deniable of the cenvat credit on the supra reason even genuineness had been verified, denial of cenvat credit was not justifiable.

18.2.(ii) <u>On the issue of the service has been treated as completed on the Point of Taxation (POT), when bill for the service has been raised, proposal for denial of cenvat credit assuming service availed prior to 01.07.2012</u>, the assessee stated that , as per POT rule invoice had been treated as completion of service, so it had been undisputed fact that assessee had been receipt of the invoices dated 01/07/2012, so the completion date of service was on 01/07/2012, so the cenvat avail by them was right one. Further stated that Notification No. 1/2006-S.T., dated 1.3.2006 interalia provided that exemption from payment of Service tax, for Commercial or industrial construction service (zzq) and Construction of complex (zzzh), amongst other services, was admissible subject to the condition that the

CENVAT credit of duty 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. It is further stated that in terms of Notification No. 26/2012 ST dated 20.06.2012 which was effective from 01.07.2012, the condition for availing exemption from payment of Service tax on the above services viz. Construction of a complex, building, civil structure or a part thereof, was modified to read (i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004 and (ii) The value of land is included in the amount charged from the service receiver. They further stated that on plain reading of the above notifications, that Cenvat Credit on input services and Capital Goods used for providing services of Construction of a complex, building, civil structure or a part thereof, could be availed only from 01.07.2012, if exemption in terms of the said notification is availed post 01.07.2012 the Cenvat credit on input services and capital goods was available despite of their availing exemption from payment of Service tax under notification dated 20.06.2012 effective from 01.07.2012; The assessee had further stated that whereby Rule 4A(1) OF Service Tax Rules, 1994 has allowed the cenvat credit on the date of invoice received as per Rule-9, So there was no question of the wrong availment of the cenvat credit. They further stated that moreover in terms of proviso to Rule 3 of Point of Taxation Rules, 2011,"In case of continues supply where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which required the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service." The assessee had then contended that so as per POT & CCR-2004 they had availed cenvat credit rightly.

18.2.(iii) On assessee's contention that entire demand is time barred, it is stated by the assessee that the show cause notice covers the period of 01.07.2012 to 31.12.2013 and it was issued on 30.03.2017 whereas fact in the knowledge of the dept's since 2012 & onwards and thus, the show cause notice has invoked extended period of limitation based on the allegation that assessee had suppressed the information from the department.

18.2.(iv) On assessee's argument that penalty cannot be imposed under Section 78 of the Finance Act, 1994 in the present case, it is contended by them that the show cause notice had proposed to impose penalty under Section 78 of the Finance Act, 1994 and they had not suppressed any information from the department and there was no wilful misstatement on their part; that it was therefore clear from the statutory provisions that for imposing penalty under Section 78 of the Act, it is to be established that there is a short payment of service tax by reason of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any provisions of the Act or rules made there under with intent to evade payment of service tax; that the Show Cause Notice had not given any reason whatsoever for imposing the penalty under Section 78 of the Act; that the shows cause notice merely alleging badly that there is suppression on our part; that the present show cause notice had not brought any evidence / fact which can establish that they had suppressed anything from the department and hence no case has been made out on the ground of suppression of facts or willful misstatement of facts with the intention to evade the payment of service tax. Further stated that as the present case was not the case of fraud, suppression, wilful mis-statement of facts, etc, penalty under Section 78 of the Act cannot be imposed and the show cause notice is liable to be dropped on this ground also. In this matter they relied on on Hon'able Gujarat High Court decision in case of Steel Cast Ltd. 2011 (21) STR 500

(Guj).

18.2.(v) On assessee's argument that Penalty cannot be imposed under Section 76, 77 of Finance Act. 1994, it is stated by them that the penalty under Section 76, 77 is not imposable since there was no short payment of service tax and as per the merits of the case, they are not liable for payment of Service tax. They also stated that for imposing penalty, there should be an intention to evade payment of service tax on our part; that the penal provisions are only a tool to safeguard against contravention of the rules; that they have always been and are still under the bonafide belief that they are not liable for payment of service tax and such bonafide belief was based on the grounds given above; that there was no intention to evade payment of service tax as mentioned in the ground above and therefore, no penalty is imposable in the present case.They then to get support of the above view, reliance is placed on the decision of the Hon'able Supreme Court in the case of Hindustan Steel Ltd. v The State of Orissa reported in AIR 1970 (SC) 253 and stated that in this decision of the Apex Court, followed by the Tribunal in the case of Kellner Pharmaceuticals Ltd. Vs. CCE, reported in 1985 (20) ELT 80, and it was held that proceedings under Rule 173Q are quasi-criminal in nature and as there was no intention on the part of the Noticee to evade payment of duty the imposition of penalty cannot be justified. They argued that the ratio of these decisions squarely applies in all force to the present case; that in the present case, there was neither any mala fide intention nor any intention to evade payment of tax and no penalty is imposable. They further stated that even if there is any contravention of provisions the same was solely on account of their bona-fide belief and such bona-fide belief was based on the reasons stated above; that the contraventions, if any, were not with the intention to wilfully evade of payment of service tax. They then relied on the judgment of the Hon'able Supreme Court in the case of Pushpam Pharmaceuticals Company v CCE 1995 (78) ELT 401 (SC) and also stated that similar was the view of the Hon'able Supreme Court in the case in CCE Vs. Chemphar Drugs and Liniments 1989 (40) ELT 276 (SC), (Supra). They stated that the ratio of both the above - cited cases is squarely applicable to case of us. Hence no penalty under Section 76 of the Act is sustainable in the present case.

18.3. The assessee further stated that the present case is a fit case to be covered under Section 80 of the Act, which expressly provides that no penalty shall be imposed under Section 76 and 79 if the assessee has a reasonable cause for default.

18.4. They further submitted that no case has been made out by the Department that the present demand of service tax is on account of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions of Act or rules made hereunder with intention to evade payment of service tax and hence no interest or penalty under Section 77 and 78 of the Act can be imposed on this ground itself and the Show Cause Notice is liable to be dropped on this ground also.

