


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(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:- ofadjhq-cgstamdnorth@gov.in</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.No.STC/4-56/O&A/2014-15

आदेश की तारीख / Date of Order : 29.12.2017

जारी करने की तारीख / Date of Issue : 23.03.2018

द्वारा पारित/Passed by -

श्री जे. ए. खान / SHRI J. A. KHAN

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR -13/2017 - 18

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 अपील न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलय न्यायाधिकरण, O-20, मेघानीनगर, न्यु मेन्टल हास्पिटल 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 अग्रोषित 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 कम प्रतियाँ संलग्न की जाएगी 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 मांग ड्राफ्ट के जरिए अदा की जाएगी तथा यह मांग 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 1.00रुपैया 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:

Sub : Proceedings initiated vide Show Cause Notice bearing F.No. STC/4-56/O&A/14-15 dated 01.12.2014 issued to M/s. Anand Corporation, 318, Shukan Mall, Near Visat Petrol Pump, Gandhinagar-Koba Highway, Gandhinagar.

BRIEF FACTS :-

M/s. Anand Corporation, 318, Shukan Mall, Near Visat Petrol Pump, Gandhinagar-Koba Highway, Gandhinagar (herein after referred to as 'the noticee') is engaged in providing service under the category of 'Commercial or Industrial Construction Services' and is also engaged in Transportation of Goods by Road / Goods from various transport agencies since 2011. Service Tax Registration No AAOFA 8376M SD001 was taken on 11.11.2013 under the category of 'Taxable Services, other than in the Negative List' from Service Tax Commissionerate, Ahmedabad.

2. Service Tax Voluntary Compliance Encouragement Scheme, 2013 (hereinafter referred to as the 'VCES') was announced with effect from 10.05.2013 vide Chapter V of the Finance Act, 2013, with an objective to encourage disclosure of Service Tax dues for the period from October, 2007 to December, 2012, which was not paid, either on account of ignorance of law, or otherwise.

3. In accordance with the said scheme, the noticee filed a declaration on 03.12.2013 under Section 107(1) of the Finance Act, 2013 with the designated authority and the authority acknowledged the declaration under Section 107(2) of the Finance Act, 2013 by issuing Form VCES-2. As per the declaration the noticee paid Service Tax dues of Rs.1,39,391/- vide Challan dated 27.12.2013, dated 30.12.2013 and dated 25.06.2014. As per Annexure to the VCES declaration, the Service Tax declared on gross amount received by them was as under:-

Period	Gross Receipt	Abatement @ 75% under Noti. No. 29/2010-ST dated 22.06.2010	Taxable Value	Service Tax due
April, 2012 to June, 2012	20,10,000/-	15,07,500/-	5,02,500/-	62,109/-
July, 2012 to Sept., 2012	21,51,000/-	16,13,250/-	5,37,750/-	66,466/-
Oct., 2012 to Dec., 2012	3,50,000/-	2,62,500/-	87,500/-	10,815/-
TOTAL	45,11,000/-	33,83,250/-	11,27,750/-	1,39,390/-

4. As per an intelligence gathered by the Officers of Preventive Section of Central Excise Commissionerate, Ahmedabad- III the noticee was a Real Estate Builder and Developer and had started a scheme in the year 2012, in the name of 'Keshavam Estate' near Dhaval Shopping Centre, Odhav Ring Road, Nikol, Ahmedabad District. The said scheme consisted of construction of Commercial-cum-Industrial complex having 36 sheds and 16 shops. It was further learnt that the noticee was collecting advance booking amounts from prospective buyers of these Sheds & Commercial Shops, before obtaining 'Building Use' permission from the competent authority. Thus it appeared that the noticee, being a Real Estate Builder and Developer, was liable to pay Service Tax on aforesaid advances under the category of 'Commercial or Industrial Construction services' w.e.f. 01.04.2012. However it was noticed

that they had neither paid Service Tax leviable on the taxable service rendered by them nor filed ST-3 returns for the aforesaid period, till the initiation of inquiry by the officers of Ahmedabad – III Commissionerate.

