

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

**निबन्धित पावती डाक द्वारा/By R.P.A.D**

फा.सं./F.No.STC/4-07/O&A/P.C./2017-18

आदेश की तारीख/Date of Order: - 08.03.2018

जारी करने की तारीख/Date of Issue :- 12.03.2018

द्वारा पारित/Passed by:-

आर. एम. गौतम / *R.M.Gautam*

अपर आयुक्त / *Additional Commissioner*

**मूल आदेश संख्या / Order-In-Original No. 08/ADC/2018/RMG**

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

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

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

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

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

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

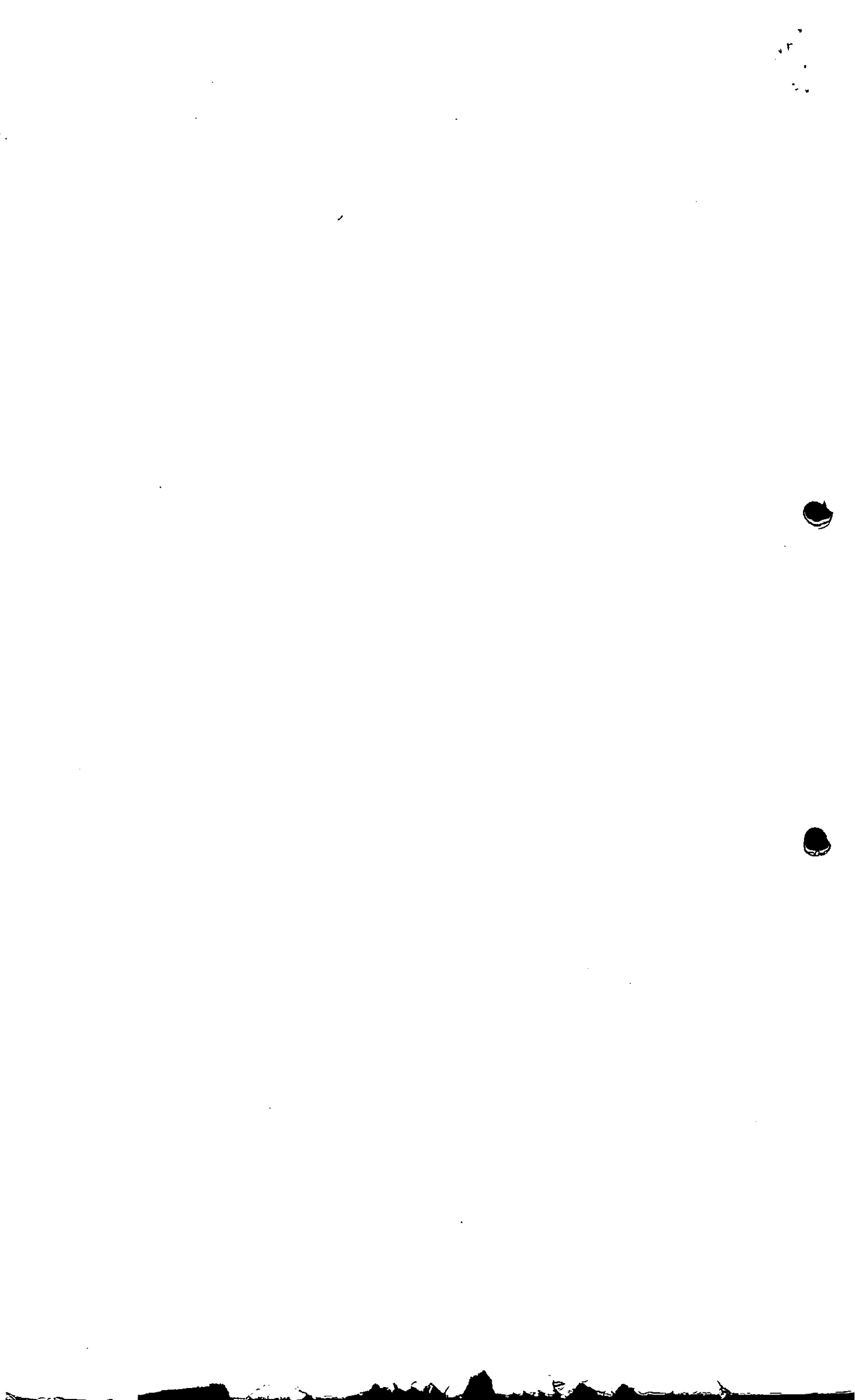
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

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

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

**विषय:** -कारण बताओ सूचना/Show Cause Notice F.No. STC/4-07/O&A/P.C./2017-18 dated 17.05.2017 issued to M/s. P.C. Snehal Construction Company, 9<sup>th</sup> Floor, City Centre, Nr. Swastik Cross Roads, Navrangpura, Ahmedabad.



**Brief facts of the case:**

During the course of audit undertaken by the Audit Commissionerate, Ahmedabad of M/s. P.C. Snehal Construction Company having registered office at 9<sup>th</sup> Floor, City Centre, Nr. Swastik Cross Roads, Navrangpura, Ahmedabad holding Service Tax Registration No. AACFP6233AST001 dated 20.01.2005, ( here-in-after referred to as 'the assessee' for the sake of brevity] who were engaged in providing the services falling under the categories of (i) Works Contract Services, (ii) Construction Services other than residential complex, including Commercial / Industrial Building or Civil Structure since 20.01.2005 and receiving services related to (i) Transport of Goods by Road / Goods Transport Agency, (ii) Legal Consultancy Services etc ,it was noticed by the Audit that the assessee had not paid service tax on Works Contract Service provided to various organizations as well as on GTA and Legal Consultancy Services under Reverse Charge Mechanism (RCM) during the period 2010-11 to 2013-14. However certain documents were sought by the Audit from the assessee for proper scrutiny of documents but they failed to furnish the same. The matter was therefore transferred to Service Tax Commissionerate , Ahmedabad.

2. Having received the said file , the Preventive section of Service Tax commissionerate issued summons to the assessee on 13.5.2016 & 16.09.2016 . A statement of Shri Dhiraaj Patel, Partner of M/s. P. C. Snehal was recorded on 16.09.2016 and the records for further period i.e. 2014-15 & 2015-16 were also obtained . The assessee vide their letters dated 22.06.2015 & 20.05.2016 submitted their records viz. copies of tender, financial records containing Balance Sheet, Profit and Loss Account, ST-3 Details, Reconciliation statement, sample work order/sample Bill etc.

