

	<p style="text-align: center;">आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, अहमदाबाद उत्तर, कस्टम हाउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p> <p style="text-align: center;">Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>	
<p>फोन नंबर./ PHONE No.: 079-27544599 फैक्स/ FAX : 079-27544463 E-mail:- oahmedabad2@gmail.com</p>		

फा .सं .STC/04-53/O&A/15-16

दिनांक: 15.07.2019

CORRIGENDUM

Attention is invited to OIO no. AHM-EXCUS-002-COMMR-03/2018-19 dated 31.03.2019 issued by the undersigned in respect of M/s Techno Tele Projects, Ahmedabad.

➤ In said OIO the Para 24(iii) which read as

(iii) In terms of the foregoing paras, I confirm the demand of Rs. 10,65,394/- (Rupees Ten Lakhs, Sixty five Thousand Three Hundred and Ninety four only/-), under proviso to section 73(2) of the Finance Act, 1994, against the Service tax demand of Rs. 31,77,525/- which was allegedly not paid on the value of Services provided by them by wrongly claiming as sale of goods, during the period from 2010-11 to 2013-14, as detailed in Annexure – D. However, I find that the assessee has paid Rs. 15,00,000/- vide challan no. 38527 dated 05.10.2015 for Rs. 9,50,000/- and challan no. 3224 dated 06.10.2015 for Rs. 5,50,000/-, against this liability. Therefore, I order for the appropriation of the said amount of Rs 10,65,394/- paid by assessee.

may be read as:

(iii) In terms of the foregoing paras, I confirm the demand of Rs. 10,65,394/- (Rupees Ten Lakhs, Sixty five Thousand Three Hundred and Ninety four only/-), under proviso to section 73(2) of the Finance Act, 1994, against the Service tax demand of Rs. 31,77,525/- which was allegedly not paid on the value of Services provided by them by wrongly claiming as sale of goods, during the period from 2010-11 to 2013-14, as detailed in Annexure – D. However, I find that the assessee has paid Rs. 15,00,000/- vide challan no. 38527 dated 05.10.2015 for Rs. 9,50,000/- and challan no. 3224 dated 06.10.2015 for Rs. 5,50,000/-, against this liability.

➤ In said OIO the Para 24(vii) which read as

(vii) I order the appropriation of Service Tax of Rs. 1,80,97,523/- [Rupees One Crore Eighty Lakh Ninety Seven Thousand Five Hundred Twenty Three only], which was paid during the course of investigation against their Service tax liability mentioned at (i) to (iv) above.

may be read as:

(vii) I order the appropriation of Service Tax of Rs. 1,80,97,523/- [Rupees One Crore Eighty Lakh Ninety Seven Thousand Five Hundred Twenty Three only], which was paid during the course of investigation against their Service tax liability mentioned at (i),(ii),(iii) & (vi) above. This amount is inclusive of the Rs.15,00,000/-(Rupees Fifteen Lakhs only) paid by the assessee as mentioned in (iii) above.

➤ In said OIO the Para 24(viii) which read as

(viii) I order that Interest at the appropriate rate should be recovered from the assessee for the period of delay of payment of Service tax for the Services mentioned at (i) to (iv) above under section 75 of the Finance Act, 1994;

may be read as:

(viii) I order that Interest at the appropriate rate should be recovered from the assessee for the period of delay of payment of Service tax for the Services mentioned at (i).(ii),(iii) & (vi) above under section 75 of the Finance Act, 1994;

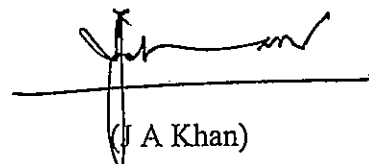
➤ In said OIO the Para 24(ix) which read as

(ix) I order that the Interest of Rs. 27,29,777/- paid during the course of investigation be appropriated against the interest liability mentioned at (vi) above;

may be read as

(ix) I order that the Interest of Rs. 27,29,777/- paid during the course of investigation be appropriated against the interest liability mentioned at (viii) above;

The Order-in-Original dated 31.03.2019 stands amended to that extent



(J A Khan)
Principal Commissioner
Central GST & Central Excise
Ahmedabad- North
Date - 15.07.2019

To,

M/s Techno Tele Projects,
301/304, Aakar Complex,
Nr. Darpan Six Roads, Naranpura,
Ahmedabad-380014

Copy to

1. The Principal Chief Commissioner, CGST , Ahmedabad Zone, Ahmedabad.
2. The Assistant/Deputy Commissioner, Div-VIII, CGST, Ahmedabad North.
3. The Superintendent, AR-III, Div-VIII, CGST, Ahmedabad North.
- ✓ 4. Guard File

<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- aaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.No. STC/04-53/O&A/15-16

आदेश की तारीख / Date of Order : 31.03.2019

जारी करने की तारीख / Date of Issue : 31.03.2019

द्वारा पारित/Passed by -

श्री जे. ए. खान / SHRI J. A. KHAN

प्रधान आयुक्त / PRINCIPAL COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR -03/2018-19

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,O-20, मेघाणीनगर ,न्यु मेन्टल हॉस्पिटल कम्पाउन्ड , अहमदाबाद -380016 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 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 Tribunal 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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के

विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलग्न की जाएंगी एक प्रमाणित प्रति होगी।(

The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice bearing No. DGCEI/AZU/36-39/2015-16 dated 12.10.2015 issued to M/s. TechnoTele Projects, 301/304, Aakar Complex, Nr. Darpan Six roads, Naranpura, Ahmedabad-380014.

BRIEF FACTS OF THE CASE:

M/s. Techno Tele Projects, 301/304, Aakar Complex, Nr. Darpan Six Roads, Naranpura, Ahmedabad - 14 (here-in-after referred to as "the assessee" for the sake of brevity) are engaged in the business of Laying/ Installation, completion and Commissioning of PE/MDPE pipelines network & Domestic and Industrial Piped Natural Gas Connections Services to M/s. GSPC Gas Company Ltd, and laying of optical fibre cable for telecom companies viz., M/s. BSNL, M/s. Bharti Airtel Ltd, M/s. Vodafone West Ltd, M/s. Idea Cellular Ltd, M/s. Reliance Communication Ltd, etc. The assessee is registered under "Commercial or Industrial Construction Service, Erection, Commissioning and Installation Service and Works Contract Service" and had obtained Service Tax Registration No. AACFT3652KST001 from Service Tax, Ahmedabad Commissionerate.

2. Information gathered by the officers of Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad (here-in-after referred to as "DGCEI" for the sake of brevity) indicated that M/s. GSPC Gas Company Limited, with their Corporate office at Unit No. 101-106, First Floor, IT Tower-1st, Infocity, Gandhinagar- 382009 & M/s. Sabarmati Gas Limited, Plot No. 907, Sector - 21, Gandhinagar- 382021 had awarded Work Orders to various companies for providing the Services of Laying/ Installation, Construction, Testing & Commissioning (including site restoration) of MDPE/PE 100 Polyethylene Gas Pipelines' Network, which appeared to be taxable under the category of "Commercial or Industrial Construction Services". The said Service provider companies had raised bills for total value of labour & materials supplied and used for execution of the said work and charged Service Tax at the prevailing rate on 33% of the gross value charged by availing the benefit of abatement under Notification No.1/2006-ST dated 01-03-2006. M/s. GSPC Gas and M/s. Sabarmati Gas Co. Ltd. had supplied 'Free Issue Materials', viz. MDPE line Pipes (PE 100, SDR 11 & 17.6), 32 mm HDPE Conduit, PE Valve, Service Regulator/Transition Box, etc., as per the terms and conditions of various Contract Agreements/ Work Orders awarded for laying/ Installation, Construction, Testing & Commissioning (including site restoration) of MDPE/PE 100 Polyethylene Gas Pipelines' Network Services for them to the said Service provider companies. However, none of them had included the value of the said Free Issue Materials used in execution of the said work in the gross amount charged in respect of Laying/ Installation, Construction, Testing & Commissioning (including site restoration) of MDPE/ PE 100 Polyethylene Gas Pipelines' Network Services provided to the said clients, while charging Service Tax under abatement scheme as per Notification No.01/2006-ST dated 01.03.2006. Exemption provided in this notification is available only if the gross amount charged for the Services provided includes the value of all materials used by it for providing the said Service. Since in respect of aforesaid Services, they had not included the value of free issue materials used for the execution of the said work, no abatement for the value of materials can be given for the said Service. Hence, 100% of the gross amount charged/ received by the said Service provider companies need to be considered for payment of Service Tax. Thus, they had not included the value of free issue materials in respect of Contract/ work orders awarded by M/s. GSPC Gas Co. Ltd. and M/s. Sabarmati Gas Co., while discharging Service tax under abatement scheme, which resulted in wrong availment of abatement scheme under the said exemption notification and consequent evasion of Service tax.

3. Intelligence gathered by the DGCEI showed that the assessee was one of the Service providers who had provided Services of Laying/ Installation, Construction, Testing & Commissioning (including site restoration) of MDPE/PE 100 Polyethylene Gas Pipelines' Network Services to M/s. GSPC Gas Company Limited, Gandhinagar (hereinafter referred to as M/s. GSPC & M/s. Sabarmati Gas Limited, Gandhinagar and wrongly availed abatement provided in Notification No. 1/2006-ST dated 01-03-2006, as amended without adding the value of free issue materials supplied by their clients. Thus, an inquiry against the assessee was initiated by DGCEI and various documents were called for from the assessee under summons.

4. From the statement of Shri Govindbhai Patel, Partner of the assessee, recorded on 30-05-2014, it was revealed that :

(i) The assessee is engaged in the business of Laying/ Installation, completion and

Commissioning of PE/MDPE pipelines network & Domestic and Industrial Piped Natural Gas Connections Services to M/s. GSPC Gas Company Ltd, and laying of optical fibre cable for telecom companies viz., M/s. BSNL, M/s. Bharti Airtel Ltd, M/s. Vodafone West Ltd, M/s. Idea Cellular Ltd, M/s. Reliance Communication Ltd, etc.;

(ii) The assessee had executed two types of work orders as detailed below.

PE Laying: In case of Services relating to Laying/ Installation, completion and Commissioning of MDPE/PE 100 Polyethylene Gas Pipeline to aforesaid client, they raised bills for total value of labour & materials supplied and used for execution of such work and charged Service Tax at prevailing rate on 33% of the Gross Value charged by availing benefit of abatement under Notification No. 1/2006-ST. He further stated that in this case, M/s. GSPC Gas had provided MDPE line Pipes (PE 100, SDR 11 & 17.6), 32 mm HDPE Conduit, PE Valve, Service Regulator/Transition Box as 'Free Issue Materials', as per the terms and conditions of said Contract Agreements/Work Orders and the same were used by them for execution of the said Works.

PNG Work: In case of Piped Natural Gas (PNG) Connections Services provided to M/s. GSPC Gas, in some cases, they had raised separate bills for the value of labour charges & for the value of materials supplied by them and charged Service Tax at full rate on the value of labour charges. In some other cases they had shown the labour charges and the value of materials used for execution of such Service separately in the same bill and charged Service Tax at full rate on labour charges on each RA (Running Account) Bill during the Financial Years 2009-10 to 2012-13.