5. Acting on the aforesaid intelligence, a team of officers of Ahmedabad – III Commissionerate visited the office premises of the noticee on 05/06.10.2013, conducted searches and withdrew documents/records as per Annexure-A to panchnama dated 05/06.10.2013 in presence of Shri Ashokbhai Ambalal Patel, Partner of the noticee.

6. A statement of Shri Ashokbhai A. Patel, partner of the noticee was also recorded on 06.10.2013 under Section 14 of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994, wherein, he *inter-alia* stated that they had taken up only one project so far namely 'Keshavam Estate' near Dhaval Shopping Centre, Odhav Ring Road, Nikol, Ahmedabad and the same was under construction and that the said project was a 'Commercial-cum-Industrial complex' having 36 Sheds and 16 Commercial shops.

6.1 The Panchnama dated 05/6.10.2013 drawn in the office premises of M/s. Shukan Silver Corporation was shown to Shri Ashokbhai A. Patel during the course of recording his statement and after going through the same, he stated that the facts mentioned in the Panchnama were true and correct and in token of its correctness, he also put his dated signature on it. He further stated that;

- the total amount of Rs. 2,41,17,800/- disclosed in the said Panchnama was as disclosed by him only and he once again confirmed the same and further stated that an amount of Rs. 1,72,27,000/- was accounted receipt, whereas the remaining amount of Rs. 68,90,800/- was cash amount received from buyers, which were not accounted in their books of accounts.
- in their business of construction and development of residential as well as commercial complexes, due to long gestation period for completion of financial deals, unwillingness / reluctance of majority of buyers and due to less availability of cash, around 40% of the accounted receipt (payment received through cheque) is collected by way of cash also.
- the cash part remains unaccounted and is being used to buy lands and other properties by the developers.
- the decision to collect the payments from the buyers in the ratio and manner stated above through cheque and unaccounted cash had been taken with due consent of each partner and on enquiring about the same, it was confirmed by the Partners.
- his firm was not registered under Service Tax and till date no Service Tax was paid on advance amount received from the buyers.
- he was in the knowledge of the requirement that his deals were liable to compliance of Service Tax, but due to his ignorance of provisions, laxity, and some greed, they had avoided to obtain registration and pay Service Tax.
- since their project was still under construction, they had not collected any Service Tax amount from the buyers as Service Tax was to be collected by them at the time of handing over the possession of the Flats / Shops separately.

- the service Tax liability on the total amount of Rs.2,41,17,800/- received / collected from the buyers is being admitted by him and they were ready to pay the same.

7. An explanation had been added w.e.f. 01.07.2010 to the definition of 'Commercial or Industrial Construction' and 'Construction of Residential Complex' service vide Finance Act, 2010, as follows :-

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

In view of the aforesaid Explanation, w.e.f. 01.07.2010, a builder / developer who sells Flats / Shops / Galas is liable to pay Service Tax on entire consideration received before 'Building Use' permission / Completion Certificate has been obtained for the property from the competent authority.

8. Thus, it appeared that the noticee had received a total amount of Rs. 2,41,17,800/- as advances towards constructions of Commercial-cum-Industrial complex booked for sale from prospective buyers before obtaining 'Building Use' permission from the competent authority i.e. AMC for the aforesaid scheme and therefore were liable to pay Service Tax on the said amount to the tune of Rs. 7,45,240/- (after abatement), during the F.Y. 2012-13 (w.e.f. 01.04.2012).

9. Thus it appeared that the noticee had received advances, accounted and unaccounted amount, in the form of Cheque / Cash to the tune of Rs.1,14,01,880/- from prospective buyers, for the scheme 'Keshavam Estate', towards cost of land and construction of Sheds & Commercial Shops on account of the sale, before obtaining 'Building Use' permission from the competent authority i.e. AMC, during the period 01.04.2012 to 31.12.2012, as detailed in Annexure – A to the show cause notice.