3. On scrutiny of the financial records, ledgers/bills/invoices/documents, ST-3 returns provided by the assessee, it was noticed that:

- a) M/s. PC Snehal had provided the Works Contract Services to M/s. Odhav Estate Infrastructure Development Ltd. (M/s. OEIDL) for up gradation of water supply scheme from 2.8 MLD to 9 MLD at GIDC, Odhav under CIP Scheme Project-3. They had claimed that the services provided to M/s. OEIDL is exempted from Service Tax, as the company was set up for the welfare of the industries situated in Odhav and the same was being run on no profit no loss basis. As per Entry No. 13(d) of Notfn. No. 25/2012 exemption is granted only to a pollution control or effluent treatment plant whereas the assessee has provided services for up-

gradation of water supply. Therefore the services provided to M/s. OEIDL neither falls under exemption nor appears to be exempted.

- b) M/s. PC Snehal had constructed two lecture halls for M/s. Entrepreneurship Development Institute of India (M/s.EDI), Gandhinagar, however, they had not paid Service Tax on the services provided stating that the said services were exempted under Notification No. 25/2012 Entry No. 12(c). It was observed that prior to 01.07.2012, the work done by them for M/s.EDI projects was duly covered under the definition of 'Works Contract Services' and chargeable to service tax as per Section 65(105)(zzzza)(ii)(b). Further, for the period 01.07.2012 onwards, the projects of M/s. EDI did not get covered in Sr. No. 12 of Notification 25/2012-ST dtd. 26.06.2012 which grants exemption to Government, a local authority or a Government authority by way of construction and therefore, the same is taxable.
- c) The assessee in their financial records under the account head 'other income' had shown amount received from their sister concern M/s. P.C. Snehal Engineering Co. Pvt. Ltd. as well as another firm M/s. M S Khurana Engineering Pvt. Ltd.

Sr. No.	Name of the Service Recipient & place	2011-12 ₹	2012-13 ₹	2013-14 ₹	2014-15 ₹	2015-16 ₹
1	M. S. Khurana Engineering Pvt. Ltd.	2020386	0	0	0	0
2	P.C. Snehal Engineers P. Ltd.	6541300	23124427	29573111	26904073	0
	<b>Total</b>	<b>8561686</b>	<b>23124427</b>	<b>29573111</b>	<b>26904073</b>	<b>0</b>

Prior to 01.07.2012, the work done by the assessee for M/s. M.S.Khurana Engineering Pvt. Ltd. and M/s. P.C.Snehal Engineers Pvt. Ltd. was duly covered under the definition of 'Works Contract Services' which is chargeable to service tax in terms of Section 65(105)(zzzza)(ii)(b) of the Finance Act ,1994. For the projects undertaken by the assessee after 01.07.2012, the same did not get covered in Sr.No.29(h) of Notification 25/2012-ST dt. 26.06.2012 which state that the services are exempt only if sub-contractor providing services by way of works contract to another contractor providing works contract services are exempt.

- d) M/s. P.C.Snehal had short paid Service Tax under 'Goods Transport Service' during the period 2011-12 to 2015-16. In view of sub-clause (B) of Rule 2(1)(d) of Service Tax Rules, 1994,also, as per Serial No. 2 of Notification No. 30/2012-ST dated 20.06.2012, Service Tax in respect of services of transportation of goods by road provided by goods transportation agency is payable by the recipient of services. M/s. P C Snehal being recipient of service having paid freight

charges and also being a Partnership firm falls under the category of 'specified persons' hence, M/s. P C Snehal was liable to pay service tax for the transportation of such goods by road in a goods carriage. Initially the differential Service Tax was shown in the worksheet as ₹ 4,94,229/-, which was agreed by Shri Dhiraaj Patel, to make the payment along with interest. However, on verification, calculation mistake was noticed and the actual Service Tax not paid by M/s. P C Snehal worked out to ₹ 5,66,349/-.

- e) During the course of investigation, it was also revealed that the assessee had not made payment of Service Tax under Reverse Charge Mechanism (RCM) on the Legal Consultancy charges for the period 2012-13 to 2015-16. The assessee as the recipient of services was liable to pay service tax for availing Legal Consultancy Services under Serial No. 5 of Notification No. 30/2012-ST dated 20.06.2012.

4. In view of the above, it appeared that the assessee had not assessed the tax due on the taxable service namely "Works Contracts service" provided/rendered by them and not paid the service tax of ₹ 87,42,335/- during the period from 01.04.2011 to 31.03.2016, Service Tax of ₹ 3,78,718/- under RCM under Legal Consultancy Services and Service Tax of ₹ 5,66,349/- under 'Goods Transport Agency' and thereby violated the provisions of Section 68 read with Rule 6 of the Service Tax Rules.

5. During the course of investigation, the assessee however paid service tax (₹.1,78,241/-) and interest (₹.1,11,537/-) under the category of Transport of Goods services & service tax of (₹. 3,45,733/-) and interest of (₹ 30,100/-) under 'Legal Consultancy Services'.

6. In view of the above facts, M/s. P.C. Snehal Construction Co., 9<sup>th</sup> floor, City Centre, Nr. Swastik Cross Roads, C G Road, Navrangpura, Ahmedabad, 380009 were issued show cause on 17.05.2017 to the Additional Commissioner of Service Tax having office situated at 1<sup>st</sup> Floor, Central Excise Bhavan, Behind Panjra Pole, Opp. Govt. Polytechnic, Ambawadi, Ahmedabad-380 015 calling upon them as to why;

- i. the services provided by the assessee to the organizations as discussed hereinabove and exemption claimed by them should not be disallowed and the same should not be considered as the taxable value and accordingly, Service Tax amount of ₹ 42,77,599/- (₹ 26,16,094/- + ₹ 16,61,505/-) not paid by them, as calculated in above para should not be demanded and recovered from them under the proviso of Section 73(1) read with Section 68 of the Finance Act, 1994, as amended, by invoking extended period of five year;