(iii) The format of bills issued under aforesaid Contract were being provided by M/s. GSPC, wherein the assessee was specifically instructed by M/s. GSPC about the method of billing and the rate of Service Tax to be charged against the Works carried out by them. The assessee was also instructed to charge Service Tax on the abated value i.e. 33% of gross amount charged in case of PE Laying Service & PNG Services provided under the above Contracts and accordingly, the assessee had charged Service Tax against each RA Bills.

(iv) M/s. GSPC had provided MDPE line pipes (PE 100, SDR 11 & 17.6) 32 mm HDPE conduit, PE valves, Service regulator/ transition box as free issue materials as per the terms and conditions of various Contract agreements / work orders. The assessee had not included the value of free issue materials supplied by M/s. GSPC Gas in the gross amount charged while discharging the Service Tax liability under the said Contracts and availed of the abatement as per Notification No. 1/2006-ST, as the value of the said free issue materials were not provided to them by M/s. GSPC Gas.

(v) However, after introduction of Service Tax on the basis of Negative List w.e.f. 01-07-2012, M/s. GSPC had changed the method of billing in respect of Services provided by them from Commercial or Industrial Construction Service to Work Contract Service under composition scheme on gross amount charged including value of free issue materials as per format of bill provided by them. Thus, from July, 2012 onwards, they had charged Service tax against aforesaid Services under work Contract Service and discharged Service tax on gross amount charged including the value of free issue materials under work Contract composite scheme.

(vi) The assessee had paid Service tax for the year 2012-13 but had not filed ST-3 returns. It was assured that ST-3 returns for the year 2012-13 would be filed and copies of the same would be furnished to DGCEI within a week's time, but they failed to furnish copies of ST-3 returns for the year 2012-13 within the committed time. They only produced copies of GAR 7 challans.

(vii) Scrutiny of GAR 7 challans revealed that they had not paid Service tax within the stipulated time as prescribed in Rule 6 of the Service Tax Rules, 1994 for the year 2012-13 till March, 2014.

4.1. Further from the statement of Shri Govindbhai Patel, Partner of the assessee, recorded on 03-02-2015, it was gathered that:

(i) The assessee had obtained Service tax registration certificate under the categories of

commercial or industrial construction Service, Erection, Commissioning and Installation Service and Works Contract Service;

(ii) The assessee had paid Service tax under the head of commercial or industrial construction Service upto the year 2012-13;

(iii) The assessee had paid Service tax under the head of Erection, Commissioning and Installation Service for the year 2013-14; From 2012-13 onwards they had paid Service tax on the Services provided to telecom companies such as Vodafone, Airtel, BSNL, etc for laying OFC cables under Erection, Commissioning and Installation Services at full rate on the gross amount charged in the bills. For the Services provided to M/s. GSPC Gas Co. Ltd, and M/s. BSNL (for some work orders, as per the direction of M/s. BSNL office), they had paid 50% of Service tax payable on the gross amount charged in the bills under Works Contract Service.

(iv) For the Services provided to M/s. BSNL, Navrangpura, Ahmedabad relating to laying of OFC cables, they were instructed to charge Service tax on 25% of gross amount charged in the bills under Manpower Supply Agency Service. Accordingly, the assessee had charged Service tax and paid 25% of the Service tax and the remaining 75% of the Service tax was to be paid by M/s. BSNL. The details of Service tax payable by Service provider and Service recipient were distinctly shown in the bills.

(v) The assessee had not deposited any Service tax under the heads of Works Contract Service and Manpower Supply Agency Service;

(vi) There was mistake on the part of the assessee inasmuch as they were paying Service tax under commercial or industrial construction Service but filing Service Tax returns under Erection, Commissioning and Installation Service and Works Contract Service in the year 2012-13;

(vii) Similarly, in the year 2013-14, entire Service tax was paid under Erection, Commissioning and Installation Services but ST-3 was filed for Erection, Commissioning and Installation Service, Works Contract Service and Manpower Supply Agency Service;

5. Further, on the basis of the relevant records/documents called for from the assessee during the course of the investigation, it was gathered as under:

(i) On examination of ST-3 returns filed for the year 2013-14, it is found that they had also shown Manpower Supply Agency Service, Erection, Commissioning and Installation Service and Works Contract Service. But they had not furnished any e- payment challans evidencing payment of Service Tax under manpower supply agency service and works contract service. In order to ascertain the details of services provided under manpower supply agency service and works contract service and whether service tax was paid appropriately during the year 2013-14, summons was issued to the assessee.

(ii) Subsequently, the assessee had submitted a letter dated 24-02-2015 reiterating their earlier contention that they had done labour work of OFC cable laying work of BSNL-ATD division. BSNL had directed them to charge Service tax on 25% of the gross amount charged and Service tax on the remaining 75% of the gross amount charged would be paid by them. They had also submitted a copy of letter No. ATD/MM/T-1157 to 1160/11-12/99 dated 04-02-2015 issued by BSNL.

(iii) On reconciliation of income shown in the profit and loss account with value of Services as declared in the ST-3 return, it was found that the two did not tally. On being asked, the assessee stated that they were also selling goods to their clients while providing Services. Income shown in the profit and loss account also includes value of such sales. In order to ascertain the correctness of the value of the goods sold, the assessee was asked to furnish copies of sales bills along with Worksheet of reconciliation.

- (iv) On verification of the copies of Sales bills by the assessee, it was found that many bills were relating to Services provided by them. Moreover, in these bills Service tax was also charged from their clients. These facts raised a suspicion in the assessee's claim of sale of goods to their clients. In order to ascertain the facts, Shri Govindbhai Patel, Partner of the firm was summoned again on 28-09-2015.

6. Statement of Shri Govindbhai Patel, Partner of the assessee recorded on 28.09.2015 further revealed that:

- (i) List of invoices produced by them evidencing sale of goods included the list of invoices issued for sale of goods and list of those invoices wherein Service tax was charged by them but not reimbursed / paid to them by their clients. He further stated that the amount mentioned in the list of invoices is gross amount charged in the bills, which included value of VAT and Service Tax.
- (ii) On being asked as to how they could claim exemption from payment of Service tax on the invoices issued for Services provided, when Service tax is also charged in such invoices as sale of goods, he stated that in case of invoices issued for sale of goods, they had issued invoices and charged VAT on it. In other bills, they had charged Service tax but their client, viz., Uttar Gujarat Vij Company Ltd(UGVCL), Madhya Gujarat Vij Company Ltd(MGVCL) and BSNL had not paid them Service tax amount. Therefore, they had shown these bills as sale of goods and claimed exemption from payment of Service tax. He has also produced copy of the letter dated 21-03-2012 issued by BSNL refusing to pay Service tax amount claimed by them in their bills by citing Circular No. 123/5/2010-TRU dated 24-05-2010.

7. On examination of the documents and information furnished by the assessee and facts deposed by Shri Govindbhai Patel, Partner of the assessee in his statements, it was concluded that:

- (i) The assessee is engaged in the business of Laying/ Installation, completion and Commissioning of PE/MDPE pipelines network & Domestic and Industrial Piped Natural Gas Connections Services to M/s. GSPC Gas Company Ltd, and laying of optical fibre cable for telecom companies viz., M/s. BSNL, M/s. Bharti Airtel Ltd, M/s. Vodafone West Ltd, M/s. Idea Cellular Ltd, M/s. Reliance Communication Ltd, etc. They were registered with Service tax department and holding Service Tax registration No. AACFT3652KST001 under "Construction Services in respect of Commercial or Industrial Building and Civil Structures, Erection, Commissioning and Installation Service and Works Contract Service".

- (ii) The assessee had short paid Service Tax on the value of Services provided to M/s. GSPC Gas for PE gas pipeline laying work by wrongly availing abatement under Notification No. 1/2006-ST without adding the value of free issue materials such as MDPE line Pipes (PE 100, SDR 11 & 17.6), 32 mm HDPE Conduit, PE Valve, etc. in the gross amount charged in the bills in the years 2010-11 to 2012-13 (Upto June, 2012).

- (iii) It was also found that the assessee was also not paying Service tax from time to time as per the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. Therefore, the period of investigation was extended to cover the year 2013-14 also.

- (iv) Further, it was also found that in one work order relating to laying of OFC cable executed for M/s. BSNL, they had short paid Service tax under Works Contract Service. Besides, they had also not paid Service tax on the Services provided to their clients on some of the bills by wrongly claiming exemption as sale of goods despite the fact that these bills relates to Services provided by them and Service tax was also charged from their clients.

(v) The assessee had declared Services provided under Manpower Supply Agency Service and paid Service tax on 25% of the gross amount charged in the bill as a Service provider in terms of provisions of Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20-06-2012. On examination of the invoices, it was found that they have not provided any Manpower Supply Service to their client viz., M/s. BSNL. Shri Govindbhai Patel, Partner of the firm, in his statement dated 03-02-2015 stated that they have not provided any Manpower Supply Agency Service. They have only provided Services of laying of OFC cables for M/s. BSNL by employing their labour. They issued bills for labour charges for providing OFC laying Service, but have raised the bills under Works Contract Service. During the relevant period, in case of Works Contract Service provided by a partnership firm, 50% of Service Tax liability is to be discharged by the Service provider and the remaining 50% of Service tax liability is to be discharged by the Service recipient. In the instant case, the assessee, being a partnership firm, is liable to pay 50% of the Service tax. Thus the assessee has short paid Service Tax under Works Contract Service.

8. From the investigation, it was concluded that there was lapse on the part of the assessee on the following issues:

1. There was short payment of Service tax by wrongly availing benefit of abatement provided in Notification No. 1/2006-ST dated 01-03-2006 by not including the value of free issue materials supplied by their clients;

2. Non-payment of Service tax in terms of provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994;

3. The assessee had also not paid Service tax on the Services provided to their clients on some of the bills by wrongly claiming exemption as sale of goods despite the fact that these bills related to Services provided by them and Service tax was also charged from their clients; and

4. Short payment of Service tax under work Contract Service by wrongly classifying the Service under Manpower Supply Agency Service.