18.5. They finally made request to drop the demand for the recovery of cenvat credit of Rs.6653204/- & interest thereon and to drop the demand of penalty u/s 76, 77(2) & 78 of the Finance Act, 1994. They also requested for a hearing.

Personal Hearing.

19. First personal hearing date was fixed on 22/09/2017, but nobody representing the assessee turned up on that day. Accordingly, next hearing was fixed on 02.11.2017, which was attended by Shri. Vipul Khandhar, Chartered Accountant, authorized representative of the assessee. During the course of

hearing, Shri. Vipul Khandhar handed over the written submissions, stated at above paras, and reiterated the contents made therein. He also requested to drop the show cause notice. Further, he promised to submit supporting documents within seven days.

19.1 Since the documents, as promised by the authorized representative of the assessee, were not submitted, vide letter dated 20.11.2017 the assessee was reminded to submit the same. The assessee, vide letter dated 29.11.2017, received on 29.11.2017, submitted copy of some challans issued by M/s. Shree Krushna Construction and M/s. Aahir Construction, the input service providers. Later on vide letter dated 15.12.2017 they submitted copy of certificates issued by M/s. SVK & Associates, Chartered Accountants in the matter of payment/depositing of the service tax collected from M/s. M/s. Shree Krushna Construction and M/s. Aahir Construction. Since the said CA certificates not specifically indicating the service tax payment by the input service providers in respect of the 23 bills in question, a letter dated 18.12.2017 was issued to the assessee; asking thereunder to submit valid document/certificate in order to prove the payment of service tax in the matter. Accordingly, the assessee vide letter dated 28/12/2017 submitted detailed ledger in respect of the transactions made with M/s. Shree Krushna Construction and M/s. Aahir Construction, duly signed by the assessee and the said input service providers.

Discussions and Findings:

20. I have carefully gone through the show cause notice, relevant documents available on records, written submissions of the assessee as well as the submissions made by the representative of the assessee during the course of hearing.

20.1 I observe that the present show cause notice, which covers a period from 2012-13 to 2013-14, is issued based on the audit objections contained in the Final Audit Report No. 607/16-17 dated 01/02/2017 of the Assistant Commissioner of C.Excise and Service Tax (Audit-II), Ahmedabad.

21.1. The subject notice propose to deny cenvat credit amounting to Rs. 66,53,204/ availed by the assessee during 2012-13 and 2013-14 on the basis of nineteen invoices issued by M/s. Shree Krushna Construction and four invoices issued by M/s. Aahir Construction, service providers, by making following allegations that-

(A) (i) these twenty three invoices do not contain the required particulars as prescribed under Rule 4A(1) of Service Tax Rules, 1994 (ii) the said two input service providers had not paid service tax for the services provided against which the disputed invoices were issued and based on which the disputed cenvat credit was taken by the assessee.

(B) Besides, the notice also propose to deny cenvat credit amounting to Rs. 10,17,791/ availed by the assessee on the three invoices issued by M/s. Shree Krushna Construction by alleging that the assessee had already received the service mentioned in these invoices and availed exemption notification No. 26/2012-ST dated 20.06.2012 prior to issuance of the said notification dated 20.06.2012 effective from 01.07.2012; that the said credit was taken by them when they were availing the exemption from payment of service tax under Notification No. 1/2006-ST dated 01.03.2006 which was admissible subject to the condition that the cenvat

credit of duty on inputs or capital goods or the service tax on input services was not taken.

21.2 These three invoices are listed among the nineteen disputed invoices issued by M/s. Shree Krushna Construction, mentioned at above. Hence it is seen that these three invoices are alleged to be invalid for the purpose of cenvat credit in view of the above points narrated at (A) & (B). Authenticity of these allegations of the notice based on which cenvat credit is proposed to be denied to the assessee is now required to be examined.

22. The first point to be ascertained is that as to whether the assessee is entitled to service tax cenvat credit taken on the basis of the disputed twenty three invoices issued by two input service providers viz. M/s. Shree Krushna Construction and M/s. Aahir Construction. Cenvat credit taken by the assessee on the basis of these invoices of both the service providers is proposed by the notice for reversal/recovery due to following grounds-

22.1 First reason is that these disputed invoices issued by the said service providers are not proper documents for taking cenvat credit in terms of Rule 9(1) of the Cenvat Credit Rules, 2004 as these invoices are alleged to have not been containing required information as per the provisions of Rule 4A (1) of the Service Tax Rules, 1994 in as much as registration number of the said two service providers is not mentioned in these invoices and these invoices are also not serially numbered. Rule 9(1) of Cenvat Credit Rules, 2004 provides for taking of cenvat credit by a manufacturer or an outside service provider or input service distributor on the basis of specified documents and one of such documents specified is an invoice, a bill or challan issued by a provider of input service. Issuance of an invoice, a bill or as the case may be, a challan by a registered service provider was governed by the provisions contained under Rule 4A(1) of Service Tax Rules, 1994. According to Rule 4A (1) of the Rules, such invoice, bill or challan shall be serially numbered and shall contain the following –

(a) the name, address and the registration number of the person issuing the document
(b) the name, and address of the person receiving the taxable service
(c) description and value of taxable service provided or agreed to be provided; and
(d) the service tax payable thereon.

A close perusal of copy of all these invoices issued by both the service providers, which are placed on records, indicates that registration number of them is not shown in all these invoices, except in the invoices listed at Sl.No. 22 & 23, mentioned in the table at para 3.1 of this order. Further, all these invoices are found as allotted running bill numbers, project wise, instead of giving serial numbers. However, it is seen from the invoices that continuous running bill numbers, project wise, are assigned to these invoices. All other information as per the requirement of Rule 4A (1) of the Service Tax Rules, 1994, discussed above, are found incorporated in these invoices.