- II. the amount of ₹ 8,81,63,297/- shown in their books of account under the head 'Other Income' being received from by the assessee from their sister concern M/s. P.C. Snehal Engineers Pvt. Ltd. & M/s. M.S. Khurana Engineering Pvt. Ltd. should not be considered as taxable value and service tax of ₹ 44,64,736/- as discussed hereinabove not paid by them, should not be demanded and recovered from them under the proviso of Section 73(1) read with Section 68 of the Finance Act, 1994, as amended, by invoking larger period of five year;
  - III. Service Tax of ₹ 5,66,349/- on transportation charges under Transport of Goods by Road Services as discussed hereinabove for the period 2011-12 to 2015-16 should not be demanded and recovered from them under the proviso of section 73(1) read with section 68 of the Finance Act, 1994, as amended, by invoking extended period of five year. The assessee during the course of investigation has paid Service Tax of ₹ 1,78,241/- under Transport of Goods by Road services and the same should not be appropriated against their Service Tax liability;
  - IV. Service Tax of ₹ 3,78,718/- under Reverse Charge Mechanism on the Legal Consultancy services received by them as discussed hereinabove for the period 2011-12 to 2015-16 should not be demanded and recovered from them under the proviso of section 73(1) read with section 68 of the Finance Act, 1994, as amended, by invoking larger period of five year. During the course of investigation, M/s. P C Snehal has paid ₹ 3,45,733/- under the head 'Legal Consultancy Service and the same should not be appropriated against their Service Tax liability;
  - V. Interest, at appropriate rate, should not be charged on the tax amount not paid as mentioned above under section 75 of the Finance Act 1994. The assessee has paid interest of ₹ 1,11,537/- under Transport of Goods by Road services and interest of ₹ 30,100/- under Legal Consultancy Services and the same should not be appropriated;
  - VI. Penalty should not be imposed upon them under Section 77, as amended, of Chapter V of the Finance Act, 1994;
  - VII. Penalty under Section 78 of the Finance Act 1994 as amended should not be imposed upon them as mentioned at (I) above for the suppressing the taxable value of taxable services provided by them before the department with intent to evade the payment of service tax;
7. However before the said case could be taken up by the Service Tax, GST Regime came in to effect w.e.f 01.07.17 and Service Tax Commissionerate was abolished. The CBEC vide Notification No.12/2017-CE(NT) dated 9.6.2017, appointed officers of Central Excise Department as Central Excise Officers and vested them with the power under the Central Excise Act, 1944 (1 of 1944) and the Rules made there under, with respect to the

jurisdiction specified in the notification issued under rule 3 of the Central Excise Rules 2002. The said notification was made effective from 22.6.2017 vide Notification No.16/2017-CE (NT) dated 19.06.2017.

8. With the Amendment of Act 32 of Finance Act, 1944, Chapter V (Service Tax) of the Finance Act, 1994 has been omitted hence all the service tax cases have been transferred to concerned jurisdictional Central Excise & Central GST Commissionerates. The present case thus got transferred to Central Excise & Central GST Commissionerate, Ahmedabad North. Consequent to this, a corrigendum dated 28.07.2017 vide F.No: STC/4-07/O&A/PC/2017-18 was issued intimating the assessee regarding transfer of this case to Additional Commissioner, Central Excise & Central GST Commissionerate Ahmedabad (North).

9. In reply to the above, the assessee furnished their written submission dt 05.02.18 wherein inter alia they stated;

- ✓ There was no fraud, collusion, willful mis-statement or suppression of facts involved with intention to evade payment of tax. Therefore SCN shall have been issued within period of eighteen months. SCN issued after period of eighteen months from date of filling concerned ST-3 returns is time barred as extended period of five years from relevant date is not applicable.
- ✓ M/s. OEIDL is a Public incorporated body and classified as Guarantee and Association Company setup for welfare of the industries situated at Odhav and the same is run on non profit basis wherein control is with the state Government. The assessee is requested to install effluent treatment plant and commission water facility. GIDC is 100% state Government owned statutory undertaking set up by the State Government under Section 3 of Gujarat Industrial Development Act, 1962. It also notify any industrial area as notified area under Gujarat Municipalities Act under Section 16 of Gujarat Industrial Development Act, 1962.
- ✓ Powers, authority and responsibility of Municipalities are defined under Article 243W in the Constitution of India 1949, are as under:

*Powers, authority and responsibilities of Municipalities, etc Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.*

*Under Sr. No. (5) of the Twelfth Schedule, it is stated that " Water supply for domestic, industrial and commercial purposes. "*

- ✓ Construction Services (Commercial and Industrial Buildings or Civil Structures)"

has come under the service tax levy,-

*13.2 The leviability of service tax would depend primarily upon whether the building or civil structure is "used, or to be used" for commerce or industry.*

*The information about this has to be gathered from the approved plan of the building or civil construction being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.*

- ✓ One of the functions entrusted to a municipality under Twelfth Schedule to Article 243 W of the Constitution is water supply for domestic, industrial and commercial purpose. Hence, it is very much clear that the work done by assessee for M/s. OEIDL is covered under Entry 12(e) of Mega Exemption Notification No. 25/2012-ST, dated 20.06.2012 and not liable for service tax.
- ✓ Leviability of service tax is depending upon whether civil structure primarily used or to be used for commerce or industry or not. Here the assessee has provided services to M/s. OEIDL and the said entity is non-profit organization. Meaning thereby the services provided to Governmental authority for non commercial purpose. The assessee has installed on commission 2.9 to 9 MLD effluent treatment plant as per entry 13(d) of Notification No. 25/2012-ST, dated 20.06.2012, it is clear that activity for pollution control or effluent treatment plant, except located as a part of a factory is exempt from service tax. As the above activity falls under exemption and not liable for service tax.

*"Governmental authority" has been defined in the Mega Exemption Notification 25/2012-ST as under-  
"governmental authority" means an authority or a board or any other body:*

- (i) set up by an Act of Parliament or a State Legislature; or*
- (ii) established by Government,  
with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243 W of the Constitution.*

- ✓ The definition of the term "Commercial or Industrial Construction" excludes the services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams. Further the definition of this term also clarifies that construction of a new building or a civil structure etc., which was used or to be used primarily for commerce or industry was covered under this levy. By a Circular No. B-2/8/2004-TRU dated 10<sup>th</sup> September, 2004, the Government of India has clarified that construction for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or



philanthropic purposes and not for the purposes of profit were not taxable, being non-commercial in nature. Since EDI is Governmental body as a result service of construction to EDI qualifies for the exemption from service tax.