9. Therefore, a Show Cause Notice was issued to the assessee, demanding as under:

- (i) Service Tax of Rs. 2,70,527/- (Service tax of Rs. 2,62,647/-, education cess of Rs. 5,253/- & higher 8s secondary education cess of Rs. 2,626/-) [Rupees Two Lakh Seventy Thousand Five Hundred Twenty Seven only] which was not paid under Commercial or Industrial Construction Services during the period from 2010-11 and 2011-12, as detailed in Annexure – A to the Show Cause Notice, under proviso to section 73(1) of the Finance Act, 1994;
- (ii) Service Tax of Rs. 1,65,97,523/- (which includes Service tax of Rs. 1,61,14,100/-, education cess of Rs. 3,22,282/- and HSE cess of Rs. 1,61,141/-) [Rupees One Crore Sixty Five Lakh Ninety Seven Thousand Five Hundred Twenty Three only] which was not paid during the period from 2011-12 (from October, 2011) to 2013-14, as detailed in Annexure B to the Show Cause Notice, under proviso to section 73(1) of the Finance Act, 1994;
- (iii) Service Tax of Rs. 31,77,525/- (which includes Service tax of Rs. 30,84,976/-, education cess of Rs. 61,700/- and HSE cess of Rs. 30,850/-) [Rupees Thirty One Lakh Seventy Seven Thousand Five Hundred Twenty Five only], which was not paid on the value of Services provided by them by wrongly claiming as sale of goods, during the period from 2010-11 to 2013-14, as detailed in Annexure – D to the Show Cause Notice, under proviso to section 73(1) of the Finance Act, 1994;
- (iv) Service Tax of Rs. 59,669/- (Service tax of Rs. 57,931/-, education cess of Rs. 1,159/- & higher 8s secondary education cess of Rs. 579/-) [Rupees Fifty Nine Thousand Six Hundred Sixty Nine only] which was short paid under Works Contract Service during

the year 2013-14, as detailed in Annexure E to the Show Cause Notice, under proviso to section 73(1) of the Finance Act, 1994

- (v) Why Service Tax of Rs. 1,80,97,523/- (which includes Service tax of Rs. 1,75,70,411/-, education cess of Rs. 3,51,408/- and HSE cess of Rs. 1,75,704/-) [Rupees One Crore Eighty Lakh Ninety Seven Thousand Five Hundred Twenty Three only], which was paid during the course of investigation should not be appropriated against their Service tax liability mentioned at (i) to (iv) above;
- (vi) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay in the payment of Service Tax for the Services mentioned at (i) to (iv) above under section 75 of the Finance Act, 1994;
- (vii) Interest of Rs. 27,29,777/- paid during the course of investigation should not be appropriated against the interest liability mentioned at (vi) above;
- (viii) Penalty under Section 76 of the Finance Act, 1994, as amended, should not be imposed on them for not paying Service tax as per the provisions of the Finance Act, 1994 and rules framed there under as explained above;
- (ix) Penalty under the provisions of Section 77 of the Finance Act, 1994, as amended, should not be imposed on them for contravention of provisions of the Finance Act, 1994 as explained above;
- (x) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable Services and material facts from the department resulting into non-payment/late payment of Service Tax as explained above.
- (xi) penalty should not be imposed on Shri Govindbhai Patel, Partner of the assessee under Section 78A of the Finance Act, 1994 for failure to pay Service tax dues as detailed supra.

DEFENCE REPLY

10. Vide their letter dated 12.02.2016, the assessee has filed their reply to Show Cause Notice No. DGCEI/AZU/36-39/2015-16 Dated 12.10.2015 and contended as under:

- (1) They have denied all allegations made in SCN
- (2) They have submitted the details of payment made before the issuance of SCN,
- (3) They have made issue-wise submission as under:

(I) Service Tax demand of Rs. 2,70,527/- - Commercial or Industrial Construction, as per Annexure A to the Show Cause Notice.

(a) For the purpose of charging Service tax the client themselves had instructed the assessee about non-inclusion of free Supply material. The client being Government organization, the assessee had, with a bonafide belief of the method being correct, not included free Supply material in the bills for the purpose of charging Service tax.

(b) Regarding inclusion of free Supply material in total taxable value for the purpose of working out the liability of Service tax, the assessee has relied on the following decision/orders passed by CESTAT in the case of (1) in Cemex Engineers vs. CST, Cochin (Tri. Bang.) and (2) Jaihind Projects Ltd. vs. CST, Ahmedabad (Tri. Ahmd.) and (3) M/s Bhayana Builders (P) Ltd and other V/s CST, Delhi

(c) The assessee strongly believed that since the Service receiver was a Government organization, there could not be an intention of the assessee either to evade tax or to save tax by charging tax on lower value. In fact it was very clear that assessee could have got the entire amount which they could have charged towards Service tax whether inclusive of free Supply of material or without such inclusion.

(II) Service Tax Rs. 1,65,97,523/- not paid during the year 2011-12 to 2013-14

(a) This liability is worked out for the period from 2011-12 (from October,2011) to 2013-14. The assessee had filed belated return for the years 2012-13 & 2013-14 and Service tax for this period was also paid late by the assessee. But before issuance of this show cause notice, assessee had paid the Service tax due with interest at applicable rate.

(b) This liability of 1,65,97,523/- is worked out by the department in respect of the Commercial or Industrial construction Services. The assessee was late in making the payment but by no any act or action of the assessee it can be transpired that, the assessee was willingly suppressing the fact. This contention of the assessee is also to in view of the fact that out of demand of 1,65,97,523/- the assessee had paid Rs. 1,16,62,737/- on or before 13.8.2015, which is the date on which the department had sought information in respect of Service tax liability for the period 2013-14 wide the letter Dt.13.8.2015. In other words this amount of Rs. 1,16,62,737/- was already paid by assessee even before the department sought information from assessee.

(c) The assessee has filed belated return. However, there is provision available in the Finance Act, 1944 that if return is filed late, penalty for late filling is applicable. These provisions are fairly applicable to assessee. Hence the assessee cannot be said to have evaded the tax or had suppressed the fact with intention to evade tax.

(III) Service Tax of Rs. 31,77,525/- - Wrongly Claimed as sale of goods.

(a) This liability of Rs. 31,77,525/- was calculated for the period from 2010-11 to 2013-14, as per Annexure D to the Show Cause Notice. In this issue the assessee had issued separate invoices for sale of goods by charging VAT and for Service portion separate invoice by charging Service tax to Uttar Gujarat Vij Company Ltd. (UGVCL), Madhya Gujarat Vij Company Ltd. (MGVCL) and BSNL which are Government / Semi-Government Organization. These invoices are for the work of laying of optical fiber cable which includes Service tax amount. But these organizations had denied paying Service tax amount by taking into consideration the Circular No. 123/5/2010-TRU dated 24/05/2010. By considering this circular the assessee had claimed exemption from laying of fibre cable for the period from 2010-11 to 2012-13(up to June, 2012) for different clients. The Service tax for this period amounts to Rs. 10,46,737/, which was not required to be paid by the assessee. However the above mentioned circular is applicable before introduction of negative list of Services i.e. up to 30.06.2012. From 2012-13 (From July, 2012) to 2013-14. Considering the above mentioned fact the assessee was required to pay balance Service tax liability of Rs. 21,30,788/-. But this Service tax liability of Rs. 21,30,788/- falls under Works Contract Services, In that case the assessee as a Service provider is liable to pay 50% of Service tax as per notification no. 30/2012-ST, Dt. 20.06.2012. According to said notification the assessee is liable to pay 50% of 21,30,788/- which amounts to 10,65,394/- and against this liability the assessee had paid Rs. 15,00,000/- wide challan no. 38527 dated 05.10.2015 for Rs. 9,50,000/- and challan no. 3224 dated 06.10.2015 for Rs. 5,50,000/-. The assessee had paid excess Service tax of Rs. 4,34,606/-.

(IV) Service tax of Rs. 59,669/- - For Works Contract Services.

(a) The assessee also was engaged in laying cables and transferring the same to its clients, as such, this activity is covered under Works Contract Services. During the year 2013-14 the assessee had erroneously charged Service tax on 25% of the gross amount charged in the bill as a Service provider under section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 and deposited under Manpower Services and filed ST-3 return accordingly. Here liability of the assessee would be 50% instead of 25% because assessee had provided Works Contract Services and not Manpower Services to their clients. Detailed calculation of Service tax liability of Rs. 59,669/- is given in Annexure - E along with the show cause notice.

(b) This Service tax liability of Rs. 59,669/- towards Works Contract Services was calculated

for the year 2013-14. During the said period the assessee had provided Works Contract Services to different clients. But in some cases the assessee had calculated Service tax by considering it as Manpower Services and charged Service tax in invoices accordingly. The assessee had taken in to consideration the notification No. 30/2010-ST dated 20.06.2012 and paid 25% on the gross amount charged considering it as Manpower Services under reverse charge mechanism. But the assessee has provided Works Contract Services and accordingly the assessee is liable to pay 50% of gross amount charged under reverse charge mechanism.

(c) The Assessee had accepted this liability of Service tax of Rs. 59,996/- and request to Service tax department to adjust this part of Service tax liability against excess Service tax paid by the assessee of Rs. 4,34,606/-.

V: Regarding Penalty u/s 76/77/78/78A. the assessee has contended as under:

(a) The assessee was not able to pay Service tax dues for the period from 2012-13 to 2013-14 because of financial crisis and since the Service tax along with interest was not paid, the assessee had not filed ST-3 returns on time for the said period. But the assessee had paid the Service tax dues before the issuance of this show cause notice along with interest. This is well settled issue that if the person liable to pay Service tax had paid Service tax before the issue of show cause notice, then that person will not be liable for penalty.

(b) The assessee has submitted that for imposing penalty, there should be an intention to evade payment of tax, or there should be suppression or concealment. The penal provisions are only a tool to safeguard against contravention of the rules. It is humbly submitted by the assessee that the assessee had no intention to evade payment of Service tax. The present proceedings have been initiated despite the fact that the entire tax along with interest was deposited prior to issuance of SCN. The assessee has already discharged its Service tax liability. Therefore, the assessee had no intention to suppress any information from the department or evade payment of Service tax. Hence, no penalty can be imposed on the assessee.

In support of the above view, they have relied on the following decisions:

- (i) Hon'ble Supreme Court in the case of *Hindustan Steel Ltd. v The State of Orissa* reported in AIR 1970 (SC) 253.
- (ii) *Kellner Pharmaceuticals Ltd. v. CCE*, reported in 1985 (20) ELT 80
- (iii) Hon'ble Madras High Court in case of *CCE Vs. Shri Suthan Promoters* reported at 2010 (19) STR 646 (Mad)
- (iv) *ETA Engineering Ltd. vs. CCE, Chennai*, 2004 (174) E.L.T 19 (Tri-LB)
- (v) *Flyingman Air Courier Pvt. Ltd. vs. CCE* 2004 (170) ELT 417 (Tri.- Del.)
- (vi) *Star Neon Singh vs. CCE, Chandigarh*, 2002 (141) ELT 770 (Tri. - Del)
- (vii) *Avian Overseas Pvt. Ltd. v. Commissioner of Central Excise, BBSR - Final Order* No. A - 103/KOI/09 dated 06.03.2009
- (viii) Hon'ble Tribunal in case of *Varsana Ispat Ltd. Vs. CCE, Rajkot (Tri.-Ahmd)* reported at 2010 (19) STR 359 (Tri.-Ahmd) *The Financers v. CCE, Jaipur - 2007 (8) STR 7 (Tri. Del)*
- (ix) *Commissioner of Central Excise, Ludhiana v. Pannu Property Dealer - 2009 (14) S.T.R. 687 (Tri. - Del.)*.
- (x) *CCE, Chandigarh Vs M/s Cool Tech. Corporation (Service Tax Appeal No 47 of 2010) (P&H)*
- (xi) *CCE, Commissionerate Vs M/s FIRST FLIGHT COURIER LTD STA No. 48 of 2010 (P&H)*

11. Vide their letter dated 25.12.2018, the assessee has submitted additional written submissions during the course of the personal hearing held on 26.12.2018. The assessee has submitted as under:

(i) the value of Material supplied free of cost by supplier cannot be added to taxable value. [Ref. Annexure - A to SCN - ST Demand of Rs. 2,70,527/-]

(ii) that impugned SCN proposes to deny the abatement under Notification No. 01/2006-ST dated 01.03.2006 on the ground that the assessee failed to add the value of free material supplied by supplier while computing the gross value and discharged the Service tax without inclusion of such

free value of material in computation of taxable value in violation of the condition of said notification.

(iii) They have relied on the judgment of Hon'ble Supreme Court in case of Commissioner of Service Tax vs. Bhayana Builders Ltd. 2018 (10) G.S.T.L 118 (SC)

(iv) that whatever the amount of taxes as proposed to be demanded in impugned SCN under Annexure B all of such taxes are paid by the assessee prior to Service of impugned SCN, details of which were submitted by the assessee.