9.1 In view of the above facts, the Service Tax liability to the tune of Rs.3,52,316/- arrived at after abatement of 75% of the gross taxable value of Rs.1,14,01,800/- received during the period 01.04.2012 to 31.12.2012, in respect of the services rendered by the noticee, appears to be recoverable from them. After the initiation of departmental inquiry, the noticee deposited Rs.1,39,390/- towards their Service Tax liability under 'Construction Services, other than Residential Complex, including Commercial / Industrial building or Civil Structures' provided by them during the period 01.04.2012 to 31.12.2012, under the Service Tax Voluntary Compliance Encouragement Scheme, 2013. Further Shri Ashokbhai Ambalal Patel, Partner of the noticee, in his statement dated 06.10.2013 admitted regarding non payment of Service Tax for the taxable services rendered by them during the period under reference. He also

admitted that his firm had not obtained the service tax registration from the department and that no returns had been filed till then.

10. In view of the above, it appeared that the noticee was liable to pay Service Tax on gross amount of advance received from the prospective buyers of the scheme. Accordingly, the net Service Tax dues as on 31.12.2012, which they were liable to declare under VCES was as under:

Total advance received, accounted	45,11,000/-
Total advance received, unaccounted in cash	68,90,800/-
Total	1,14,01,800/-
Service Tax actually payable	3,52,316/-
Service Tax declared in VCES	1,39,390/-
Service Tax less declared in VCES	2,12,926/-

11. Thus in view of the reasons stated in the foregoing paras, it appeared that the noticee had given substantially false declaration within the meaning of Section 111 of the Finance Act, 2013 inasmuch as against the total declaration of Rs.3,52,316/-, they had declared only Rs.1,39,390/-, thereby declaring less Service Tax dues to the tune of Rs.2,12,926/- as on 31.12.2012 in their VCES declaration filed on 03.12.2013. Therefore, it appeared that the declaration under VCES filed by the noticee merited rejection and consequently, the entire Service Tax dues of Rs.3,52,316/- was liable for recovery under Section 111 of the Finance Act, 2013, invoking the relevant provisions of the Finance Act, 1994. However, as they had declared Service Tax liability of Rs.1,39,390/- under VCES and paid the same, the said payment of Service Tax appeared liable to be appropriated towards their total Service Tax dues.

12. In terms of provisions of Section 111(3) of the Finance Act, 2013, the show cause notice shall be deemed to have been issued under Section 73 of the Finance Act, 1994 and provisions of the Finance Act, 1994 shall apply for the same. In view of deeming provisions, all the provisions of the Finance Act, 1994 are invocable for recovery of Service Tax dues and compliance of other provisions of the Act. Therefore, Service Tax dues of Rs. 3,52,316/- appeared liable for recovery in terms of proviso to Section 73 of the Finance Act, 1994, along with interest under Section 75 of the Finance Act, 1994.

13. It also appeared that despite the knowledge of Service Tax law and procedure, the noticee had wilfully avoided obtaining Service Tax Registration, filing of the ST-3 Returns as well as payment of Service Tax due within the dates stipulated under Service Tax Rules, 1994 (hereinafter referred to as 'STR, 1994), in respect of 'Construction Service, other than Residential Complex, including Commercial / Industrial buildings or Civil Structures' provided by them, with the sole intention to evade the Service Tax liability. Thus, it appeared that the noticee had wilfully suppressed the value of the aforesaid taxable service with the intent to evade payment of Service Tax leviable thereon and as such it appeared that the extended

period specified in the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 was invokable to demand and recover the Service Tax due from them.