- ✓ The services provided by M/s P.C.Snehal Engineers Pvt Ltd, is exempted from service tax hence the sub-contractors are also exempt from service tax. P C Snehal Construction Co. is main contractor and rendered works contract services which are exempted from payment of service tax. The copies of work orders are attached as Annexure D. M/s P.C.Snehal Engineers Pvt. Ltd. is a sub-contractor of the assessee. The copies of contract are attached as Annexure D. A sub-contractor providing services by way of works contract to the main contractor, providing exempt works contract service, has been exempted from service tax under the mega exemption entry No 29(h) if the main contractor is engaged in providing exempt services of works contracts.

By virtue of Entry 29(h) of Notification No.25/2012-ST dtd 20.06.2012, sub-contractor is eligible for exemption, the said is as under:

*"Services by the following person in respective capacities-*

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

- ✓ Details of sub contractor, main contractor and works contract service rendered which are falling under exemption are as detailed below:

S.r No	Name of Main contractor	Name of sub-contractor	Works contract service rendered which are exempted from payment of service tax.
1	P C Snehal Construction Co.	P C Snehal Engineers Pvt Ltd	Providing, lowering, laying and jointing, sewer collecting systems with allied works and transmission main from main pumping station to sewage treatment plant for Botad Drainage project.
2	P C Snehal Construction Co.	P C Snehal Engineers Pvt Ltd	Providing, lowering, laying, jointing, testing and commissioning of various diameter, D1 K-9 pipe line distribution network for augmentation of water supply under new zonal reservoir (ESR- GSR) at plot no. 57 of TP- Scheme 3 Rajkot for Ward 14 (chandres nagar/Laxminagar).
3	P C Snehal Construction Co.	P C Snehal Engineers Pvt. Ltd.	Una Nagar Palika water supply scheme under SJMMSVY.
4	P C Snehal Construction	P C Snehal Engineers	Construction of D.I. Rising Main, Gravity Main, pumping machinery and construction work of BPT with M&R for Amreli water supply scheme.

- ✓ The assessee has paid lump-sum amount to their sub-contractors to executing of works contracts which are exempted in the hands of both. At the completion of work at year end sub-contract has issued credit notes for the invoices they have raised to main contractor. As a result the same amount to credit note is nothing but part and parcel of main activity which is exempted from service tax. The copies of credit notes are attached as Annexure-E. The assessee is not liable to pay service tax as demanded in SCN.
- ✓ The income received from M.S.Khurana Engineering Pvt. Ltd is related to non-competent fees received prior to 01.07.2012. M.S.Khurana has paid amount to the assessee on 20.11.2011 and 31.03.2012 as non-compete fees for not filling of tender. The ledger of M.S.Khurana is attached as Annexure-F. Non-compete fee is a sum received under an agreement from a person for not competing in the business or for not taking a similar assignment for a period of time. If a company pays another consideration as part of an agreement to refrain from competing with it in any specified products, services or geography, that consideration is known as non-compete fee and it will not be subject to service tax prior to 01.07.2012. From the facts of the transaction it is clear that the said amount of non-compete fees are received by the assessee prior to negative list.
- ✓ Under pre-negative list era, activities which were not being classified under a specific category were not liable to service tax. Activities like non-compete agreements could not be taxed as there was no specific category under which such activity could be classified. Hence before July 01, 2012 non-compete fees was not liable to service tax. Hence it is requested to drop the said demand. Under GTA service the SCN proposes demand of ₹ 4,94,229/-. As the assessee has already paid service tax liability of ₹ 5,66,532/- & Int. of ₹ 1,11,537/- under reverse charge mechanism (details of paid challans also submitted) hence, they are not liable to pay any service tax.
- ✓ The Legal services are liable to tax under reverse charged mechanism. The SCN proposes demand of ₹ 3,78,718/- under service tax on legal service since tax of ₹ 3,79,531/- & Int. of ₹ 37,076/- is paid by the assessee hence no liability exist under the said service.
- ✓ The assessee is not required to pay penalty under section 78 of the Finance Act, 1994. The assessee has not paid tax by reason of fraud; or collusion; or wilful misstatement; or suppression of facts; with intend to evade payment of tax and therefore extended period of five years is not applicable.

- ✓ The adjudicating authority was required to issue SCN within period of eighteen months from relevant date. The assessee has submitted all required documents and information to the officers of department for audit as well as officers who investigated under preventive department. The department has no where proved that the assessee has suppressed facts or given will full mis-statement before the officers of the service tax department. The assessee relied on following judgments;

- 1) Continental Foundation Jt. Venture Vs. CCE, Chandigarh-12007 (216) E.L.T. 177 (S.C.)
- 2) Pahwa Chemicals Pvt Ltd - 2005 (189) ELT.257 (S.C)
- 3) Mysore Kirloskar Ltd - 2008 (226) E.LT.161 (S.C),
- 4) Cosmic Dye Chemical - 1995 (75) E.L.T.721 (S.C)

- ✓ The service provider has shown income in the P&L Accounts, Ledgers for the period 2011-12 to 2014-15. The service provider has shown this income in income tax returns and service provider filed service tax return for which he was liable to pay service tax for the relevant years. This proves that service provider has not suppressed his income with intent to evade payment of service tax. In addition the appellate authority has not proved that any of the ingredients mentioned in Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.) were present in our case. Therefore provisions of proviso of section 78 of the Finance Act, 1994 is not applicable. They requested to grant personal hearing in the case.

10. The personal hearing was granted in this case even prior to receipt of the written submissions on 13.11.2017, 18.12.2017, 09.01.2018. However none appeared for personal hearing. Therefore last personal hearing was granted on 08.02.2018. Shri Bishan R. Shah, C.A. appeared before me and represented the case on behalf of M/s. P.C. Snehal. Shri Shah reiterated the submissions made in the written reply and sought one week's time to submit the challans evidencing the payment of service tax.

**Discussion & Findings:**

11. I have carefully gone through the show cause notice, written submission made by the assessee vide their letter dated nil received on 05.02.2018, contention made during the personal hearing and records of the case.