22.2 Assessee through the defense reply filed on 2/11/2017 is found to have stated that department had verified the registration number of the service providers and found that both the service providers were registered under construction services and argued that since genuineness of registration of the service providers had been verified by the department, denial of cenvat credit was not justifiable. On the issue of non mentioning of serial numbers in the invoices of the service providers, assessee stated that invoices had been issued as a continuous supply

service having reference of RA bill i.e. running bill, which suffice the purpose of the rule for availing the cenvat credit.

22.3 Documents showing the registration number of the said service providers who issued the disputed invoices are then produced by the assessee before the auditing officers which is also narrated in the show cause notice itself. It is also seen from the copy of documents submitted by the assessee, available on records, both the input service providers got registered with the erstwhile Service Tax department in the year 2008 and 2011; which shows that while issuing the disputed invoices both the service providers were registered with the Service Tax.

22.4 From the copy of the disputed bills, available on records, it is seen that a continuous running numbers but project wise are assigned to these bills. Thus it is seen that one number with a code of the project name, in sequence, is present in all these bills. It is further observed from the facts of the case that receipt of the input services covered in these bills/invoices by the assessee and the usage of the said input services in providing the taxable output service of the assessee are not disputed. Thus I find that non mentioning of their service tax registration number in their invoices issued is merely a non-compliance of minor procedural formality. Similarly, considering the existence of running successive numbers in sequence with the project name in the bills, non mentioning of serial numbers in these invoices is a minor procedural lapse on the part of the input service providers. Thus, I observe that all these invoices conformed to the provisions of Rule 9(1) of the Cenvat Credit Rules, 2004 read with Rule 4A(1) of Service Tax Rules, 1994 and accordingly these invoices issued by both the input service providers are to be treated as valid documents for the purpose of availing of cenvat credit as far as the the provisions of Rule 9(1) of Cenvat Credit Rules, 2004 are concerned. For this, I rely on the decision of Hon'ble Tribunal, Delhi bench in the case of Secure Metres Ltd Vs. CCE, Jaipur-II, reported at 2010 (018) STR 0490 Tri.Del. wherein it has been held that it is not correct to deny the service tax credit on the basis of supplementary invoices that the input service provider was not registered and had not mentioned the registration number in the invoices and when the receipt of the input services is not disputed and the fact that the input service had been used for providing the taxable output services is not disputed, the credit of service tax on the input services even if the subsequently under supplementary invoices, cannot be denied. Further, in the case of CCE, Ahmedabad Vs. Meghmani Organics Limited, appearing at 2016 (42) STR. 81 (Tri-Ahm.), Hon'ble Tribunal, Ahmedabad rejected the appeal of the department by observing that respondent subsequently produced necessary certificates from the jurisdictional Central Excise authorities showing registration number of the service provider and the procedural irregularities cannot be made the basis for denying the Cenvat credit and accordingly Tribunal held that Cenvat credit was admissible to the appellant on the issue of certain documents for which necessary registration number, etc., were provided by the respondent. Further, Hon High Court of Gujarat in the case of Vimal Enterprise Vs UOI, (2006 (195) E.L.T. 267 (Guj) upheld that Cenvat/Modvat credit cannot be denied on faults for which assessee is not responsible.

22.5 Keeping in mind the provisions of Rule 9 of Cenvat Credit Rules, 2004, the benefit of cenvat credit is a substantive benefit provided by the statute to the manufacturers and the service providers and I observe that it cannot be curtailed by the procedural lapses or lack of relevant procedural provisions which would have otherwise enabled availment of such cenvat credit. It is a fact that Rule 9(2) of Cenvat Credit Rules, 2004, prohibits in taking of cenvat credit on the documents specified under Rule 9(1) if all the particulars as prescribed under the Central

Excise Rules, 2002 or the Service Tax Rules, 1994 are not contained therein. However, proviso to Rule 9(2) says that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, central excise or service tax registration number of the person issuing the invoice, name and address of the factory or warehouse or premises of first or second stage of dealers of provider of output service, and the Deputy Commissioner/Assistant Commissioner of C.Excise is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the cenvat credit. The close look at the aforesaid rule clearly reveals that if the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the cenvat credit provided that if the said document atleast contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, as the case may be. In the present case, receipt and account of services covered by the disputed invoices in the books of account of the assessee is not challenged by the department in the notice. Considering above facts, no merit is found in the proposal made in the notice to deny cenvat credit on the point that invoices issued by the two input service providers are not valid documents as per Rule 9(1) of Cenvat Credit Rules, 2004. Therefore, there is no embargo in availing the credit of service tax paid on the said invoices of input service providers in so far as the point of validity of documents as per Rule 9(1) of Cenvat Credit Rules, 2004 is concerned.

23. Second reason for the proposal made in the notice to deny service tax credit taken by the assessee on the basis of the said twenty three disputed invoices issued by two input service providers is that the payment of service tax involved in these invoices by the said input service providers is in doubt. In the written submissions of the assessee this point is not found to have specifically been answered. However, later on, they filed following documents-

(i) copy of some challans issued for remittance of service tax by M/s. Shree Krushna Construction and M/s. Aahir Construction, the input service providers,

(ii) copy of certificates dated 13.12.2017 of Chartered Accountant, Shilpang Karia, issued in respect of the depositing of the service tax collected from M/s. Satyam Developers Ltd by M/s. Shree Krushna Construction and M/s. Aahir Construction into government account for the financial year 2013-14.

(iii) A data in ledger form showing the details of accounts as standing in their Book of Accounts as on 01.04.2014 in respect of the transactions made with both the input service producers during the period covered in the notice, which is signed by the assessee as well as the input service providers.

23.1 Above documents produced by the assessee, placed on records, are carefully perused by me. By producing copy of these documents, assessee tried to prove that the said input service providers did make payment of the service tax involved in the bills on the basis of which the disputed cenvat credit was taken by them. A detailed verification of above documents revealed that -

(i) Documents they submitted are found as tax payer's counterfoils of challans, bearing the bank's seal, issued by M/s. Shree Krushna Construction and M/s. Aahir Construction for payment of service tax. On a detailed examination of the challan counterfoils it is found that although the said service providers are found to have

made payment of service tax through bank, it is not forthcoming as to whether the amount of service tax involved in the bills in dispute is covered in these payment documents. In absence of the evidence to link the payment of service tax covered in these challan counterfoils of the service providers to the amount of service tax involved in the disputed bills/invoices, no relevancy is found in these challan counterfoils.