14. From the above, it further appeared that the noticee had contravened the following provisions of the Finance Act, 1994 and STR, 1994, with intent to evade payment of Service Tax, inasmuch as they –

- (i) Failed to make an application under Section 69 of the Finance Act, 1994 for registration with the Superintendent of Service Tax, within the stipulated time of 30 days from the date on which the Service Tax under Section 66 of the Finance Act, 1994 was leviable, read with Rule 4 of the STR, 1994, as the said firm had obtained Service Tax Registration (ST-2) only on 11.11.2013 for 'Construction Services, other than Residential Complex, including Commercial / Industrial buildings or Civil Structures' provided before 05.10.2013;
- (ii) Failed to pay Service Tax (including Education Cess and Secondary and Higher Education Cess) on the taxable services i.e. 'Construction Services, other than Residential Complex, including Commercial / Industrial buildings or Civil Structures' provided by them, at the rate specified in Section 66 /66B of the Finance Act, 1994, in the manner prescribed and within such period as required under Section 68 of the Finance Act, 1994, read with Rule 6 of the STR, 1994;
- (iii) Failed to determine the gross value of said taxable services correctly as required under Section 67 of the Finance Act, 1994;
- (iv) Failed to furnish to the jurisdictional Superintendent of Central Excise, a list of all accounts maintained by them in relation to the Service Tax payable on their taxable services, as required under Rule 5 of the STR, 1994;
- (v) Failed to assess the Service Tax due on their services and to maintain records and furnish returns, in such form and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994, read with Rule 7 of the STR, 1994.

15. Thus it appeared that the noticee had evaded Service Tax to the tune of Rs. 3,52,316/- leviable on taxable value of Rs.1,14,01,800/- charged for 'Construction Services, other than Residential Complex, including Commercial / Industrial buildings or Civil Structures' provided during the period 01.04.2012 to 31.12.2012, as discussed above, and therefore the same appeared to be recoverable from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994. Consequently, it also appeared that the noticee was liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of Service Tax evaded by them as mentioned above. It further appeared that the noticee had paid amount of evaded Service Tax to the tune of Rs.1,39,390/- against 'Construction Services, other than Residential Complex, including Commercial / Industrial buildings or Civil Structures' provided by them,

vide GAR-7 Challans as detailed in Annexure-A to the show cause notice, and the same was required to be appropriated against aforesaid liability.

16. The above said acts of contraventions appeared to constitute offences of the nature as described under the provisions or Rules laid down by the Finance Act and therefore appeared liable to penalties under the provisions of Section 76 and 77 of the Finance Act, 1994 for failure to obtain Service Tax Registration, as required under Section 69 of the Finance Act, 1994 read with Rule 4 of the STR, 1994 and failure to furnish prescribed periodical ST-3 returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the STR, 1994 and failure to furnish the list of all accounts maintained by them in relation to Service Tax, as required under Rule 5(2) of the STR, 1994 and Section 78 of the Finance Act, 1994, for suppressing the taxable value with an intent to evade payment of Service Tax for aforesaid contraventions.

17. Therefore, vide show cause notice F.No. STC/4-56/O&A/14-15 dated 01.12.2014 the noticee was called upon to show cause to the Commissioner of Service Tax as to why:-

- (i) Declaration dated 03.12.2013 filed under Voluntary Compliance Encouragement Scheme, 2013 should not be treated as 'substantially false' declaration;
- (ii) Construction work carried out by them should not be classified as taxable service of 'Commercial or Industrial Construction Services' defined under Section 65(105)(zzq) / 66E(b) of the Finance Act, 1994 and gross amount received towards the same should not be taken as taxable value under Section 67 of the Finance Act, 1994 for charging Service Tax;
- (iii) The amount of Service Tax evaded to the tune of Rs. 3,52,316/- leviable on taxable value of Rs. 1,14,01,800/- arrived at after abatement of 75% of the gross value charged for construction of 'Commercial-cum-Industrial Complex Service' provided during the period 01.04.2012 to 31.12.2012 should not be demanded and recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Sections 66 and 68 of the Finance Act, 1994, as detailed in Annexure- A to the show cause notice; the said amount not paid as on 31.12.2012 and not declared in VCES declaration should not be demanded and recovered under Section 111 of the Finance Act, 2013 invoking proviso of Section 73 of the Finance Act, 1994;
- (iv) Interest at appropriate rate should not be recovered under Section 75 of the Finance Act, 1994;
- (v) Service Tax of Rs. 1,39,390/- declared under VCES declaration and paid by them on 27.12.2013, 30.12.2013 and 25.06.2014 should not be appropriated towards their Service Tax liability of Rs.3,52,316/-.