12. I find that the SCN is raising the service tax demand of Rs.87,42,335/- under 'Works Contract' service rendered to M/s. OEIDL, M/s. EDI, M/s. Khurana Engineering Pvt Ltd & M/s. P.C. Snehal Engineering Co. Pvt Ltd during the period from 01.04.2011 to 31.03.2016; demand of Service Tax of Rs.3,78,718/- under RCM under Legal Consultancy Services and Service Tax of Rs.5,66,349/- under 'Goods Transport Agency'.

13. I would first take up the demand raised under works contract service. As per the provision of Section 65(105) (zzzza) of the Finance Act, 1994, taxable service mean any service provided "to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams". "Works contract", for the purposes of section 65(105) (zzzza), means a contract wherein,-

- (i) *transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*
- (ii) *such contract is for the purposes of carrying out,—*
  - (a) *erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*
  - (b) *construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or*
  - (c) *construction of a new residential complex or a part thereof; or*
  - (d) *completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*
  - (e) *turn key projects including engineering, procurement and construction or commissioning (EPC) projects;*

14. Further clause 54 of section 65B of Finance Act, 1994, defines the Work-Contact as "a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property".

15. Thus from the above definition, it is clear that there should be transfer of property in goods involved in the execution of such contract, and such transfer of property in goods is leviable to tax as sale of goods (such as sales tax, VAT or WCT, etc.) Thus it can be concluded that work contract is the composite/single contract for providing (a) transfer of property in goods and (b) provision of service.

16. The SCN alleges that the assessee has provided the Works Contract Services to **M/s. OEIDL** for up gradation of water supply scheme from 2.8 MLD to 9 MLD at GIDC, Odhav under CIP Scheme Project-3. Since OEIDL is a private organization exemption under Sr. No. 13 (d) of Notification No. 25/2012 is not admissible. The assessee has not disputed the fact that they were rendering works contracts service to M/s. OEIDL but are claiming exemption stating that the gradation of water supply from 2.8 MLD to 9 LD at GIDC, Odhav was rendered to M/s. OEIDL, which has been setup for welfare of

the industries situated at Odhav and is run on non profit basis and controlled by the state Government i.e. GIDC hence the services rendered to OEIDL should be treated as services rendered to GIDC, which is 100% State Government Body.

**16.1** I have gone through the letter dated 22.3.2011 issued by M/s. OEIDL assigning the tender to the assessee, Memorandum of Work in brief as well as the terms & conditions of the Contract between them. GIDC (Gujarat Industrial Development Corporation) is a Corporation created for securing the orderly establishment and organization of industries in industrial areas and industrial estates in the state. Odhav Estate Infrastructure Development Limited (OEIDL) is a Public Ltd company which identifies locations suitable for industrial development and creates industrial estates with infrastructure such as roads, drainage, electricity, water supply, street lights, and ready-to-occupy factory sheds on behalf of GIDC. OEIDL has floated tenders to carry out these works in Odhav GIDC. In the instant case the up gradation of water supply scheme from 2.8 MLD to 9 MLD at GIDC, Odhav under CIP Scheme Project-3 including construction & Commissioning Water Supply Scheme at GIDC, Odhav with an estimated cost of Rs.5 crore was granted to the assessee. As per the special condition **no.1.3(b)** of the Contract if *the agency does not maintain the work to the entire satisfaction of the Engineer-in-charge, OEIDL will undertake the work & its components by themselves and the expenditure so incurred shall be recovered from the amount of maintenance bond.* Further condition no. 2 states that *OEIDL reserves the right to get check the quality of works through Third party Inspection Agency, GIDC/PMC & GIDC Quality Control.* Further the maintenance work shall be carried out as & when required and asked by OEIDL without fail within a given time frame; the maintenance work can be withdrawn by OEIDL at any stage; during execution, if any doubt arises shall be discussed in committee of PMC/TP I/GIDC/OEIDL & decision of OEIDL in the matter shall be final. The terms & conditions of the contract clearly establish that the Works Contract service was rendered to OEIDL and not directly to GIDC, hence the construction carried out cannot be treated as exempted service.

17. I find that M/s. P.C.Snehal is claiming exemption under entry No. 13(d) of Mega Notification No.25/2012-ST dated 20.6.2012 which stipulates that;

**13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:-**

- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- (c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;

*(d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;*

Entry at 13(d) allows exemption to a services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased. In the instant case M/s. P.C.Snehal is not constructing or altering a pollution control or effluent treatment plant but is upgrading a water supply scheme hence the benefit of exemption cannot be extended to them.

18. I also do not find merit in the argument that in terms of Entry 12(e) of the aforesaid notification, they are eligible for the exemption. Entry at 12(e) is reproduced below:-

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

*(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*

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

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

*(d) canal, dam or other irrigation works;*

*(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*

*(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;*

19. Under Clause 2(s) of Mega Exemption Notification, "**Governmental Authority**" is defined as follows:

*"governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W<sup>1</sup> of the Constitution.*

In the light of the above stated definition of Governmental Authority, the bodies which were established by way of a special enactment passed by the Central or State Legislatures and with 90 percent or more participation by way of equity capital or control by the government were termed as the Governmental Authority. Such bodies carried out any function entrusted to a municipality under Article 243W of the Constitution of India. Accordingly, various entities such as corporations, government companies, government institutes etc. that were owned and controlled by the Government, were excluded from the definition of 'governmental authority' since the same were not established under the special enactment of the Parliament or the state legislature and there was a limited scope of the definition of the Governmental Authority. However, Ministry of Finance vide its notification no. 02/2014 dated 30.01.2014 widened the scope of the definition of the Governmental Authority. The

earlier definition as provided under the mega Exemption Notification dated 20.06.2012 was substituted with the following:

- '(s) "governmental authority" means an authority or a board or any other body;*
- i. set up by an Act of Parliament or a State Legislature; or*
  - ii. established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;'*

Now, according to the new definition of the Governmental Authority a body is governmental authority if such body is set up by an Act of Parliament or a State Legislature with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution *OR if such body is established by Government with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.* From the work contract, it is clear that the services rendered by the assessee was not to the government or local authority but to M/s. OEIDL which is a Public Limited Company hence exemption cannot be granted.

**20.** Another allegation in the SCN is that the assessee has constructed two lecture halls for **M/s. EDI, Gandhinagar**, which cannot be treated as exempted service under entry no.12 (c) of Notification No.25/2012-ST dated 20.6.2012 as EDI is not a government, local authority or a Government authority but an autonomous body.