(ii) Other document is the certificates dated 13.12.2017 issued by Chartered Account Shilpang Karia of M/s. SVK & Associates, Ahmedabad on the matter of payment of service tax by M/s. Shree Krushna Construction & M/s. Aahir Construction, collected from M/s. Satyam Developers Limited, in the government account. The Chartered Accountant's certificates endorse that M/s. Aahir Construction and M/s. Shree Krushna Construction collected service tax of Rs. 10,45,034/ and Rs. 5,50,009/ respectively from M/s. Satyam Developers Limited and deposited the same to government account for the financial year 2013-14. It is worthwhile to recall that the disputed credit taken is on the basis of bills/invoices of these service providers issued during 2012-13 & 2013-14. But the Chartered Accountant's certificates cover a period of 2013-14 only. On verifying the data in respect of service tax amount paid by both the service providers during 2013-14, as shown in the certificates of the Chartered Accountant, with the disputed credit taken by the assessee on the basis of Bills of the input service providers during 2013-14, it is seen that the amount of service tax involved in the bills of the input service providers issued during 2013-14, is certified as paid by the two input service providers into government account. But the certificates of Chartered Accountant are not showing the service tax liability on the part of both the service providers in respect of bills issued in favour of the assessee during 2012-13.

(iii) On going through the details of accounts , as per the books of accounts of the assessee in respect of bills raised to both the service providers, submitted by the assessee vide letter dated 28/12/2017, it is seen that the payment of amount involved in the disputed bills issued during 2012-13 and 2013-14, inclusive of service tax, by the assessee to the service providers is shown. But the payment of service tax by the said two service providers in respect of the disputed bills in government account, which is the issue before me, is not mentioned in this document. Hence, I do not think the said document would serve any purpose in deciding the current issue.

23.2 The conclusion arrived after verifying the documents furnished by the assessee in order to establish that the service tax involved in the disputed twenty three bills of the service providers, viz. M/s. Shree Krushna Construction and M/s. Aahir Construction, is that only the Chartered Accountant's certificates dated 13/12/2017 support the theory that the service tax was remitted by the two service providers to government account; but the said certificates covering only a period of 2013-14. Besides 2013-14, period of 2012-13 is also involved in the proposed recovery of the alleged disputed credit availed by the assessee. Therefore, on the strength of the said certificates of the Chartered Accountant, the service tax amount involved in the bills issued by the said two service providers during 2013-14 was found to have been remitted by them in government account. But, the documents furnished by the assessee do not specify any confirmation that the service tax amount involved in the bills issued by the service providers during 2012-13 was credited to government treasury . Accordingly, so far as the issue of payment of service tax by the service providers is concerned, cenvat credit involved in the disputed bills issued during 2012-13 is required to be disallowed and recovered from the assessee.

23.3 At this juncture, it is relevant to peruse the provisions contained in Rule 9(6) of Cenvat Credit Rules, 2004 which are reproduced below for easy understanding.

> *"(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, cenvat credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the cenvat credit shall lie upon the manufacturer or provider of output service taking such credit."*

It would be evident from the above rule that it is obligatory on the part of the manufacturer or the provider of output service, who take cenvat credit, in maintaining of the proper records showing the details of the receipt and consumption of the input services on which credit was taken. Besides, this rule also cast the burden of proof regarding the admissibility of Cenvat credit upon the manufacturer or service provider who is availing the credit. Thus it is obligatory on the part of the assessee that the proof in respect of the duty paid character of the bills/invoices on the basis of which credit was availed is to be with him in order to ensure that cenvat credit taken is properly. In the case on hands, assessee is found to have failed to provide such documentary evidences to establish that service tax suffered on the services provided to the assessee under the bills issued during 2012-13 by the service providers.

24. Now coming to the other reason shown in the notice to deny cenvat credit to the assessee, it is seen that dispute in respect of the cenvat credit taken is on the basis of three invoices issued by M/s. Shree Krushna Construction, input service provider. These three invoices are also found as appearing among the twenty three invoices issued by the input service providers, discussed at above paras. Notice proposes to deny cenvat credit taken by the assessee on the said disputed three invoices of the input service provider by alleging that the said credit was taken by them when they were availing the exemption from payment of service tax under Notification No. 1/2006-ST dated 01.03.2006 which was admissible subject to the condition that the cenvat credit of duty on inputs or capital goods or the service tax on input services was not taken. With effect from 01.07.2012, the assessee was claiming the same exemption provided vide notification No. 26/2012-ST dated 20.06.2012 which was available to them with a modified condition that cenvat credit on inputs used for providing the taxable service had not been taken under the provisions of the Cenvat credit Rules, 2004 and the value of land was included in the amount charged from the service receiver. Thus with effect from 01.07.2012, Cenvat credit on inputs used for providing the service only is prohibited in order to get the said exemption from payment of service tax on the service of construction of complex, building etc. Notice is found to have observed that cenvat credit on input services and capital goods for providing the said taxable services could be availed by the assessee only from 1.7.2012. Contention of the notice is that the disputed three invoices, all dated 01.07.2012, of the input service provider were issued for completion of the services rendered before 01.07.2012 when the assessee was claiming exemption notification No. 01/2006-ST dated 1.3.2006 which was admissible to them with the condition of non availment of the cenvat credit of duty on inputs or capital goods or the service tax on input services.

24.1 The charges in the notice, in short, is that the assessee discharged the service tax liability by claiming the abatement under the Notification No. 1/2006-ST and simultaneously availing the cenvat credit of service tax in respect of input services covered in the disputed three invoices issued on 01.07.2012 by M/s. Shree Krushna Construction. Notice says that the benefit of cenvat credit was not available to the assessee in view of the fact that the Notification No. 1/2006-S.T.,

dated 1-3-2006 did not provide for availment of cenvat credit if abatement was claimed.