- (vi) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for non payment of Service Tax by reason of suppression of facts and contravention of provisions of the Finance Act, 1994 and the Service Tax Rules, 1994 with an intent to evade payment of Service Tax;
- (vii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for failure to pay Service Tax in accordance with the provisions of Section 68 of the rules made under Chapter V of the Finance Act, 1994;
- (viii) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for contravention of various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed above.

18. Chief Commissioner vide Office Order No 2/2015-16 dated 20.10.2015 issued from F.No IV/16-08/CCO/MW/2015-16 assigned this case to Commissioner, Central Excise, Ahmedabad II, for the purpose of adjudication. In view of this specific order read with Notification No 12/2017-Central Excise (NT) dated 09.06.2017, the said case is being taken up for the purpose of adjudication .

PERSONAL HEARING :-

19. Personal Hearing in this case was fixed on 28.12.2015, however, M.S. Chhajed & Co., Chartered Accountants, vide letter dated 07.01.2016 informed that the show cause notice was made available to them on that day only and requested to adjourn the personal hearing.

19.1 Accordingly, Personal Hearing was held on 17.02.2016, wherein Shri Hem Chhajed, Chartered Accountant appeared on behalf of the noticee and submitted a detailed defence reply with annexures. Some of these annexure were written in Gujarati, the regional language and it was felt that it would be in fitness of things if free English translation of these documents is furnished. Shri Chhajed assured that within a week's time, he would supply the free translations and any other relevant document, which was permitted.

WRITTEN SUBMISSIONS :-

20. The noticee submitted written reply to aforesaid show cause notice vide their letter dated 16.02.2016, wherein, it is *inter-alia* submitted that

- they commenced into the business of construction of Commercial Complexes and Sheds in the year 2012;
- search operation was carried on Shukan Group on 5th October, 2013 and that the search was conducted on the business premises of the assessee on 5th October, 2013 and carried till 7:00 pm on 6th October, 2013.
- During the course of such search proceedings, the authorized officers threatened the partners and had coerced them into admitting the unaccounted cash and that the

officers had also recovered the post dated cheques under threat and coercion, without determining the Service Tax liability of the assessee firm.

- They had objected such high handedness of the officers carrying on search proceedings and had filed a letter dated 9th October, 2013 intimating the department to stop payment of cheques recovered and for this they relied upon the decision in the case of Naresh Kumar & Co. Vs. Union of India, Kolkata High Court – 288 STT 21.

20.1 It was further submitted that

- during the course of search, statement of Shri Ashok Patel, Partner of assessee firm was recorded
- Shri Ashok Patel was coerced into admitting arbitrarily that the assessee firm received cash upto 40% of the sales value.
- though the show cause notice states that the search at the office of the noticee was done in the presence of two independent Panchas, the whole search was conducted in the absence of Panch Witness and it was conducted to coerce the partners to accept unaccounted cash
- They submitted copy of the affidavit of the Panch witness.
- As the whole proceedings was conducted in the absence of the Panch witness, the search proceedings itself was void. They relied upon the following judicial pronouncements:-

- (i) Laxmi Tobacco Company Vs. Commissioner of Central Excise, Meerut – 2007 Taxmann.com 1453
- (ii) Kwalitiy Tube Industries Vs. Commissioner of Central Excise – 232 ELT 813
- (iii) Leela (K) Tex – 293 ELT 146
- (iv) Sharad Dugar Vs. Commissioner of Customs, ICD TKD New Delhi – 151 ELT 321