(v) that ST-3 Returns for the Financial Year 2011-12 to 2013-14 are filed, details of the same were submitted by the assessee.

(vi) that even though all the returns were filed prior to the Service of impugned SCN to them, the assessee submitted that in respective ST-3 details about the Service tax liability for respective months along with details of their payments vide Cenvat and/or PLA are also explicitly submitted. Further the details of the availment & utilisation of cenvat credit for respective months are also provided in respective returns.

(vii) that the demand of Rs. 1,65,97,523/- as mentioned in Annexure- B to the show cause notice dated 12.10.2015 is not sustainable as the said amount was never in dispute.

(viii) Work of Laying of Cables alongside the roads is not taxable upto Jun-2012 [Ref. Annexure - D to SCN - ST Demand of Rs. 31,77,525/-] :The assessee submitted that they had carried out the work of laying of cables alongside the roads for their various clients at relevant point in time.

(ix) With reference to para 13 of the SCN regarding non-payment of Service tax on such alleged Services, the assessee submitted that it is nowhere disputed in the impugned SCN about the type of the work and it is an admitted fact that the work undertaken by them is that of laying of cables only.

(x) The assessee submitted that the work of laying of cables alongside the roads was not taxable till 30.06.2012 and the same had also been re-iterated and confirmed vide CBEC Board Circular No. 123/5/2010-TRU dated 24/05/2010.

(xi) The assessee submit that on perusal of the above Circular it is very much clear that the activity of laying of cables was not taxable till the introduction of negative list of Services i.e. 30.06.2016.

(xii) that Circulars and Instructions issued by CBEC Board are binding upon the departmental authorities and the view contrary to that cannot be entertained.

(xiii) The Assessee has relied on various decision viz. (1) on the decision of the Hon'ble Supreme Court in case of Ranadey Micronutrients v/s Collector of Central Excise [2002-TIOL-184-SC-CX] (2) Supreme Court in case of Collector of Central Excise, Bombay v/s Kores (India) Limited [2002-TIOL-414-SC- CX] (3) Hon'ble Supreme Court in case of Paper Products Ltd v/s Commissioner of Central Excise [2002-TIOL-84-SC-CX] and others.

(xiv) The Assessee submitted that the extended period of limitation is not invocable in the present case as there was no suppression of facts with an intention to evade payment of Service tax. Therefore, the impugned SCN proposing to demand Service tax beyond the normal period of demand of Service tax under the section 73 of the Finance Act 1994 is barred by limitation.

(xv) The Assessee submitted that they were under a bonafide belief that they are not liable to pay Service tax for the reasons stated in their earlier reply to SCN, as reproduced hereinabove. Hence, there can be no suppression of facts. Therefore, the extended period of limitation is not invocable as no suppression of facts, fraud, collusion, wilful mis-statement or any intention to evade payment of Service tax & hence no demand of Service tax beyond normal period under Section 73 and no penalties under Section 78

(xvi) that they had furnished all information required, as and when sought by the department. Further, the issue involved in the present case is one of interpretation of law. The Assessee were

under a bonafide belief and hence, the entire demand is hit by time bar. In this regard, the Assessee placed reliance on the following decisions

- (1) Hon'ble Supreme Court in the case of Pahwa Chemicals v. CCE - 2005 (189) E.L.T. 257 (S.C.)
- (2) The Hon'ble Supreme Court in the case of Anand Nishikawa Co. Ltd. 2005 (188) ELT 149 (SC)
- (3) Case of CCE Mumbai vs. S Narender Kumar & Co 2011-TIOL-52-SC-CX relying on the decision of Anand Nishikawa Co. Ltd. 2005 (188) ELT 149 (SC)

(xvii) In the present case, the demand of Service tax on matters covered under Annexure-B are not tenable for the very reasons that there were no such short payment of Service tax as alleged by the department in Annexure-B to SCN. Therefore, allegation made in the show cause notice of suppression of facts with intent to evade payment of duty is not tenable and it has no legs to stand. It is well settled law that the Department cannot press into Service the machinery for invoking the extended period of limitation unless there is established an act of suppression or mis-declaration with an intent to evade payment of duty. In this connection, the assessee relied on the following decisions:

- (a) Cosmic Dye Chemical vs. Collector of Central Excise, Bombay 1995 (75) E.L.T. 721 (S.C)
- (b) Tamil Nadu Housing Board vs. Collector 1994 (74) E.L.T. 9 (S.C)
- (c) Cadila Laboratories Pvt. Ltd. vs. CCE 2003 (152) E.L.T. 262 (S.C.)
- (d) Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay 1995 (78) E.L.T. 401 (S.C.)
- (e) M/s. Continental Foundation Joint Venture Holding, Naphtha HP. vs. CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.)
- (f) Alumeco Extrusion vs. CCE 2010 (249) ELT 577
- (g) National Rifles vs. CCE 1999 (112) E.L.T. 483
- (h) SPGC Metal Industries Pvt. Ltd. vs. CCE 1999 (111) E.L.T. 286 26
- (i) Gujarat State Fertilizers vs. CCE, Vadodara 1996 (84) E.L.T. 539 () ITI (TID) Ltd. vs. CCE 2007 (11) ELT 316 (Tri)
- (j) Neyveli Lignite Corporation Ltd. vs. CCE 2007 (209) ELT 310 (Tri)
- (k) Commissioner vs. Bentex Industries 2004 (173) ELT A079 (SC)
- (4) Commissioner vs. Binny Limited 2003 (156) ELT A327 (SC)
- (m) Collector vs. Ganges Soap Works (P) Ltd. 2003 (154) ELT A234 (SC)

(xviii) The assessee submitted that in any case the demand of Service tax as proposed under Annexure-B is not maintainable. It is a well-settled principle of law that where there is no demand of duty, penalty cannot be imposed. The Assessee relies on the judgment in case of Coolade Beverages Limited Vs. Commissioner of Central Excise (2004) 172 ELT 451 (All).

(xix) that as per the Apex Court's decision in CCE v. Chemphar Drugs & Liniments [1989 (40) E.L.T. 276 (SC)], something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacture knows otherwise, is required in order to invoke the extended period of limitation. The Show Cause Notice has made no specific positive allegation that the assessee had deliberately or with a contumacious intent withheld information and such intent had culminated in the evasion of payment of Service tax. The assessee submitted that they readily paid the Service tax amount that was required to be paid as per the investigating authority. Thus, in the instant case all the relevant information in relation to any payments or liability is readily available with the department, and there can be no allegation of suppression with intent to evade payment of duty on the part of the Assessee.

(xx) The assessee submit that there was no specific instance of suppression which was brought out in the show cause notice, which implies that the SCN is devoid of the grounds necessary to invoke the extended period of limitation. It is a well settled position of law that there has to be a

specific act of suppression with an intention to evade payment of Service tax for invoking the extended period of limitation. The Hon'ble Supreme Court in the case of Uniworth Textiles v. CCE, Raipur [2013 (288) ELT 161 S. C] held that mere non-payment of duties is not equivalent to collusion or willful mis-statement or suppression of facts,

(xxi) They have relied on various judgments. viz.

- (1) Savira Industries v. Commissioner of Central Excise, Chennai II [2015-TIOL- 2225-CESTAT-MAD],
- (2) Kay Kay Press Metal Corporation [2013 (297) ELT 40 (Guj.)]
- (3) Uniworth Textile Ltd. Vs CCE (supra)
- (4) Hon'ble Apex Court in the case of Commissioner of Central Excise, Mumbai v. C. M. S. Computers P. Ltd. [2005 (182) ELT 20],
- (5) Cosmic Dye Chemical v. Collector of Centra Excise[1995 (75) E.L.T. 721] and various other judgments.

PERSONAL HEARING:

12. Personal hearing in this matter was held on 26.12.2018, wherein Shri Pratik Trivedi, Chartered Accountant, appeared on behalf of the assessee. During the course of the hearing, he submitted additional written submissions, which is elaborated in the above para. He reiterated the written submission made in the defence reply and additional written submissions at the time of personal hearing. He mainly relied upon the judgment of Supreme Court in the case of M/s. Bhayana Builders Pvt. Ltd and the Board's Circulars No. 123/5/2010-TRU dated dated 24/05/2010, No. 201/01/2014-CX.6 dated 26.6.2014 and No. 106/13/2015-CX,dtd. 21.09.2015. He submitted that in light of these judgments and circular, the Show Cause Notice is not sustainable.

DISCUSSION AND FINDINGS:

13. I have gone through the facts and records of the case, the defence reply to the Show Cause Notice and additional written submissions submitted by the assessee as well as the submissions made by them during the course of personal hearing.

14. On going through the Show Cause Notice, I find that Show Cause Notice was issued to the assessee on the following grounds and the issues to be decided in this case are as under:-

- (1) Short payment of Service tax by wrongly availing the benefit of abatement provided in Notification No. 1/2006-ST dated 01-03-2006 by not including the value of free issue materials supplied by their clients;
- (2) Non-payment of Service tax in terms of provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994;
- (3) Non-payment of Service Tax on the Services provided to their clients on some of the bills by wrongly claiming exemption as sale of goods despite the fact that these bills relates to Services provided by the assessee and Service tax was also charged from their clients;
- (4) Short payment of Service tax under Works Contract Service by wrongly classifying the Service under Manpower Supply Agency Service.

(14.1) The Show Cause Notice has also proposed demand and recovery of interest at the appropriate rate for the period of delay in the payment of Service Tax under Section 75 of the Finance Act, 1994.

(14.2) Further, the Show Cause Notice also proposed penalty under:

- (i) Section 76 of the Finance Act, 1944, for not paying Service tax as per the provisions of the Finance Act, 1994.
- (ii) Section 77 of the Finance Act, 1944, for contravention of provision of the Finance Act, 1994.
- (iii) Section 78 of the Finance Act, 1944, for allegedly suppressing the full value of taxable Services and material fact from department resulting into nonpayment of Service tax.
- (iv) Penalty is also proposed to be imposed on Shri Govindbhai Patel, partner of Techno Tele Project for failure to pay Service tax dues under Section 78A of the Finance Act, 1944.

15. Now, I would like to go into the details of the charges levelled against the assessee in the Show Cause Notice.

A: Service Tax demand of Rs.2,70,527/- towards short payment of Service tax by wrongly availing benefit of abatement provided in Notification No. 1/2006-ST dated 01.03.2006 by not including the value of free issue materials supplied by their clients, as detailed in Annexure A to the Show Cause Notice.

16.1 STATUTORY PROVISIONS RELATING TO COMMERCIAL OR INDUSTRIAL CONSTRUCTION SERVICE:

Service tax on the Services relating to construction of pipelines and conduits was imposed with effect from 16.06.2005 under the "Commercial or Industrial Construction Service". The "commercial or Industrial construction Service" is defined under Section 65(25b) of the Finance Act, 2005 as under: -

"Commercial or industrial construction Service" means —

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

16.2. As per clause 105(zza) of Section 65 of the Finance Act, 1994, Commercial or Industrial Construction Service means any Service provided or to be provided to any person, by any other person, in relation to commercial or industrial construction. The value of taxable Service shall be the gross amount charged by the Service provider of such Service provided or to be provided by him.