24.2 To examine the issue, I would like to have a look at the provisions of Notification No. 1/2006-ST dated 01.03.2006. Notification No. 1/2006-ST dated 01.03.2006 provided specified percentage of abatement from the gross amount for payment of service tax in respect of taxable services which are specified therein subject to the general condition that the cenvat credit of duty 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; or the service provider has not availed the benefit under the Notification No. 12/2003-Service Tax, dated the 20th June, 2003. Notification No. 1/2006-ST dated 01.03.2006 covered the output service of Commercial or Industrial Construction service and Construction of Complex, amongst other specified services. It is to recall that the assessee has been providing the service of Commercial or Industrial Construction service and Construction of Complex. Notification No. 1/2006-ST came into the effect from 01.03.2006 and was rescinded with effect from 01.07.2012 vide Notification No. 34/2012-ST dated 20.6.2012. Thus, it is seen that Notification No. 1/2006-ST was in force from 1.3.2006 to 30.6.2012. However, the abatement at specified percentage from the gross value of taxable service of Construction of a complex, building, civil structure etc was continued vide Notification No. 26/2012-ST dated 20.06.2012, which came into force with effect from 1.7.2012 with a modified condition of non availment of cenvat credit on inputs used for providing the taxable service and the inclusion of value of land in the amount charged from the service receiver.

24.3 It would be apparent from above that Notification No. 1/2006-ST dated 1.3.2006 is very clear that if abatement is claimed, the cenvat credit of duty on inputs or capital goods or the cenvat credit of service tax on input services, used for providing the specified taxable services, should not be taken. Notification No. 26/2012-ST which was issued after rescinding the Notification No. 1/2006-ST did provide the abatement but prohibited the availment of cenvat credit only on inputs used for providing the taxable service. Thus it is seen that vide Notification No. 26/2012-ST, effective from 1.7.2012, the benefit of abatement at specified percentage from the gross value of taxable service provided by the assessee was continued but the earlier condition of non availment of cenvat credit on capital goods and input services was dispensed with and prevention was only for availing of cenvat credit on inputs used in providing the taxable service.

24.4 The three invoices of the input service provider, on which the disputed cenvat credit on input services is availed by the assessee, are issued on 01.07.2012. On 01.07.2012, Notification No. 26/2012-ST was in operation. As stated above, Notification No. 26/2012-ST did provide the benefit of abatement if the cenvat credit on inputs used for providing the taxable service has not been taken. But in the case at hands the said credit is found in dispute because of the provision contained in the Notification No. 1/2006-ST dated 1.3.2006 i.e. the ban was on the availment of cenvat credit on inputs, capital goods and input services used for providing the taxable services under the provisions of Cenvat Credit Rules, 2004. It is to recall that the Notification No. 1/2006-ST was in force upto 30.6.2012. Allegation in the notice is that although the three disputed invoices are issued by the input service provider on 1.7.2012, the services covered in these invoices were rendered to the assessee for the period prior to 1.7.2012 when they had availed/claimed the abatement from the gross value of their taxable service for payment of service tax under the provisions of the Notification No. 1/2006-ST. To

defend this point the notice also stated that the three invoices of M/s. Shree Krushna Construction, the input service provider, are in the nature of Running Account Bills (RA Bills) for completion of the services before 1.7.2012 as without completion of service it is not possible to mention the works done and RA bills cannot be issued by the service provider; that payment of Rs. 90 lakhs was made between 1.4.2012 to 26.6.2012 as against the total amount of Rs. 92.52 lakhs involved in the three invoices/bills. Notice is also found to have observed that the works performed by the input service provider in the construction sites of the assessee such as cellar slab block, cellar wall etc. against which the three bills were issued would have been performed over a period and completed prior to 1.7.2012 on which date the disputed RA bills are issued. Notice also stated that Rule 4A(1) of the Service Tax Rules, 1994 provided for issuing the invoice within thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier; that as per Rule 4(7) of the Cenvat Credit Rules, 2004 cenvat credit cannot be availed prior to making the payment of the value of input services. The notice, is thus to found to have tried to establish that the services/works covered in the said invoices/bills of the input service provider were in fact rendered to the assessee prior to 1.7.2012 when the assessee was paying service tax after availing the abatement from gross value of their taxable services under the provisions of Notification No. 1/2006-ST.

24.5 On the other hand, the charges made in the notice, discussed at above para, is contested by the assessee by stating that as per Point of Taxation Rules, 2011 invoice had been treated as completion of service, so it has been undisputed fact that they had received the invoice dated 1/7/2012 so the cenvat availed by them was right one. They also pointed out that as per proviso to Rule 3 of Point of Taxation Rules, 2011 which says that in case of continuous supply where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which required the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

24.6 At this juncture, it would be relevant to find out the period of time of rendering of the services covered in the three disputed bills of the input service provider issued on 1.7.2012 to the assessee; i.e. period prior to 1.7.2012 or post 1.7.2012. It is undisputed that the three disputed bills were issued on 1.7.2012. Issuance of invoice, bill or challan by the registered service tax provider of taxable service was governed under the provisions of Rule 4A(1) of the Service Tax Rules, 1994. As per the said Rule, a provider of taxable services is required to raise the invoice not later than 30 days of completion of taxable service or receipt of any payment of such taxable service, whichever is earlier. However, this basic rule has certain exceptions and one is that as per the third proviso of sub-rule (1) of Rule 4A, in case of continuous supply service, the service provider is required to raise the invoice within 30 days of the date when each event specified in the contract which requires the service receiver to make a payment to the service provider, is completed. It is clear from the above rule that the date of completion of taxable service or receipt any payment of such taxable service is criteria in issuing the time limit for issuing the invoice/bill by the provider of taxable service, but in the continuous supply service invoice has to be issued within thirty days of the date when each event specified in the contract, which requires the service receiver to make any payment to service provider, is completed. In the present case, as per assessee, the disputed invoices were issued in the case of continuous supply of service. As per Rule 2 (c) of the Point of Taxation Rules, "continuous supply of service" means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months. Assessee submitted that M/s.