- the Partner of the assessee firm, Shri Ashok Patel had filed statement stating that the admission of unaccounted cash was made under coercion and that he had made retraction statement on 8th October, 2015
- subsequent to filing of retraction, summons was issued to the partner of the assessee firm for which reply was given.
- during the recording of statement, inspite of repeated requests of the assessee on the ground of ill health, no adjournment was given and Shri Ashok Patel had to be admitted in the hospital directly from the office of Preventive, Ahmedabad – III as he had fainted.
- subsequent to filing of the retraction statement, the statement of the partner Shri Ashok Patel was again recorded on 15.10.2013 and the same was recorded on a video tape. The partner had stated that the assessee firm had not received any unaccounted cash, however, the said statement was not provided to the assessee. The assessee firm had asked for the copy of the statement and video recording vide its letter dated 24.10.2016, however, the copy of the same was not made available to the assessee company.

- the retraction affidavit filed by the Partner of the assessee firm had not been dealt with by the assessing officer in the show cause notice rendering the show cause notice bad and illegal. They relied upon the following decisions :-

- (i) Vinod Solanki Vs. Union of India – 233 ELT 157
- (ii) Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate & Anr. – (2007) 8 SCC 254

- they had obtained registration of Service Tax and discharged the liability on the members booking as received by them and had filed declaration under Section 107(1) of the Finance Act, 2013

- they had paid the tax dues on declaration made under Section 107(1) within the due date as prescribed under Section 107(3) and had discharged all the Service Tax liability post VCES period regularly.

- However, they had received show cause under Section 111 read with 73(1) of the Finance Act, 1994 on 1st December, 2014 wherein it was alleged that they have made false declaration under Section 107(1) of the Finance Act, 2013.

- During the course of the assessment they had submitted copies of ledger accounts and bank statements and reconciliation with the same but the assessing officer, merely on the basis of assumption, premises and conjecture has stated that the assessee firm has received unaccounted cash receipts of Rs. 68,90,800/- on which Service Tax liability comes to Rs. 2,12,926/-.

- the assessing officer had not produced any evidence on record to show as to how the assessing officer had arbitrarily determined the unaccounted cash receipts and there are no evidences on record.

- No statements of the members, i.e. occupants of the shops and sheds constructed by the assessee firm, were taken by the investigating officer. The investigating officer merely showed high handedness, has arbitrarily made addition of unaccounted cash without any corroborative evidence only presumption and surmise. They relied on the following judicial pronouncements

- (i) Commissioner Vs. Transasia Bio-Medicals Ltd. – 326 ELT A138
- (ii) Commissioner of Central Excise, Ahmedabad – I Vs. Gopi Synthetics Pvt. Ltd. – 310 ELT 299.
- (iii) Commissioner of Central Excise & Customs, Surat-II Vs. Manikchand G. Sharma – 257 ELT 87

21. In light of the above submission, they submitted that the addition made by the assessing officer is arbitrary and without any cogent evidence on record and hence requested that it be deleted..

Personal Hearing:

22. Vide letter dated 25.02.2016 and 16.10.2017, it was requested to fix a new date for a further personal hearing. Accordingly another hearing was fixed in the case on 14.11.2017

whereupon Shri Hem Chhajed, CA, appeared on behalf of Shri Ashok Patel, Partner of the noticee and submitted that he had produced free English translations of the documents which were originally recorded in the local language (Gujarati). Further he also presented the copies of two Order-In-Originals passed by a different adjudicating authorities in the case of a sister concern in order to buttress his point that the proceedings need to be dropped. He further relied on the subsequent retractions of Shri Ashok Patel, the Partner and Shri Ajay Patel, the second Panch witness.

Discussion and Findings:

23. I have before me the show cause notice, it's relied upon documents and the written and oral submissions made by the noticee.