16.3. However, at Sr. No. 7 of Notification No. 1/2006-Service Tax dated 01-03-2006, as amended, exemption to commercial or industrial construction Service is provided from so much of the Service tax leviable thereon under section 66 of the said Finance Act, as is in excess of the Service tax calculated on a value which is equivalent to 33% of the gross amount charged by such Service provider for providing commercial or industrial construction Service, subject to the relevant conditions specified in the corresponding entry in column (4) of the Table aforesaid. For ease of reference, relevant portion of the table of this notification is reproduced herein below:

Sr. No	Sub clause of (105) of Section 65	Description of taxable Service	Conditions	Percentage
(1)	(2)	(3)	(4)	(5)
7	(zzq)	Commercial or industrial construction service.	<p>This exemption shall not apply in such cases where the taxable services provided were only completion and finishing services in relation to building or civil structure, referred to in sub-clause (c) of clause (25b) of section 65 of the Finance Act.</p> <p><i>Explanation.-</i> The gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service.</p>	33

16.4. From the above table of Notification No. 1/2006-Service Tax, it is clear that taxable value of commercial or industrial construction Service shall be 33% of the gross amount charged by the Service provider for providing commercial or industrial construction Service, subject to the conditions that:-

a) This exemption shall not apply in such cases where the taxable Services provided were only completion and finishing Services in relation to building or civil structure, referred to in sub-clause (c) of clause (25b) of section 65 of the Finance Act.

b) The gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction Service for providing such Service.

16.4.1. Further this notification shall not apply in cases where, -

(i) 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 been taken under the provisions of the CENVAT Credit Rules, 2004; or

(ii) the Service provider has availed the benefit under Notification No. 12/2003-Service Tax, dated 20-06-2003 [the value of goods and materials sold by the Service provider to the recipient of Service is not excluded from the taxable value].

16.5 It is explicitly mentioned in Notification No. 1/2006-ST dated 0103-2006, as amended, that for availing exemption under this notification, the gross amount charged should include the value of goods and materials supplied or provided or used by the provider of the construction Service for providing such Service. In other words, if the gross amount charged do not include the value of goods and materials supplied or provided or used by the Service provider for providing the Service, then the exemption provided in this notification will not be admissible.

16.6. From the agreements entered into between the assessee and M/s. GSPC Gas and the statement of Shri Govindbhai Patel, Partner of the firm, it appears that for the Services provided for laying of PE gas pipeline, M/s. GSPC Gas had supplied them MDPE line Pipes (PE 100, SDR 11 & 17.6), 32 mm HDPE Conduit, PE Valve, Service Regulator/Transition Box etc as Free Issue Materials. The assessee has not included the value of free issue materials supplied by their client to the gross amount charged while discharging the Service tax liability under the Contracts as per Notification No. 1/2006-ST. This shows that the assessee had not fulfilled the condition of the Notification No. 1/2006-ST and thus they were not eligible for exemption provided in the said notification. Therefore, the assessee should have paid Service tax on the gross amount of bills charged to M/s. GSPC Gas at full rate of Service tax without any abatement. From the billwise information furnished by the assessee, it is found that they had paid Service tax under abatement scheme of Notification No. 1/ 2006-ST dated 01-03-2006 during the years 2010-11 and 2011-12.

16.7. The SCN proposes to recover an amount of of Rs. 2,70,527/- as detailed in Annexure-A thereto on the ground that the said assessee failed to include the value of free issue materials while providing taxable Services of "Commercial or Industrial Construction Service" to M/s. GSPC, yet wrongly availed the abatement provided under Notification no. 1/2006-ST dated 01.03.2006 for the period from 2010-11 to 2011-12. There is no dispute that M/s. GSPC had supplied them MDPE line Pipes (PE 100, SDR 11 & 17.6), 32 mm HDPE Conduit, PE Valve, Service Regulator/Transition Box, etc. as 'Free Issue Materials' the value of which was not considered by the said assessee for the purpose of discharging their Service tax liability. I find that the said assessee has built up their entire defence on the cited case law and Board's circulars which prescribed that Service tax is leviable on the gross amount charged by the Service provider and hence the value of free issue materials would stand excluded. However, they have not considered the fact that the entire section 67 of the Finance Act, 1994 which governs the valuation for the purpose of levy of Service tax, has undergone remarkable change with effect from 18.04.2006, as the said section 67 was substituted by the Finance Act, 2006. I would now discuss the provisions of valuation as given in the statute to determine the inclusion of the cost of free issue materials into the taxable value. While Sections 66 and 66B, which are the charging sections of Service tax, provide for levy of Service tax on the value of taxable Services, Section 67 lays down the manner and method of valuation. For ease of reference, text of section 67 as it stood with effect from 18.04.2006 is quoted as follows:

(1) *Subject to the provisions of this Chapter, Service tax chargeable on any taxable Service with reference to its value shall,—*

- (i) *in a case where the provision of Service is for a consideration in money, be the gross amount charged by the Service provider for such Service provided or to be provided by him;*
- (ii) *in a case where the provision of Service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of Service tax charged, is equivalent to the consideration;*
- (iii) *in a case where the provision of Service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.*

(2) *Where the gross amount charged by a Service provider, for the Service provided or to be provided is inclusive of Service tax payable, the value of such taxable Service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.*

(3) *The gross amount charged for the taxable Service shall include any amount received towards the taxable Service before, during or after provision of such Service.*

(4) *Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.*

Explanation.—For the purposes of this section,—

- (a) *"consideration" includes any amount that is payable for the taxable Services*

provided or to be provided;

(b) [* * *]

(c) *"gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and 2[book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay Service tax, where the transaction of taxable Service is with any associated enterprise."*

16.8. Sub-section(3) unambiguously provides that the gross amount charged for the taxable Service shall include any amount received towards the taxable Services before, during or after provision of such Service. This is further clarified with the definition of the term "consideration" as given in explanation-(a) which simply states that 'consideration' includes any amount that is payable for the taxable Services provided or to be provided. This definition is inclusive and not specific. Plainly stated, consideration means quid pro quo, i.e. something in return. It is an advantage flowing from one to another. The consideration can be a positive or negative act. It can be in the form of cash, goods, or Services. It can be in the past, present or future. In a number of cases, the Service provider is supplied with certain inputs or input Services, generally by the Service recipient, which are essential for providing the Services either free of cost or on concessional cost. Such Supply of inputs or input Services in any form would undoubtedly depress the value of taxable Services charged by the Service provider to the Service receiver. Thus, the moot point is whether the free Supply of inputs or any other facilities or infrastructure used either by Service provider or Service recipient or even by any third parties, are actually incurred towards the taxable Service in question or not. In the ultimate analysis, the value of taxable Services under section 67, as it exists after the substitution of the said section with effect from 18.04.2006, **will not be the amount charged by the Service provider, but will be the cost of the Service to the Service receiver.** As per Guidance Note No. 8 of the Service Tax Education Guide published by the Board, with the introduction of system of taxation of Services based on the negative list with effect from 01.07.2012, there has been no fundamental change in the manner of valuation of Service for the purpose of payment of Service tax. The broad scheme remains the same barring some marginal changes carried out to align the scheme of valuation of taxable Services and the Service Tax (Determination of Value) Rules, 2006 with the new system of taxation in respect of Works Contract Services, telecommunication Services, catering and restaurant Services, etc. I am, thus, fully convinced that the cost of various free issue materials supplied by M/s. GSPC, actually formed part of the total cost of taxable Services provided by the said assessee to the said M/s. GSPC, and therefore, such cost of free issue materials are includible into the taxable value of such taxable Services.

16.9. I also find that rule 5 of Service Tax (Determination of Value) Rules, 2006 specifically deals with the question of inclusion or exclusion of various items of expenditure or costs which would remove any ambiguity, if left, on the issue involved in this case. Sub-rule (1) of rule 5 provides that where certain expenditures or costs are incurred by the Service provider in the course of providing any taxable Service, all such expenditures or costs shall be treated as 'consideration' for the taxable Services provided or to be provided and shall be included in the 'value' for the purpose of charging of Service tax. This is a general rule which makes it abundantly clear that irrespective of whether such expenditure or costs are included in the gross amount charged by the Service provider or not, such expenditures or costs must be determined by the Service provider and included in the value of taxable Service. Thus, rule 5(1) of the said 2006 rules, makes a clear departure from the earlier executive clarifications in respect of any conditional treatment of cost or expenses incurred while providing any taxable Service. Under the present position of law, such expenses or costs, if it costs to the Service recipient towards the taxable Service received by them, are required to be included into the taxable value. There is no dispute that the cost of MDPE line Pipes (PE 100, SDR 11 & 17.6), 32 mm HDPE Conduit, PE Valve, Service Regulator/Transition Box, etc. supplied by M/s. GSPC as free issue materials to the said assessee for execution of the taxable Service would form an inalienable cost of the total taxable Services and

therefore, the value of such free issue material is required to be included for determining the tax liability of the said assessee.

16.10. Now coming to the second part of the present issue, i.e. admissibility of abatement provided under Notification no. 1/2006-ST dated 01.03.2006 for the period from 2010-11 to 2011-12 without considering the value of free issue materials, I find that at Sr. No. 7 of Notification No. 1/2006-Service Tax dated 01-03-2006, as amended, exemption to commercial or industrial construction Service is provided from so much of the Service tax leviable thereon under section 66 of the said Finance Act, as is in excess of the Service tax calculated on a value which is equivalent to 33% of the gross amount charged by such Service provider for providing commercial or industrial construction Service, subject to the relevant conditions specified in the corresponding entry in column (4) of the aforesaid Table.

16.11. From the above table of Notification No. 1/2006-Service Tax, it is clear that taxable value of commercial or industrial construction Service shall be 33% of the gross amount charged by the Service provider for providing commercial or industrial construction Service, subject to the conditions that:-

- (i) 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 been taken under the provisions of the CENVAT Credit Rules, 2004;
- (ii) or the Service provider has availed the benefit under Notification No. 12/2003-Service Tax, dated 20-06-2003 [the value of goods and materials sold by the Service provider to the recipient of Service is not excluded from the taxable value].

16.12 It is thus clear that taxable value of commercial or industrial construction Service shall be 33% of the gross amount charged by the Service provider for providing commercial or industrial construction Service, subject to conditions.

16.13 Further, as per the proviso given under this notification, the same shall not apply in cases where, 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 been taken under the provisions of the CENVAT Credit Rules, 2004; or the Service provider has availed the benefit under Notification No. 12/2003-Service Tax, dated 20-06-2003 according to which the value of goods and materials sold by the Service provider to the recipient of Service is not excluded from the taxable value. In other words, if the gross amount charged does not include the value of goods and materials supplied or provided or used by the Service provider for providing the Service, then the exemption provided in this notification will not be applicable. Thus, I am fully convinced that since the said assessee had not included the value of free issue materials while determining the 'gross amount', they will not be eligible for the benefit provided under the said Notification No. 1/2006 (supra). Therefore, I hold that the said assessee is liable to pay Service tax on the gross amount charged by them from M/s. GSPC as tabulated in the Annexure-A to the subject SCN. I, therefore, find that the demand in respect of this issue is sustainable and it is liable to be recovered from the assessee under Section 73 (1) of the Finance Act, 1994.

B: Non-payment of Service tax in terms of provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. Service Tax demand of Rs.165,97,523/- for the period October 2011 to 2013-14, not paid by the assessee as per Rule 6 of the Service Tax Rules, 1994.

17.1 PROVISIONS RELATING TO PAYMENT OF SERVICE TAX:

In Rule 3 of Point of Taxation Rules, 2011, which has come into force w.e.f. 01-07-2011, it is specified that point of taxation should be the time when the invoice for the Service provided or agreed to be provided is issued.