claimed benefit of abatement under Notification No. 1/2006-ST for the services provided by them prior to 1.7.2012. Thus it is seen that the assessee can not avail the benefit of cenvat credit used for providing the taxable service by claiming the exemption under Notification No. 1/2006-ST. The services involved in the said three disputed bills of the input service provider were clearly received and used by the assessee in providing of their taxable service prior to 1.7.2012 by claiming the benefit of abatement under Notification No.1/2006-ST. It is very clear that both the benefits of abatement and cenvat credit cannot simultaneously be available to the assessee. It is thus to conclude that the cenvat credit involved in the said three bills of M/s. Shree Krushna Construction of Ahmedabad, amounting to Rs.10,17,791/, is wrongly availed and utilised by the assessee which is required to be recovered from them under the provisions of Section 73(2) of the Finance Act, 1994 read with Rule 14 of the Cenvat Credit Rules, 2004.

25. I would like to summarise my findings as under-

(i) Cenvat credit amounting to Rs. 50,581,61/ involved in the Bills issued by M/s. Shree Krushna Corporation and M/s. Aahir Construction during 2012-13, appearing at Sl.No. 1 to 16, 20 & 21 of the chart mentioned at 3.1 above is to be disallowed as the payment of service tax involved in these bills by the said service providers into government account is not proved. Service tax amounting to Rs. 15,95,043/, involved in the bills issued by these service providers during 2013-14, listed at Sl.No. 17, 18, 19,22 & 23 of the said chart is to be allowed to the assessee as the Chartered Accountant's certificates dated 13.12.2017 certify the payment of said tax amount by these service providers into government account.

(ii) Cenvat credit amounting to Rs. 10,17,791/ involved in the Bills all dated 1.7.2012 of M/s. Shree Krushna Construction, listed at Sl.No. 1,2 & 3 of chart shown at para 3.1. above, is to be disallowed on the ground that services covered in the three invoices were rendered to the assessee much before 1.7.2012 when the assessee was working under Notification No. 1/2006-ST.

(iii) Since the bills at Sl.No. 1,2 & 3 of said chart is inadmissible for the purpose of taking cenvat credit in view of both grounds at above, the total amount of cenvat credit is to be disallowed is Rs. 50,58,161/

26. Notice also proposes to recover interest on the wrongly availed and utilized cenvat credit, as described above, under the provisions of Rule 14(ii) of Cenvat Credit Rules, 2004 read with Section 75 of the Finance Act, 1994. Rule 14(ii) of Cenvat Credit Rules, 2004 provides that where the cenvat credit has been taken and utilized wrongly or has been erroneously refunded, the same shall be recovered along with interest from the provider of output service and the provisions of Section 73 and 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries. Section 75 of the Act provides that every person liable to pay the tax in accordance with the provisions of Section 68 or rules there under, who fails to credit the tax or any part thereof to the account of the central government within the period prescribed, shall pay interest at the specified rate. In the instant case the assessee had wrongly availed and utilized the cenvat credit of Rs. 50,581,61/ on input services involved in the above said bills of M/s Shree Krushna Construction and M/s. Aahir Construction of Ahmedabad. Thus the interest on the above said wrongly availed and utilized cenvat credit amount, at the appropriate rate, is chargeable from the assessee in terms of the Section 75 of the Finance Act, 1994.

27. Notice further proposes to penalise the assessee (i) under the provisions of Rule 15(1) of Cenvat Credit Rules, 2004 read with Section 76 of the Finance Act,

1944 as they failed to pay service tax within time limit as specified in Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 (2) under the provisions of Section 77(2) of the Finance Act, 1994 for their failure to self assess tax liability correctly and failure to file ST 3 returns with correct and full details and (3) under the provisions of Rule 15(3) of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 for taking and utilizing of cenvat credit wrongly by way of misstatement and suppression with intent to evade payment of tax.

27.1 The shortcoming on the part of the assessee is the wrong availment of cenvat credit. No charge against the assessee is in the notice in the matter of failure of service tax payment within the time limit. Hence, penalty under Rule 15(1) of Cenvat Credit Rules, 2004 or Section 76 of the Finance Act, 1994, as suggested in the notice, for the allegation of failure in payment of service tax, is not warranted.

27.2 It would also be appropriate to examine the relevant provisions of penal provisions contained under Section 77(2) of the Finance Act, 1994, as it stood at the relevant time, which is also reproduced below for ready reference.

> *"Section 77(2) : Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees."*

27.3 Proposal for penalizing the assessee under Rule 77(2) of the Finance Act, 1994 is for the violation of the provision of Section 68 of the Act as the assessee had not discharged their tax liability properly due to availing and utilizing the ineligible cenvat credit and for the violation of Section 70 of the Act read with Rule 7 of the Service Tax Rules as the assessee failed to file correct ST-3 return . Observations made in previous paras clearly indicate that the assessee intentionally availed and utilized inadmissible cenvat credit of service tax involved in the services rendered before 1.7.2012 on the basis of three bills of an input service provider and on the basis of bills issued during 2012-13 by two input service providers, amount of tax involved in which was in fact not proved to have been paid to government account. Thus, it is clear that by way of availing and utilizing such inadmissible cenvat credit, they made violations of Section 68 & 70 of the Finance Act, 1994 for which no separately penalty is provided in the Finance Act, 1994, and hence the assessee is also liable to face penal action under the provisions of Section 77(2) of the Finance Act, 1994. Assessee's arguments on the matter of imposing of penalty under Section 77 of Finance Act, 1994 that penalty under this section is not imposable as there was no short payment of service tax. This contention is totally wrong as it is already proved that violations of the provisions of Section 68, section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994 etc facilitated them to wrongly avail and utilize cenvat credit on input services and to evade payment of the service tax leviable on the taxable service provided by the assessee. The case laws pointed out by them in this respect are not relevant here as in the present case correct information in respect of the credit availed and utilized was not disclosed by the assessee deliberately only to escape from payment of service tax leviable on the services provided.