**20.1** The website of Entrepreneurship Development Institute of India (EDI) claim that they are an autonomous body and not for profit institution registered under Societies Registration Act 1860 and the Public Trust Act 1950. Since they are not governed by the government body it cannot be considered as a Government, local authority or a government authority. As per the Works Contract No: EDI/PER/Cons/2011 dated 17.2.2011 the assessee was entrusted the work of construction of lecture hall and extension of Computer lab in EDI. Since the above service rendered is to an autonomous body and not a government organization, benefit of exemption mentioned at Entry no. 12(c) of the Notification No.25/2012-ST dated 20.6.2012 cannot be extended to the assessee.

**21.** Another allegation leveled against the assessee is that they have not paid service tax on the income received against the work contract service rendered to **M/s. M.S.Khurana Engineering Pvt. & M/s. P.C.Snehal Engineers P. Ltd.** The assessee has contended that M/s. P.C.Snehal Engineers P. Ltd is their sub-contractor providing works contract service exempted from service tax under the mega

exemption entry No 29(h) as the main contractor is engaged in providing exempt services of works contracts. After completion of work sub-contract issues credit notes for the invoices they have raised to main contractor. As a result the same amount to credit note is nothing but part and parcel of main activity which is exempted from service tax. In respect of services rendered to M/s. M.S.Khurana Engineering Pvt, they claimed that the sum received was a non-compete fee to refrain from filing a tender i.e. a consideration to refrain from competing with the Company in any specified products, services or geography, which is not subjected to service tax prior to 01.07.2012.

22. I have gone through the following documents:-

- a) MOU cum Work Contract and Agreement dated nil wherein the assessee has sub-contracted the work of 'Construction work of D.I.Rising Main, Distribution System, Filter Plant, Sump, ESR, Compound Wall, Pumping Machinery including M&R for Amreli Water Supply Scheme, Amreli' to M/s. P.C. Snehal Engineers Pvt. Ltd
- b) MOU cum Work Contract and Agreement dated nil wherein the assessee has sub-contracted the work of 'Construction work of D.I.Rising Main, Gravity Main, Pumping Machinery & Construction work of BRT with M&R for Amreli Water Supply Scheme, Amreli' to M/s. P.C. Snehal Engineers Pvt. Ltd
- c) MOU cum Work Contract and Agreement dated nil wherein the assessee has sub-contracted the work of 'Una Water Supply Scheme Under SJMMSVY for Una Nagarpalika' to M/s.P.C. Snehal Engineers Pvt. Ltd.
- d) MOU cum Work Contract and Agreement dated nil wherein the assessee has sub-contracted the work of Providing, Lowering, Laying, Jointing, Testing & Commissioning of Pipeline Distribution Network for augmentation of Water Supply at Ward 14 of Rajkot Municipal Corporation to M/s. P.C. Snehal Engineers Pvt. Ltd.
- e) MOU cum Work Contract and Agreement dated nil wherein the assessee has sub-contracted the work of Supply Lowering, Laying of DI K-7 pipeline for Umavada Zone, Amreli Nagarpalika to M/s. P.C. Snehal Engineers Pvt. Ltd.
- f) letter dated 06.5.2010 wherein the assessee has been awarded the construction contract i.e. Providing, Lowering, Laying & Jointing sewer collecting system with allied works and Transmission main from main pumping station to sewage Treatment plant for Botad Drainage Project.



**22.1** On going through the above contracts it appears that the assessee sub-contracted all the above work contracts to M/s. P.C. Snehal Engineers Pvt. Ltd which is their sister concern. The assessee claims that they have paid lump-sum amount to their sub-contractor for executing the above work contract and at the completion of the work the sub-contractor issued credit notes for the invoices raised to them. I find that as per common business practice, when a work is sub-contracted, it is the sub-contractor who raises an invoice and not the main contractor as the service is rendered to main contractor. Hence the claim that the credit notes issued were for the completion of work appears illogical.

**22.2** Regarding the claim that the services are exempt in the hands of both as the main service is rendered to Government body hence they as main contractor are not liable to pay service tax, I find that the above works contract was provided to a Rajkot Municipal Corporation, Una & Amreli Nagarpalika which are local authorities / government body by the main contractor i.e. the assessee. Since the services rendered by the sub-contractor (M/s. P.C. Snehal Engineers Pvt. Ltd) to the assessee is also works contract service. Board vide Circular No. 138/7/2011-ST dated 6-5-2011, has clarified that a sub-contractor is liable even if main contractor is exempt from service tax, if the service provided by sub-contractor falls in a category where the service is not exempt from service tax. I find that in the instant case, the nature of service of the sub contractor is same as that of the service rendered by main contractor i.e. Construction & up-gradation of water supply scheme of various Municipalities or Nagarpalika which is a local authority or a governmental authority. Thus, in terms of entry at 29(h) of Notification No. 25/2012-ST dated 20.6.2012, a sub-contractor is eligible for exemption, if sub-contractor providing services by way of works contract to another contractor providing works contract is exempt. The relevant text is reproduced below:-

*29. Services by the following persons in respective capacities -*

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

**22.3** In view of above, I find that the services rendered to various Municipalities & Nagar Palika are exempted. Nevertheless, I find that the benefit of above notification cannot be extended to the assessee because other than the copies of MOU/Contracts mentioned above they have not provided copies of relevant invoices to establish that the payment received/credit notes raised by M/s. P.C.Snehal Engineers Pvt Ltd. during the 2013-14 & 2014-15 was towards the aforementioned work contract or a rate difference in respect of aforementioned contract. In absence of any documentary

evidence, I find that the assessee is liable to pay service tax on the amount received through credit notes.

23. As regard the payment of ₹ 20,00,000/- received from M/s. M.S.Khurana Engineering Pvt. Ltd, the assessee claim that the same is non-compete fee received prior to 01.7.2012 hence not taxable. They produced a ledger account of M/s. M.S.Khurana Engineering Pvt. Ltd (period 1.4.2011 to 31.3.2012) showing ₹ 20,00,000/- debit towards non-compete charges which they claim is for not filling of tender. Here again I find that the assessee in support of their above claim has failed to produce either copy of contract entered with the aforesaid party or the invoices / bills raised towards provision of such service. In terms of Rule 4A every person providing taxable service not later than [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,] issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him [in respect of such taxable service] [provided or agreed to be provided] and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the name, address, address and the registration number of such person; the name and address of the person receiving taxable service; description and value of taxable service provided or agreed to be provided; and the service tax payable thereon. In absence of invoices and contract, I find no reasons to believe the claim that income received was towards non-compete fee and prior to negative list i.e. on 20.11.2011 & 31.03.2012. Thus the demand of service tax on ₹ 20,20,386/- ,I find, is also sustainable.