17.2. Further, in Section 68 of the Finance Act, 1994, as it was in force till 30-06-2012, procedures relating to payment of Service tax were specified. For better understanding the said section is reproduced herein below: -

“68. Payment of Service tax - (1) *Every person providing taxable Service to any person shall pay Service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.*

(2) *Notwithstanding anything contained in sub-section (1), in respect of any taxable Service notified by the Central Government in the Official Gazette, the Service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the Service tax in relation to such Service. ”*

12.4.1 In Section 68 of the Finance Act, 1994, as it is in force from 01.07.2012, procedures relating to payment of Service tax are specified. For better understanding, the said section is reproduced hereinbelow: -

“68. Payment of Service tax -

(1) *Every person providing taxable Service to any person shall pay Service tax at the rate specified in section 66B in such manner and within such period as may be prescribed.*

(2) *Notwithstanding anything contained in sub-section (1), in respect of such taxable Service as may be notified by the Central Government in the Official Gazette, the Service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the Service tax in relation to such Service.*

Provided that the Central Government may notify the Service and the extent of Service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the Service tax shall be paid by the Service provider.”

17.3 In section 68 of the Finance Act, 1994 it is specified that every person providing taxable Service to any person should pay Service tax at the rate specified in section 66/ 66B in such manner and within such period as may be prescribed. Accordingly, the manner and time period for payment of Service tax is prescribed in Rule 6 of the Service Tax Rules, 1994, the relevant portion of which, is reproduced herein below:

“Rule 6. Payment of Service tax - (1) The Service tax shall be paid to the credit of the Central Government,-

(i) *by the 6th day of the month, if the duty is deposited electronically through internet banking; and*

(ii) *by the 5th day of the month, in any other case, immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard.*

Provided that where the assessee is an individual or proprietary firm or partnership firm, the Service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the quarter in which Service is deemed to be provided as per the rules framed in this regard.”

17.4. In Rule 6 (1) of the Service Tax Rules, 1994 it is prescribed that the Service tax should be paid to the credit of the Central Government by the 6th day of the month, if the duty is deposited electronically through internet banking, immediately following the calendar month in which the Service is deemed to be provided. In case of the assessee is an individual or proprietary firm or partnership firm, the Service tax should be paid to the credit of the Central Government by the 5th day of the month if the duty is deposited through other than internet banking, immediately following the quarter in which Service is deemed to be provided.

17.5. The assessee is a partnership firm paying Service tax not through internet banking and therefore they should have paid Service tax by 5th of the month immediately following the quarter in which the Service was provided. But as per the information furnished by the assessee for the years 2011-12 to 2013-14, they had failed to pay Service tax within the stipulated time as per the provisions of Section 68 of the Act read with Rule - 6 of the Rule for the year 2012-13 & 2013-14.

17.6. The assessee has not deposited Service tax under one uniform Service code. That is, for the Services provided upto 2013-14 (upto September, 2013), the assessee had paid Service tax under Commercial or Industrial Construction Service but for the Services provided during the year 2013-14 (from October, 2013), they had paid Service tax under Erection, Commission and Installation Service. However, CBEC vide Circular No. 165/16/2012-ST dated 20-11-2012 clarified that a list of 120 descriptions of Services for the purpose of registration and accounting codes corresponding to each description of Service for payment of tax is restored. Registrations obtained under the positive list approach continue to be valid. Thus, Services tax paid under Commercial or Industrial Construction Service and Erection, Commissioning and Installation Service would be treated as valid.

17.7. The assessee had provided Services of taxable value of Rs. 13,76,02,030/- during the period from 2011-12 (from October, 2011) to 2013-14 (upto March, 2014) and Service tax payable thereon amounts to Rs. 1,65,97,523/- (which includes Service tax of Rs. 1,61,14,100/-, education cess of Rs. 3,22,282/- and HSE cess of Rs. 1,61,141/-) [Rupees One Crore Sixty Five Lakh Ninety Seven Thousand Five Hundred Twenty Three only]. It may be pertinent to stress that they had been charging and collecting the Service tax from their clients. But they failed to deposit the same into the Central Government account. They had failed to pay Service tax even after initiation of inquiry by DGCEI. The details of value of Services provided and Service tax payable for each quarter is furnished in ANNEXURE - B to the Show Cause Notice.

17.8. However, I find that the assessee has admitted non-payment of Service tax in accordance with Section 68 of the Act. They had paid entire Service tax of Rs. 1,65,97,523/- [Rupees One Crore Sixty Five Lakh Ninety Seven Thousand Five Hundred Twenty Three only] along with interest of Rs. 23,35,738/- for the period from 2011-12 (from October, 2011) to 2013-14, as detailed in the ANNEXURE - C to the Show Cause Notice.

17.9. I find that the assessee has not disputed the non payment of Service Tax in accordance with Section 68 of the Act, as discussed in the above paras and has paid the Service Tax with interest. The assessee has also not contested the issue in their reply to the SCN and additional written submissions, made by them. Since the assessee is not contesting this portion of the demand, I find that the demand in this respect is sustainable.

C: Non payment of Service tax by wrongly claiming value of Services provided as sale of goods under Commercial or Industrial Construction Service: SERVICE TAX DEMAND OF Rs.31,77,525/- as per Annexure D of the Show Cause Notice.

18.1: A demand of Service Tax amounting to Rs. 31,77,525/- was raised against the assessee for non payment of Service Tax for providing the Service of laying of cables under Commercial or Industrial Construction Service. The assessee had wrongly claimed their activity of laying of cables, which is also shown in the invoice as laying of cables only, as sale of goods on the bills issued for Services provided. Moreover, they had also not disclosed this fact to DGCEI while furnishing the details of value of Services provided by them. Since the assessee had provided taxable Services and also charged Service tax in their bills issued to their clients, they should have paid applicable Service tax payable thereon.

18.2. Further, it was also found that in case of work orders relating to laying of OFC cable executed by the assessee, they had short paid Service tax under Works Contract Service by wrongly claiming exemption in the guise of sale of goods, despite the fact that these bills related to Services provided by them and Service tax was also charged from their clients. The assessee vide their letter

dated 22-09-2015 regarding the non payment of Service Tax on the pretext of sale of goods in as much as that they had wrongly claimed exemption from payment of Service tax even on those bills which were relating to Services provided. Further, Service tax was also charged in such bills from their clients as detailed in ANNEXURE - D of the Show Cause Notice. Shri Govindbhai Patel, in his statement dated 28-09-2015, has admitted that these invoices were issued for the Services provided and Service tax was also charged in these bills. But, they considered these bills as sale of goods because their clients had not paid them the Service tax element.

18.3. In reply to the Show Cause Notice, the assessee has contended that they had issued separate invoices for sale of goods by charging VAT and for Service portion separate invoice by charging Service tax to Uttar Gujarat Vij Company Ltd. (UGVCL), Madhya Gujarat Vij Company Ltd. (MGVCL) and BSNL which are Government / Semi-Government Organization. These invoices are for the work of laying of optical fibre cable which includes Service tax amount. But these organizations had denied paying Service tax amount by taking into consideration the Circular No. 123/5/2010-TRU dated 24/05/2010. By considering this circular the assessee had claimed exemption from laying of fibre cable for the period from 2010-11 to 2012-13 (up to June, 2012) for different clients. The Service tax for this period amounts to Rs. 10,46,737/-, which, as per the contention of the assessee, was not required to be paid by them. However the above mentioned circular is applicable before introduction of negative list of Services i.e. up to 31.06.2012.

18.4. The Board vide circular No. 123/5/2010-TRU dated 24.05.2010 has clarified regarding applicability of Service tax on laying of cables under or alongside roads and similar activities. The following would be the tax status of the activities in respect of which dispute has arisen:

S.No. (1)	Activity (2)	Status (3)
1.	Shifting of overhead cables/wires for any reasons such as widening/renovation of roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
2.	Laying of cables under or alongside roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
3.	Laying of electric cables between grids/sub-stations/transformer stations en route	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
4.	Installation of transformer/ sub-stations undertaken independently	Taxable service, namely Erection, commissioning or installation services [section 65 (105) (zzd)].
5.	Laying of electric cables up to distribution point of residential or commercial localities/complexes	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
6.	Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service, namely commercial or industrial construction' or 'construction of complex' service [section 65(105) (zzq)/(zzzh)], as the case may be.
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service, namely Erection, commissioning or installation services [section 65 (105) (zzd)].
8.	Railway electrification, electrification along the railway track	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994

18.5. The Central Board of Excise and Customs, New Delhi in its Circular 123/2010 dated 24.05.2010 issued under F.No. F. No. 332/5/2010-TRU clarified that the following activities are not treated as a taxable Service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994:

- (i) Shifting of overhead cables / wires for any reasons such as widening/ renovation of roads.
- (ii) Laying of cables under or alongside roads.
- (iii) Laying of electric cables between grids / sub-stations / transformer stations en route.
- (iv) Laying of electric cables up to distribution point of residential or commercial localities / complexes. Railway electrification, electrification along the railway track.

The circular further clarified that the activity of:

- (v) Laying of electric cables beyond the distribution point of residential or commercial localities / complexes is covered under the category of taxable Service, namely 'commercial or industrial construction' or 'construction of complex' Service [section 65(105) (zzq)/(zzzh)], as the case may be.
- (vi) Installation of transformer/ sub-stations undertaken independently and Installation of street lights, traffic lights, floodlights, or other electrical and electronic appliances / devices or providing electric connections to them are covered under taxable Service, of namely Erection, Commissioning or Installation Services [section 65 (105) (zzd)].
- (viii) By virtue of this circular, the Board has clarified that laying of electrical cables from the point of distribution, i.e. from the point of Supply by the utility provider, in the residential or commercial localities / complexes to the individual residential or commercial units are leviable to Service Tax. In other words, the laying of electrical cables undertaken by or on behalf of residential or commercial units or its developers or Contractors etc are subject to Service tax and any activity of laying of electrical cables undertaken by the utility provider i.e. power distribution company or its Contractors, agents etc are excluded from the ambit of Service tax.

18.6. From 01-07-2012, Service tax levy is based on negative list i.e. all Services are liable to Service tax other than those Services mentioned in the negative list notified in Section 66D of the Finance Act, 1994. There are certain Services notified as declared Services in Section 66E of the Finance Act, 1994. At Sl. No. (h), Service portion in the execution of a Works Contract is one of the declared Services for levy of Service tax. Further as per Section 65B(54) of the Finance Act, 1994, Works Contract means 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, improvement, repair, renovation, alteration of any building or structure on land or for carrying out any other similar activity or a part thereof in relation to any building or structure on land. In the instant case, the assessee has laid cables and transferred the same to its clients, such activity is appropriately covered under the definition of Works Contract Service. Thus the activity of laying cables is clearly covered under Works Contract Service. I agree with the contention of the assessee that the Service of laying cables provided by them and which involves the transfer of property, i.e. cables falls under the ambit of Works Contract Service; and accordingly, they are liable to pay Service tax as per Notification No. 30/2012-ST dated 20.6.2012. In terms of this Notification, as amended, in case of Works Contract Service provided by a partnership firm, 50% of Service tax liability is to be discharged by the Service provider and the remaining 50% of Service tax liability is to be discharged by the Service recipient. In the instant case, the assessee, being a partnership firm, is liable to pay 50% of the Service tax.