27.4 Now the proposal for invoking the provisions of Rule 15(3) of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 is to be examined. By the introduction of Finance Bill, 2015, with effect from 14.5.2015, Section 78 of Finance Act, 1994 are amended or substituted. Present case of period 2012-13 to 2013-14. Hence in present case new Section 78 of the Act effective from 14.5.2015

is applicable as per the provisions of Section 78B of the Act. Thus, provisions of amended Section 78 w.e.f 14.5.2015 are relevant here. Relevant provisions of the said section is as under-

> *"(1) where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of (a) fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the Rules made thereunder with intent to evade payment of tax, the person who has been served notice under the proviso to sub-section (1) of section 73, shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent of the amount of such service tax.*
>
> *Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning*
>
> *with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent of the service tax so determined.*
>
> *Provided further that where service tax and interest is paid within a period of thirty days of-*
>
> *(i) the date of service of notice under the proviso to sub-section (1) of Section 73, the penalty payable shall be fifteen per cent of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded.*
>
> *(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub section (2) of Section 73, the penalty payable shall be twenty five per cent of the service tax so determined.*
>
> *Provided also that the benefit of reduced penalty under the second proviso shall be available"*

27.5 Further, Rule 15(3) of Cenvat Credit Rules, 2004, stood at the relevant time is as under-

> *" In a case, where the Cenvat credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then the provider of output service shall also be liable to pay penalty in terms of the provisions of Section 78 of the Finance Act, 1994."*

27.6 It is clearly evident from above paras that the assessee wrongly availed and utilized cenvat credit on the input services rendered vide three bills of the said input service provider by simultaneously availing the abatement from gross value of taxable services vide Notification No. 1/2006-ST and by way of availing credit on the bills of said two service providers issued during 2012-13 without ensuring the service tax involved was paid by the service providers into government account which was suppressed from the department with intent to evade service tax by way of availing inadmissible credit. The assessee is also found to have given mis-declaration in respect of the said three bills and the period when the services rendered therein. Cenvat Credit taken on the said input services was shown in the

periodical return filed during the relevant time when the restriction on availing the cenvat credit on input services was gone away. But during the verification of the documents during auditing, it is unearthed that although the said bills showing date of 1.7.2012 the services involved in these bills were in fact rendered and received by the assessee prior to 1.7.2012 and payment against these bills was also made much before 1.7.2012. The assessee is clearly found to have tried to mislead the department by way of taking the cenvat credit on the bills bearing date of 1.7.2012 when the Notification No. 1/2006-ST ended, but the services involved in the bills were received and utilized by them in providing the output services by claiming the abatement under Notification No. 1/2006-ST. Their intention was to furnish a wrong impression to department that the credit taken under these bills of input service provider while they were working under Notification No. 26/2012-ST which was in effective from 1.7.2012, which do not put any restriction in availing cenvat credit on input services. Similarly, during verification of the credit availed by the assessee during 2012-13 by the audit officers, it was noticed that payment of service tax involved in the bills of two service providers, on the basis of credit was taken by the assessee, was not proved to be discharged by the service providers into government account. By taking cenvat credit towards service tax mentioned in the bills, but in fact not paid to government account, assessee evaded the payment of service tax. These actions on the part of the assessee invited the penal provisions under Rule 15(3) of Cenvat Credit Rules, 2004 read with Section 78 of the Act against them. Assessee's contention that penalty cannot be imposed under Section 78 of the Finance Act, 1994 in the present case as they had not suppressed any information from the department and there was no willful misstatement on their part cannot be accepted in view of the reason that it is already established that with an intention to evade the payment of service tax they suppressed and given misstatement to the department on the matter of the cenvat credit wrongly taken on input services. The case law pointed out by the assessee in the matter, High Court of Gujarat's decision in the case of Steel Cast Ltd, reported in 2011 (21) STR 500 (Guj.), which dealt with the issue of dropping of a demand on the ground of limitation, is not relevant here. I further observe that Hon'ble High Court of Punjab & Haryana, in the case of CCE Vs Haryana Industrial Security Services reported at 2011 (21) STR 210 (P&H), has upheld the penalty equal to service tax imposed under Section 78 of the Finance Act, 1994. Hon'ble Karnataka High Court has also taken similar view in the case of CCE, Mangalore Vs K Vijaya C Rai reported at 2011 (21) STR 224 (Kar.)

27.7 Coming to the issue of the quantum of penalty under Section 78 of the Finance Act, 1994 it is seen that under the provisions of Section 78(1) of the Finance Act, 1994 penalty shall be equal to the amount of service tax not paid. However, as per the first proviso to this section, where true and complete details of the transactions are available in the specified records for the period beginning with the 8th April 2011 up to the date on which the Finance Bill 2015 receives the assent of the President, the penalty shall be reduced to fifty per cent of the service tax so determined. It would be recalled from the facts of the case that the notice was originated from the audit objection raised by the Audit officers of the department which covers a period 2012-13 to 2013-14. During verification of the records/documents of the assessee by these officers it is found that benefit of cenvat credit was wrongly availed by the assessee in view of the fact that benefits of abatement under Notification No. 1/2006-S.T., dated 1-3-2006 is also simultaneously availed by them. Availment of cenvat credit which was not found as paid to government account by the service providers was also unearthed during verification of documents maintained by the assessee during auditing. Thus, benefit of reduced penalty of fifty per cent of the non paid service tax amount, as per the said proviso to Section 78 can be extended to them.