24. In light of above findings, I find the demand of ₹ 87,42,335/- under "Works Contracts service" rendered during the period from 01.04.2011 to 31.03.2016 is sustainable.

25. Further, the SCN proposes service tax demand of ₹ 5,66,349/- under **GTA service**. In terms of sub-clause (B) of Rule 2(1)(d) of Service Tax Rules, 1944, persons liable for paying service tax are as under:

- (i) *Where the consignor or consignee of goods is 'specified persons', the person liable for paying service tax shall be 'any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage'.*
- (ii) *Where the consignor or consignee of goods does not fall in category of 'specified persons', goods transport agency shall be liable to pay service tax.*

Also, as per Serial No. 2 of Notification No. 30/2012-ST dated 20.06.2012, Service Tax in respect of services of transportation of goods by road provided by

goods transportation agency is payable by recipient of services. I find that the assessee is a Partnership firm and being the recipient of GTA service they paid the freight charges hence shall be liable to pay service tax for transportation of goods. Thus Service Tax demand of ₹ 5,66,349/- under 'Goods Transport Agency' is also sustainable.

26. Further the SCN also proposes service tax demand of ₹ 3,78,718/- under **Legal Consultancy services**. In terms of Serial No. 5 of Notification No. 30/2012-ST dated 20.06.2012 service tax is payable by recipient of legal services in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services. In the instant case the assessee is liable to pay service tax ₹ 3,78,718/- under Legal Consultancy Services under reverse charge mechanism.

27. Against the demand raised under GTA & Legal Consultancy services, the assessee has made the payment of [₹ 1,78,241/-(S.tax) + ₹ 1,11,537(Int) under GTA] & [₹ 3,45,733/-(S.tax) + ₹ 30,100/-(Int) under Legal Consultancy service]. I have gone through the challans & submission of the assessee. I find that the assessee is not disputing the demand under GTA & Legal Consultancy service and have provided the Challans evidencing payment of Service Tax made to the tune of ₹ 4,94,421/- under GTA and ₹ 3,79,534/- under Legal Consultancy service and Interest payment of ₹ 11,15,371/- under GTA and ₹ 37,073/- under Legal Consultancy service. The assessee has mentioned that during the period Oct, 2015 to March, 2015 they have made the payment of ₹ 72,111/- towards Legal Consultancy service, I however find that they have not submitted the proof of such payment thus S.Tax of ₹ 72,111/- still remains unrecovered. I therefore find that against the service tax demand of ₹ 5,66,349/- under GTA, they paid ₹ 4,94,421/- which I find is required to be appropriated and against the demand of ₹ 3,78,718/- under Legal Consultancy service they paid the entire amount hence ₹ 3,78,718/- paid by the assessee is also required to be appropriated.

28. I find that the assessee has strongly contested that the demand notice is time barred as the notice is issued beyond eighteen months from the date of filing of ST-3 returns though there is no fraud, collusion willful, mis-statement or suppression of facts. I find that the assessee has willfully suppressed the facts, nature and value of service provided by them by not filing ST3 returns correctly and not declaring correct taxable value with department with intent to evade the payment of Service Tax for the services provided by them.

29. I find that the assessee has rendered taxable service namely "Works

**Contracts service**" and not paid the service tax of ₹ **87,42,335/-** during the period from 01.04.2011 to 31.03.2016, received **Legal Consultancy Services** but failed to pay Service Tax of ₹ **3,78,718/-** under RCM and received '**Transport of Goods Services (GTA)**' but failed to pay Service Tax of ₹ **5,66,349/-** as recipient of service and thereby violated the provisions of Section 68 read with Rule 6 of the Service Tax Rules. It is also noticed that during the course of Audit the assessee did not cooperate and hence investigation had to be carried out by the preventive wing of the Commissionerate and all these prove malafide intention of the assessee. I therefore find that the said service tax not paid is required to be demanded and recovered along with interest from them under the proviso to Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

30. Thus in light of above findings, I determine the amount of service tax of ₹ **87,42,335/-** under Works Contract service, Service Tax of ₹ **3,78,718/-** under Legal Consultancy Services and Service Tax of ₹ **5,66,349/-** under 'Transport of Goods Services (GTA)' during the period 2011-12 to 2015-16. As the demand is sustainable on above grounds the same shall be recovered along with interest under Section 75 of the Finance Act, 1994 for the delayed payment.

31. Regarding penalty under Section 77, I find that the assessee has also contravened the provisions of Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable services received from various service providers by not mentioning the correct project value in ST 3 returns; violated the provisions of Section 68(1) of the act read with Rule 6 of the Service Tax Rules, 1994, by not paying service tax of ₹ **87,42,335/-** during the period from 01.04.2011 to 31.03.2016, Service Tax of ₹ **3,78,718/-** under RCM under **Legal Consultancy Services** and Service Tax of ₹ **5,66,349/-** under '**Goods Transport Agency**'. Further the assessee has not assessed the tax due, properly, on the services provided by them, as discussed above, and failed to file correct ST-3 Returns in time thereby violated the proviso of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994. In view of the above, they are liable for imposition of appropriate penalty under clause (c) & (d) of Section 77.

32. As regards imposition of penalty under Section 78, I find that charge of suppression is justified as discussed above. Since it is already proved that the assessee had suppressed the facts, the consequences shall automatically follow. Hon'ble Supreme Court has settled this issue in the case of **U.O.I Vs Dharmendra Textile**

Processors reported in **2008 (231) ELT 3 (S.C)** and further clarified in the case of **U.O.I Vs R S W M** reported in **2009 (238) ELT 3 (S.C)**. Hon'ble Supreme Court has said that the presence of *mala fide* intention is not relevant for imposing penalty and *mens rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Further, Hon'ble High Court of Karnataka at Bangalore in the case of **Motor World (2012 (27) S.T.R. 225 (Kar.))** held that

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

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

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

**33.** Thus penalty under **Section 78**, is attracted wherever any service tax has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful mis-statement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. However, as per the second proviso to Section 78, where such service tax along with interest is paid within 30 days from the date of communication of the order, penalty would be further reduced to 25% of the service tax so determined. The benefit of reduced penalty shall be available only if such penalty is also paid within 30 days referred to above. Thus the assessee have rendered themselves liable to penalty under Section 78 of the Finance Act, 1994, as they were not paying service tax in spite of the facts that they were providing the taxable service.