18.7. In view of the discussions in the foregoing paras and as per Notification No. 30/2012-ST dated 20.6.2012, I hold that the activity of laying of cables for the period from 2010-11 to

30.6.2012, is not liable to Service Tax. Therefore I drop the demand of Rs. 10,46,735/- (Rupees Ten Lakhs Forty Six Thousand, Seven Hundred and Thirty Five only/-)[Service Tax Rs.1016247/-+ Education Cess: Rs.20325/-+H.S.Edu Cess: Rs.10163/-], for the period from 2010-11 to 30.6.2012,as the Annexure D to the Show Cause Notice.

18.8. However the above mentioned circular is applicable only till 30.6.2012. After the introduction of negative list of Services from 01.07.2012, the assessee was required to pay balance Service tax liability of Rs. 21,30,790/-. However, I hold that the said Services, as per the details of Annexure D, fall under Works Contract Service, from the period 01.07.2012 to 2013-14. In terms of Notification no. 30/2012-ST, Dt. 20.06.2012, as amended, in the case of Works Contract Service provided by a partnership firm, 50% of Service tax liability is to be discharged by the Service provider and the remaining 50% of Service tax liability is to be discharged by the Service recipient. In the instant case, the assessee, being a partnership firm, and as a Service provider, is liable to pay 50% of the Service tax. According to said notification the assessee is liable to pay 50% of 21,30,790/- which amounts to 10,65,395/- and against this liability the assessee had paid Rs. 15,00,000/- wide challan no. 38527 dated 05.10.2015 for Rs. 9,50,000/- and challan no. 3224 dated 06.10.2015 for Rs. 5,50,000/-. I find that the amount of Service Tax amounting to Rs. 10,65,395/-, already paid by the assessee against the said demand, needs to be appropriated.

D: SHORT PAYMENT OF SERVICE TAX UNDER WORKS CONTRACT SERVICE:

19.1. The assessee has provided the Services of laying OFC cables for M/s. BSNL and are issuing bills under Works Contract Service. From the foregoing para No. 18.6, it is apparently clear that the Services provided by the assessee to M/s. BSNL is covered under Works Contract Service. Accordingly, they are liable to pay Service tax as per Notification No. 30/2012-ST dated 20-06-2012. In terms of this Notification, as amended, in case of Works Contract Service provided by a partnership firm, 50% of Service tax liability is to be discharged by the Service provider and the remaining 50% of Service tax liability is to be discharged by the Service recipient. In the instant case, the assessee, being a partnership firm, is liable to pay 50% of the Service tax.

19.2.1. On verification of ST-3 returns filed for the year 2013-14, it appeared that they had declared Services provided under Manpower Supply Agency Service and paid Service tax on 25% of the gross amount charged in the bill as a Service provider in terms of provisions of Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20-06-2012. On examination of the invoices, it was found that they had not provided any Manpower Supply to their client viz., M/s. BSNL. Shri Govindbhai Patel, Partner of the firm in his statement dated 03-02-2015 had stated that they had not provided any Manpower Supply Agency Service. They had only provided Services of laying of OFC cables for M/s. BSNL by employing their labour. They issued bills for labour charges of the above work. Therefore, the assessee, being a partnership firm, should have paid 50% of the Service tax payable under Works Contracts Service.

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

Taxable Service means any Service provided or to be provided to any person, by a Manpower recruitment or Supply Agency in relation to the recruitment or Supply of Manpower, temporarily or otherwise, in any manner;

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

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

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

19.2.4. Difference between Old definition and New Definition of Supply of Manpower:

There is specific departure in the definition of Supply of Manpower, temporarily or otherwise, inasmuch as the new definition is very specific i.e. Supply of Manpower means Supply of Manpower, temporarily or otherwise, to another person to work under his superintendence or control; whereas this condition was not there in the erstwhile definition

19.2.5. In view of the above definition, where supplied manpowers are working under supervision or control of Service recipient, then it will fall under the ambit of "Supply of Manpower" and thus liable to Service tax under the stated category.

19.2.6. Prior to July 1, 2012, Manpower Recruitment or Supply Agency was liable to Service tax as being a taxable Service defined under Section 65(68) and under Section 65(105)(k) of the Finance Act respectively, which are reproduced as under:

*"Section 65(68) of the Finance Act with effect from May 16, 2008 provides as under:
Manpower Recruitment or Supply Agency means any person engaged in providing any Service, directly or indirectly, in any manner for recruitment or Supply of Manpower, temporarily or otherwise, to any other person.*

19.2.7. On going through the sample copy of such bills, I find that the assessee has not supplied pure labour to the Service receiver, but they have used their labourers, who were under the control and supervision of the assessee, for providing the Service of laying the cables. There is no employee and employer relationship between the labour supplied and the Service receiver. Thus it is clear that the assessee has not provided Manpower Supply Service but has actually provided Works Contract Service.

19.2.8. The assessee had provided Services of taxable value of Rs. 19,31,035/- during the year 2013-14 and short paid Service tax payable thereon amounting to Rs.59,669/- (which includes Service tax of Rs. 57,931/-, education cess of Rs. 1,159/- and HSE cess of Rs. 579/-) [Rupees Fifty Nine Thousand Six Hundred Sixty Nine only] as detailed in Annexure E to the Show Cause Notice and thus I hold that the same needs to be recovered from them along with interest under Works Contract Service.

E.: CONTRAVENTIONS OF PROVISIONS OF THE FINANCE ACT, 1994 AND RULES MADE THEREUNDER:-

20.1. As per Section 67 of the Finance Act, 1994 Service tax is to be paid on the gross amount charged by the Service provider for the Services provided or to be provided. In the instant case, I find that the assessee had failed to pay Service tax on the gross amount charged from their clients in contravention of the provisions of this section during the period from 2010-11 to 2011-12 by wrongly availing abatement under Notification No. 1/2006-ST dated 01-03-2006 without adding the value of free issue materials supplied by their clients into the gross amount charged for the Services provided.

20.2. Section 68 of the Finance Act, 1994 provides that every person providing taxable Service to any person shall pay Service tax at the specified rates and in such manner and within such period as may be prescribed. Further, Rule 6 of the Service Tax Rules 1994 stipulates that Service tax shall be paid to the credit of the Central Government, by the 5th of the month immediately following the calendar month/ quarter, in which the Services were provided. I find that assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule-6 of the Service Tax Rules, 1994, inasmuch as they failed to pay Service tax as specified therein;

20.3. 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 the manner of filing

returns. I find that the assessee had provided taxable Services but failed to file ST-3 returns within the stipulated time limit and thereby they had suppressed the facts from the knowledge of the department with the intention of evading the payment of Service Tax and thereby violated the provisions of this section.

20.4. **It is thus evident that the assessee did not pay Service tax and education cess by way of wilful suppression of facts, mis-declaration and in contravention of provisions of the Finance Act, 1994 relating to levy and collection of Service tax and the rules made thereunder with intent to evade payment of Service tax. The Service tax is therefore recoverable from them under the extended period proviso to sub-section (1) of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.**

20.5. From the foregoing paras, it is apparent that the assessee had rendered themselves liable for penal action under Section 76 of the Finance Act, 1994 for not paying Service tax as per the provisions of the Finance Act, 1994 and rules framed thereunder as explained above; and have also rendered themselves liable for penal action under Section 76 and Section 77 of the Finance Act, 1994 for contravention of the provisions of the Finance Act, 1994 and rules made thereunder as detailed above.

20.6. Further, it appears that the assessee had suppressed/concealed the value of taxable Service, with an intent to evade Service tax. They had not paid Service tax by way of wilful mis-statement, suppression of facts and contravention of provisions of Finance Act, 1994 and rules made thereunder relating to levy and collection of Service tax with an 'intent' to evade the payment of Service tax. It, therefore, appears that the assessee is liable to penal action under Section 78 of the Finance Act, 1994.

20.7. Shri Govindbhai Patel, Partner of the assessee is the key person responsible for business activities of the firm relating to Services provided and liability to pay Service tax. He has admitted that there was a failure to pay Service tax during the period from 2011-12 to 2013-14 beyond six months from the due date. He has also admitted that they had not filed ST-3 returns within the stipulated time. Further, they had wrongly claimed exemption from payment of Service tax on those bills which were issued for Services provided, charging Service tax therein, as sale of goods. For the acts of contravention of various provisions of the Finance Act, 1994 and rules made thereunder, I hold that Shri Govindbhai Patel, Partner of the assessee is liable for penalty under Section 78A of the Finance Act, 1994.

20.8. It is seen that the assessee is registered with the department and paying Service tax and filing returns. However, the assessee failed to show the correct taxable value in their ST-3 Returns filed for disputed period. The fact that the assessee had not included the value of the said Free Issue Materials used in execution of said work in the gross amount charged in respect of Laying/ Installation, Construction, Testing & Commissioning (including site restoration) of MDPE/ PE 100 Polyethylene Gas Pipelines' Network Services provided to their clients, while availing the benefit of Notification No.01/2006-ST dated 01.03.2006, was not disclosed to the department. Further the assessee has indulged in suppression of facts from the department as discussed in the paras above. These activities of the assessee came to the knowledge of the department only after the investigation was commenced by DGCEI. Since the assessee is well aware of the provisions of law, being registered with the department, there cannot be any ambiguity about liability to Service tax. Thus the only conclusion that can be arrived at is that the assessee has suppressed the facts from the department with an intent to evade payment of appropriate tax. As per Section 73 of the Finance Act, 1994 when there is a suppression of facts with intent to evade payment of Service tax, extended period is invocable. Hon'ble High Court of Gujarat, in the case of CCE, Surat-I Vs. Neminath Fabrics Pvt. Ltd. – 2010 (256) ELT 369 (Guj.), held that –

Demand - Limitation - Extended period - Knowledge of Department, effect - Suppression admitted but Tribunal held demand as barred by limitation importing concept of knowledge of Department, as submitted - Proviso to Section 11A(i) of Central Excise Act, 1944 provides for a situation

whereunder provisions of sub-section (i) ibid recast by legislature extending period within which SCN issued - Proviso cannot be read to mean that because there is knowledge, suppression which stands established disappears - Concept of knowledge, by no stretch of imagination, can be read into the provisions - Suppression not obliterated, merely because Department acquired knowledge of irregularities. - What has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for Service of show cause notice under sub-section (1) of Section 11A, stands extended to five years from the relevant date. [paras 15, 16, 20]

20.9. Section 73 of the Finance Act, 1994 and section 11A of the Central Excise Act, 1944 are *pari materia*, i.e. these are general laws that were enacted at different times but pertain to the same subject. Statutes in *pari materia* must be interpreted in the light of each other since they have a common purpose for comparable events or items. Hence the judgment is squarely applicable to the present case.

20.10. In view of the above, I conclude that the suppression clause is properly invoked in the present case and for the same reason, the assessee is liable for imposition of penalty under section 78 of the Finance Act, 1994.

21. Section 75 of the Finance Act, 1994 provides that every person liable to pay Service tax in accordance with the provisions of section 68 or the rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate fixed by the Central Government by notification, for the period by which such crediting of the tax or any part thereof is delayed. Thus, it is clear that interest is chargeable from an assessee who has withheld the payment of any tax as and when it is due and payable. Interest is compensatory in character as held by the Hon'ble Supreme Court in the case of *Pratibha Processors Vs. Union of India* reported in 1996 (88) E.L.T. 12 (S.C.). In *Pratibha Processors* (supra), the Hon'ble Apex Court held as follows:

"13. In fiscal Statutes, the import of the words - "tax", "interest", "penalty", etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provisions. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date (emphasis supplied). Essentially, it is compensatory and different from penalty - which is penal in character."