27.8 Finally, assessee is also found to have pleaded that their case is a fit case to be covered under Section 80 of the Act. I find that Section 80 of the Finance Act, 1994 is omitted by the Finance Act, 2015 with effect from 14.5.2015. However, considering the period covered in the present notice is 2012-13 to 2013-14, the plea of the assessee is to be examined. According to the erstwhile Section 80, no penalty may be imposed under Section 78, 77 or 78(1) of the Act if the assessee is able to prove that there is reasonable cause for such failure. It is clear from the provisions of this section that to get the benefit of no penalty, the assessee has to prove that there is a genuine reason for the failure to follow the service tax provisions and not to pay the service tax. In the present case, the assessee even not accepted the failure to comply the said provisions of Finance Act/Service Tax Rules. Thus to come under the provisions of Section 80 of the Act, firstly the assessee has to admit their tax liability which then should be paid; only then the adjudicating authority may properly consider the plea of the assessee as whether they are entitled to the benefit of Finance Act, 1994. I also observe that Hon'ble Tribunal, Principal Bench at Delhi in the case of Indo Hong Kong Industries Pvt.Ltd Vs CCE & ST, Delhi, reported in 2017 (4) G.S.T.L 257 (Tri-Delhi), held that as the appellant voluntarily made payment of service tax along with interest before issuance of show cause notice, provisions of Section 80 of the Finance Act, 1994 would be applicable and penalties imposed under Section 77 and 78 are dropped. I also observe that by pleading the waiver of penalty under Section 80 of the Act, the assessee is found to have indirectly accepted the charges leveled in the notice against them and their service tax liability which in fact provide much strength to my decision of confirming their tax liability and penal liability.

28. Besides on merits, the assessee contested the notice on the point of limitation also. Argument was that since the fact was in the knowledge of department since 2012 & onwards, show cause notice issued on 30.3.2017 covering a period 1.7.2012 to 31.12.2013 is time barred. This contention is devoid of merit as the wrong availment of Cenvat credit was come to the notice of the department when their documents were verified by the Audit team during April, 2015. Although they had shown the wrongly availed cenvat credit amount in their periodical returns, only during the course of auditing it is revealed that the services involved in the bills in question were actually rendered prior to 1.7.2012 when they were also claiming the benefit of abatement from gross value of taxable services provided under the erstwhile Notification No. 1/2006-ST. Similarly, their periodical return might have shown the amount of credit availed, but during verification by audit officers, it was revealed that service tax amount involved in the bills issued by the two service providers during 2012-13 was not paid to government account. Thus mis declaration and suppression of facts on the part of assessee with an intent to evade payment of service tax by way of wrongly availing of cenvat credit is clearly seen in this case. Hence the demand notice is correctly issued by invoking the extended period of limitation of five years under the proviso to erstwhile Section 73 (1) of the Finance Act, 1994 read with Rule 14 of the Cenvat Credit Rules, 2004. In the case of Mahavir Plastics Vs CCE, Mumbai, reported at 2010 (255) ELT 241, it has been held that if facts are gathered by department in subsequent investigation, extended period can be invoked. Also in the case of Lalit Enterprises Vs CST, Chennai, reported at 2010 (17) STR 370, Chennai branch of Tribunal held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Hon'ble Supreme Court in the case of CCE, Visakhapatnam Vs. Mehta & Co. reported in 2011(264) ELT 481(SC) held that cause of action arises on the date on which the relevant facts come to the knowledge of the department. In the present case, only after the verification of documents by the Audit, the wrong availment of cenvat credit was noticed. In the era of self assessment, assessee is supposed to be proactive in declaring their activities to the department. Thus it is very clear that all

essential ingredients required to apply the proviso to Section 73(1) of the Finance Act, 1994 are found existing in the case and hence five years period is properly invoked in the notice.

29. In view of above, I pass the following order.

ORDER

i) Out of the total demand of the cenvat credit of Rs.66,53,204/, I confirm an amount of Rs. 50,58,161 / (Rs. fifty lakhs fifty eight thousand one hundred and sixty one only) as wrongly availed credit and order to recover the same from M/s. Satyam Developers Limited, Satyam House, B/h Rajpath Club, S. G. Highway, Ahmedabad-380059 under the proviso to Section 73(2) of the Finance Act, 1994 read with Rule 14 of the Cenvat Credit Rules, 2004. Demand made for remaining cenvat credit amounting to Rs. 10,17,791 / (Rs. ten lakh seventeen thousand seven hundred and ninety one only) is dropped

ii) I order to charge and recover interest at prescribed rate on the amount of demand confirmed at (i) above, under Rule 14(ii) of Cenvat Credit Rules, 2004 read with Section 75 of the Finance Act, 1994.

iii) I do not impose any penalty upon M/s. Satyam Developers Limited, Satyam House, B/h Rajpath Club, S. G. Highway, Ahmedabad-380059 under Rule 15(1) of Cenvat Credit Rules, 2004 and under Section 68 of the Finance Act, 1994.

iv) I impose penalty of Rs. 10,000/ (Rs. Ten thousand only) upon M/s. Satyam Developers Limited, Satyam House, B/h Rajpath Club, S. G. Highway, Ahmedabad-380059 under Section 77(2) of the Finance Act, 1994.

v) I impose penalty of Rs. 25,29,081/ (Rs. twenty five lakhs twenty nine thousand and eighty one only) upon M/s. Satyam Developers Limited, Satyam House, B/h Rajpath Club, S. G. Highway, Ahmedabad-380059 under Rule 15(3) of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

However, if the amount of service tax and interest payable thereon, mentioned at Sl.No. (i) & (ii) above, is paid within thirty days from the date of receipt of this order, the amount of penalty liable to be paid by the assessee shall be twenty five per cent of the service tax amount determined at Sl.No. (i) subject to the payment of the amount of reduced penalty within the period of thirty days from the communication of this order.

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

(G.C. Jain)
Joint Commissioner
Central Goods & Service Tax & C.Excise
Ahmedabad-North

FNo. STC-38/O&A/SCN/PPPL/16-17

Date: 09.02.2018

By Regd post AD.

To
M/s. Satyam Developers Limited,
Satyam House, B/h Rajpath Club,
S. G. Highway, Ahmedabad-380059

Copy to:

1. The Commissioner of CGST & C.Excise, Ahmedabad-North (RRA Section)
2. The Deputy/Assistant Commissioner of CGST & C.Ex., Division VI, Ahmedabad North
3. The Superintendent of CGST & C.Excise, AR.IV/Division VI, Ahmedabad North
4. Guard File.