**34.** By the introduction of Finance Bill, 2015, with effect from 14.5.2015, Section 78 of Finance Act, 1994 are substituted. Present case of period 2011-12 to 2015-16. 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 ; abstract of which is as under-

"78B. (1) Where, in any case,--

(a) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and no notice has been served under sub-section (1) of section 73 or under the proviso thereto, before the date on which the Finance Bill, 2015 receives the assent of the President; or

(b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and a notice has been served under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President, then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable."

**35.** In the present case SCN is issued on 17.5.2017, hence coming under the category of clause (a) of Section 78A of the Act. Thus the amended or substituted provisions of Section 78 vide Finance Act, 2015 would be applicable to the period prior to 14.5.2015 also.

**36.** Thus, provisions contained in the Section 78 of the Act substituted by Finance Act, 2015 are to be examined in working out the quantum of penalty under this section. 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 there under 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 8<sup>th</sup> 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"

37. It would be seen from above 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 during the entire period covered in the present notice. However, as per this section, where true and complete details of the transactions are available in the specified records, penalty shall be reduced to fifty per cent of the service tax so not paid. It would be recalled from the facts of the case that the notice was originated from the preventive operation conducted by the preventive officers of the department. During verification of the records/documents of the assessee by these officers, the non-payment of service tax on the taxable service provided was unearthed. It is found that the assessee had not filed correct ST-3 returns by way of hiding many taxable events in the returns. Thus, benefit of reduced penalty of fifty per cent of the non paid service tax amount, as per the Section 78 can not be extended to them.

38. In view of above, quantum of penalty as per Section 78 of the Act in the present case would be equal to the amount of service tax not paid during the entire period. However, as per the second proviso to Section 78, where service tax and interest thereon is paid within a period of thirty days of the date of receipt of this order, the penalty payable will be reduced to twenty five per cent of the service tax determined.

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

#### ORDER

- a) I deny the exemption claimed by the assessee and consider the services rendered as taxable value and accordingly, determine the Service Tax amount of ₹ **42,77,599/-** (₹ 26,16,094/- + ₹ 16,61,505/- as detailed in Table-A&B of Annexure-A to the SCN) under Section 73(2) of the Finance Act, 1994, by invoking extended period.
- b) I consider the amount of ₹ 8,81,63,297/- shown in their books of account under the head 'Other Income' being received by the assessee from their sister concern M/s. P.C. Snehal Engineers Pvt. Ltd. & M/s. M.S. Khurana Engineering Pvt. Ltd. as taxable value and determine the service tax of ₹ **44,64,736/-** (as detailed in Table-C of Annexure-A to the SCN) under Section 73(2) of the Finance Act, 1994 by invoking extended period.
- c) I determine the Service Tax of ₹ **5,66,349/-** not paid for the period 2011-12 to 2015-16 on transportation charges under Transport of Goods by Road Services (detailed in Table-D of Annexure-A to the SCN) under Section 73(2) of the Finance Act, 1994 by invoking extended period. I order to appropriate the amount of ₹ **4,94,421/-** paid by the assessee during the course of investigation under Transport of Goods by Road services against their Service Tax liability;
- d) I determine the Service Tax of ₹ **3,78,718/-** under Reverse Charge Mechanism on the Legal Consultancy services received by them for the period 2011-12 to 2015-16 (detailed in Table-E of Annexure-A to the SCN) under Section 73(2) of the

Finance Act, 1994 by invoking extended period. I order to appropriate the amount of ₹ 3,79,534/- paid by the assessee during the course of investigation under Legal Consultancy services against their Service Tax liability;

- e) I order to pay the interest at the appropriate rate on the amount of service tax not paid / short paid by them for the period of delay of payment of service tax under Section 75 of the Finance Act, 1994. I order to appropriate the amount of interest of ₹ 1,11,537/- paid by the assessee under GTA and amount of ₹ 37,073/- paid under Legal Consultancy service against their interest liabilities.
- f) I impose penalty of ₹ 10,000 / ( ₹ TEN THOUSAND ONLY ) under Section 77 C, as amended, of Chapter V of the Finance Act, 1994 for contravention of provisions of the Finance Act, 1994 as explained herein above. I also impose a penalty of Rs 10,000/( Rs TEN THOUSAND ONLY ) under section 77 D of the Finance Act, 1994 .
- g) I impose penalty of ₹ 96,87,402/( ₹ Ninety Six Lakh Eighty Seven thousand Four Hundred and Two only) under Section 78 of the Finance Act 1994 for suppressing the full value of taxable services and material facts from the department resulting into non-payment/late payment of Service Tax as explained herein above.
- (h) However as per the clause (ii) of second proviso to Section 78 of the Finance Act, 1994, if the assessee pay the amount of Service Tax determined under (a), (b), (c) & (d) above along with interest payable thereon as ordered under (e) above within thirty days from the date of receipt of this order, the amount of penalty shall be twenty-five per cent of the penalty imposed above. The benefit of reduced penalty shall be available only if the amount of the reduced is also paid within the aforesaid period of thirty days.

  
[R. M. GAUTAM]

Additional Commissioner  
C.Ex. & CGST, Ahmedabad-North  
Date: 08.03.2018

F.No: STC/4-07/O&A/P.C./2017-18

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

To,  
M/s. P.C. Snehal Construction Company,  
9<sup>th</sup> Floor, City Centre, Nr. Swastik Cross Roads,  
Navrangpura, Ahmedabad-380009

**Copy to:**

1. The Commissioner, C.Ex.& CGST, Ahmedabad-North.
2. The Deputy Commissioner, C.Ex.& CGST, Division-VII, Ahmedabad- North.
3. The Assistant Commissioner (RRA), C.Ex.& CGST, Ahmedabad-North.
4. The Superintendent, C.Ex.& CGST, AR-I, Division-VII, Ahmedabad-North.
5. Guard File.

-----\*