21.1. Thus, interest is chargeable from the assessee for the period for which they have withheld the tax payable.

22. As regards imposition of penalty under Section 76, 77 and 78 of the Act. I have already held that the demand under the notice is recoverable by invoking the extended period proviso under Section 73 of the Act and Section 75 of the Act mandates levy of interest on delayed payment of Service Tax. Therefore, the demand is recoverable alongwith interest under the said Section. Further, I find that, Section 78 of the Act provides as follows:

22.1. **SECTION 78. Penalty for failure to pay Service tax for reasons of fraud, etc. —**

(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 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 the intent to evade payment of Service 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 records for the period beginning with the 8th April, 2011 upto the 24 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 — the date of Service of notice under the proviso to

(i) 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 only if the amount of such reduced penalty is also paid within such period :

Explanation. - For the purposes of this sub-section, "specified records" means records including computerized data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement; the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.

(2) Where the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, modifies the amount of Service tax determined under sub-section (2) of section 73, then, the amount of penalty payable under sub-section (1) and the interest payable thereon under section 75 shall stand modified accordingly, and after taking into account the amount of Service tax so modified, the person who is liable to pay such amount of Service tax, shall also be liable to pay the amount of penalty and interest so modified.

(3) Where the amount of Service tax or penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over and above the amount as determined under sub-section (2) of section 73, the time within which the interest and the reduced penalty is payable under clause (ii) of the second proviso to sub-section (1) in relation to such increased amount of Service tax shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.

22.2. It is observed that where any Service Tax has not been levied or paid or has been short-levied or short-paid by the reason of suppression of facts or fraud or collusion or wilful mis-statement or contravention of any of the Act or the Rules made thereunder with intent to evade payment of Service Tax, Section 78 of the Act provides for mandatory penalty and the person, liable to pay such Service Tax, shall also be liable to pay a penalty in addition to such Service Tax and interest thereon. The amount of penalty leviable under this section is equal to hundred percent of the amount of Service Tax evaded. In view of the findings given in foregoing paras, as extended period of time for demand under proviso to Section 73 of the Act is invocable in the present case, I find that the assessee has rendered themselves liable for penalty under Section 78 of the Act for the various acts of omission and commission committed by them, as discussed in the foregoing paras. Penalty under Section 78 of the Finance Act, 1994 is mandatorily imposable as has been held by the Apex Court in the case of Dharmendra Textile Mills Ltd-2008 (231) ELT 3 (SC) and Rajasthan Spinning & Weaving Mills Ltd-2009 (238) ELT 3 (SC).

22.3. In view of the above, as the penalty is payable under Section 78 of Finance Act 1994, penalty under 76 is not warranted in this case. Hence I hold that penalty should be imposed on the assessee under Section 78 of the Act, only and I do not impose penalty under Section 76 of the Finance Act, 1994.

22.4. Regarding the non imposition of penalty under Section 76 of the Finance Act, I hereby rely on the decision of CESTAT, Principal Bench, New in the case of M/s. BSL Ltd. V/s. CCE, Jaipur-II, reported at 2016 (44) S.T.R. 419 (Tri. - Del.), wherein it has been held as under:

“Penalty - Simultaneous penalties under Section 76 as well as Section 78 of Finance Act, 1994 cannot be imposed - Sections 76 and 78 of Finance Act, 1994. [para 4]

Penalty - Reduced penalty - Duty, interest and penalty not deposited either before raising of demand or within 30 days of adjudication order - Tribunal cannot extend benefit of reduced penalty - Section 78 of Finance Act, 1994. [2016 (331) E.L.T. A312 (S.C.) and 2014 (305) E.L.T. 442 (Guj.) relied on]. [paras 4]”

Para 4 of the above CESTAT order states as under:

4. *We have considered the contentions of both sides. The appellant has conceded the demand along with interest and it is only pleading for waiver of penalty under Section 76 ibid as penalty under Section 78 ibid has been imposed and for an option to pay 25% (reduced) mandatory penalty under Section 78 ibid as the option was not given at the lower levels. As regards the imposition of penalty under Sections 76 and 78 ibid simultaneously and option for reduced (25%) mandatory penalty under Section 78, CESTAT in the appellant's own case vide order dated 11-9-2015 (supra) held as under :-*

“3. *We have considered the contentions of the appellant. There is no doubt that the commission paid to overseas agents by the appellant was liable to service tax under BAS and the appellant is not contesting the same. However, regarding the contention of the appellant that it should not have been imposed penalty under Section 76 ibid, we find that in the case of Jubilant Enpro (P) Ltd. v. CCE, Noida [2015-TIOL-2535-CESTAT-DEL], CESTAT has held as under :-*

“12. *The appellants have argued that once penalty under Section 78 has been imposed, penalty under Section 76 of Finance Act, 1994 should not be imposed. We find that Punjab & Haryana High Court in several cases (viz. CCE v. First Flight Couriers Ltd. - 2011-TIOL-67-HC-P7H-ST, CCE, Chandigar-I v. M/s. Cool Tech Corporation - 2011-TIOL-23-HC-P&H-ST, CCE v. Pannu Property Dealers, Ludhiana - 2010-TIOL-874- HC-P&H-ST) has held that even if at the relevant time the penalties under Sections 76 & 78 were not mutually exclusive, once penalty under Section 78 has been imposed, penalty under Section 76 ibid may not be justified.*

23. As regards imposition of penalty under Section 77 of the Finance Act, 1994, I find that in the present case the assessee had failed to comply with provisions of the Act/Rules inasmuch as they have failed to self-assess the correct taxable value and not shown the same in their statutory returns. Hence, they are liable to penalty under this Section 77 of the Finance Act also.

24. In view of the above, I pass the following order:

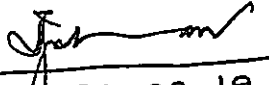
ORDER

- (i) I confirm the demand of Service Tax of Rs. 2,70,527/- (Service tax of Rs. 2,62,647/-, education cess of Rs. 5,253/- & higher 8s secondary education cess of Rs. 2,626/-) [Rupees Two Lakh Seventy Thousand Five Hundred Twenty Seven only] which was not paid under Commercial or Industrial Construction Services during the period from 2010-11 and 2011-12, as detailed in Annexure – A of the Show Cause Notice, and order that the same should be recovered from the assessee under proviso to section 73(2) of the Finance Act, 1994;
- (ii) I confirm the demand of Service Tax of Rs. 1,65,97,523/- (which includes Service tax of Rs. 1,61,14,100/-, education cess of Rs. 3,22,282/- and HSE cess of Rs. 1,61,141/-) [Rupees One Crore Sixty Five Lakh Ninety Seven Thousand Five Hundred Twenty Three only] which was not paid during the period from 2011-12 (from October, 2011) to

2013-14, as detailed in Annexure – B of the Show Cause Notice and order that the same should be recovered from them under the proviso to section 73(2) of the Finance Act, 1994;

- (iii) In terms of the foregoing paras, I confirm the demand of Rs. 10,65,394/- (Rupees Ten Lakhs, Sixty five Thousand Three Hundred and Ninety four only/-), under proviso to section 73(2) of the Finance Act, 1994, against the Service tax demand of Rs. 31,77,525/- which was allegedly not paid on the value of Services provided by them by wrongly claiming as sale of goods, during the period from 2010-11 to 2013-14, as detailed in Annexure – D. However, I find that the assessee has paid Rs. 15,00,000/- vide challan no. 38527 dated 05.10.2015 for Rs. 9,50,000/- and challan no. 3224 dated 06.10.2015 for Rs. 5,50,000/-, against this liability. Therefore, I order for the appropriation of the said amount of Rs. 10,65,394/- paid by the assessee.
- (iv) As discussed in Paras 18.1 to 18.8, I drop the demand of Service Tax amounting to Rs. 10,46,735/- (Rupees Ten Lakhs Forty Six Thousand, Seven Hundred and Thirty Five only/-) [Service Tax Rs.101,6,247/- + Education Cess: Rs.20,325/- +H.S.Edu Cess: Rs.10163/-], for the period from 2010-11 to 30.6.2012, as per Annexure D to the Show Cause Notice, on the ground that such services were exempted from Service Tax during the material time.
- (v) As discussed in Paras 18.1 to 18.8, I also drop the demand of Service Tax amounting Rs. 10,65,395/- i.e 50% of Rs. 21,30,790/- [Rs.31,77,525-Rs.10,46,735/-], as the assessee, being a partnership firm, and as a Service provider, the assessee is liable to pay only 50% of the Service tax.
- (vi) I confirm the demand of Service Tax of Rs. 59,669/- (Service tax of Rs.57,931/-, Education cess of Rs. 1,159/- & Higher Secondary Education cess of Rs. 579/-) [Rupees Fifty Nine Thousand Six Hundred Sixty Nine only], which was short paid under Works Contract Service during the year 2013-14, as detailed in Annexure - E, and order that the same be recovered from them under proviso to section 73(2) of the Finance Act, 1944.
- (vii) I order the appropriation of Service Tax of Rs. 1,80,97,523/- [Rupees One Crore Eighty Lakh Ninety Seven Thousand Five Hundred Twenty Three only], which was paid during the course of investigation against their Service tax liability mentioned at (i) to (iv) above;
- (viii) I order that Interest at the appropriate rate should be recovered from the assessee for the period of delay of payment of Service tax for the Services mentioned at (i) to (iv) above under section 75 of the Finance Act, 1994;
- (ix) I order that the Interest of Rs. 27,29,777/- paid during the course of investigation be appropriated against the interest liability mentioned at (vi) above;
- (x) I impose Penalty of Rs 10,000 (Rupees Ten Thousand only) on the assessee under Section 77 of the Finance Act, 1994 for the failure to self-assess the correct taxable value and not showing the same in the statutory ST -3 returns;
- (xi) I impose penalty on the assessee equal to the amount of Service tax evaded i.e Rs. 1,79,93,114/- (Rs.2,70,527/ + Rs.16597523/- + Rs.10,65,394/- + Rs.59,669/-) (Rupees One Crore Seventy Nine Lakhs Ninety Three Thousand One Hundred and Fourteen only), under Section 78 of the Finance Act, 1994 for suppressing the value of taxable Services provided by them from the department with an intent to evade payment of Service Tax. If the Service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service tax amount, provided such penalty is also paid within such period of 30 days.
- (xii) I impose personal penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on Shri Govindbhai Patel, Partner of the assessee under Section 78A of the Finance Act, 1994 for failure to pay Service tax dues as detailed supra.

- (xiii) The Show Cause Notice No. DGCEI/AZU/36-39/2015-16, dated 12.10.2015, issued by Principal Additional Director General, Ahmedabad Zonal Unit, DGCEI, Ahmedabad, disposed of in above terms.


31.03.19
(J.A.KHAN)

Principal Commissioner,
CGST & C.EX.,
Ahmedabad-North

F.No.STC/4-53/O&A/15-16

Date:

By RPAD.

To

M/s. Techno Tele Projects,
301/304, Aakar Complex,
Nr. Darpan Six Roads,
Naranpura, Ahmedabad- 380014

Copy to:

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Assistant Commissioner, CGST, Division-VII, C.G.S.T, Ahmedabad-North.
3. The Superintendent, Range-III, Division-VII, CGST, Ahmedabad-North.
- ✓ 4. Guard file.