24 I find that the subject Show Cause Notice was issued in terms of the provisions of Sec.111 of the Finance Act 1994 on the grounds that the noticee had mis-declared the amount of advances received by them from their buyers so as to evade actual payment of Service Tax. They had during the period from April 2012 to December, 2012 shown Rs. 45,11,000/- as advances received from their prospective buyers in the VCES declaration and accordingly paid Service Tax amounting to Rs. 1,39,390/- . However, during the course of investigations, it was revealed that they had, in addition to the above advances, also collected Rs. 68,90,800/- as advances from their prospective buyers and accordingly they were supposed to pay Service Tax amounting to Rs.3,52,316/-. However, by paying only Rs.1,39,390/- towards their Service Tax liability, they have short paid Service Tax amounting to Rs.2,12,926/-.

25. I find that there is no dispute regarding classification and taxability of services rendered by the noticee. The only point of dispute is regarding the non-declaration of the actual cash advances received by them from the prospective buyers.

26. I find that the noticee have in their VCES declaration dated 03.12.2013 declared Rs.45,11,000/- as advances received during the period from April, 2012 to December, 2012 and service tax of Rs.1,39,390/- on the said amount has also been paid by them. Thus, the only question that remains to be examined is whether the noticee had received an amount of Rs.68,90,100/- over and above the amount declared by them in their VCES declaration. In this regard I refer to the following documents:

- a) Panchnama dated 06.10.2013 drawn at the premise of M/s Shakun Silver Corporation, 318, 3rd Floor, Shukan Mall, Gandhinagar,
- b) Statement dated 06.10.2013 of Ashok Patel, Partner of the noticee.
- c) Page number 17 and 19 of File withdrawn and listed at serial no 5 of Annexure A to the Panchnama.

26.1 **Panchnama dated 06.10.2013 drawn at the premise of M/s Shakun Silver Corporation, 318, 3rd Floor, Shukan Mall, Gandhinagar, reveals that :**

- a. The noticee, having S/Shri Ashokbhai Ambalal Patel, Ambalal Shankardas Patel, Kalpesh Kumar Shakalchand Patel and Hardik Shakalchand Patel as

partners was engaged in construction of premises by the name of KESHAVAM ESTATE at Odhav.

- b. The deals for properties were mostly done in a variable ratio of total receivable through cheques and in cash. The cash part remained unaccounted for and was being used to buy land and other properties by the developers.
- c. The decision to maintain the variable ratio of the payment through cheque and unaccounted cash was taken with due consent of each partner.
- d. The total amount of collections received through cheque or in unaccounted cash was as below:-

Sr. No.	Name of Project	Name of the Partner	Amount of declaration of accounted Cheque/Cash Received	Amount of declaration of unaccounted Cash received	Total Payment received
1	Shukan Silver Residency	Shri Purshottam Venidas Patel	283722638	243173166	526895804
2	Kalrav Residency	Brijeshbhai R. Patel	11178000	4471200	15649200
3	Kalash Bungalow	Ashokbhai Ambalal Patel	12721500	8481000	21202500
4	Keshav Bungalow	Kalpesh Kumar S. Patel	109933676	44066324	154000000
5	Keshavam Estate	Ashokbhai A. Patel	17227000	6890800	24117800

26.1.1 It is thus evident from the Panchnama that the noticee was collecting cash over and above accounted money. They had collected cash amounting to Rs.68,90,800/- from their prospective buyers for the project Keshavam Estate and the said cash was not accounted for by the noticee in their books of account.

26.2 **Statement of Shri Ashok Patel, Partner of the noticee, dated 06.10.2013 reveals that:**

- a. In the business of construction and development of residential as well as commercial complexes due to long gestation period for completion of financial deals, unwillingness/ reluctance of majority of buyer and due to less availability of cash, around 40% of the accounted receipts (payment received through cheque) are collected by way of cash also. The cash part remains unaccounted which is used to buy land and other properties by the developers. It was a business practise for the noticee to receive money in the form of cash as advances from their prospective buyers and not account for the same in their books of accounts.
- b. Amount of Rs. 2,41,17,800/- which was disclosed in the Panchnama dated 06.10.2013 drawn in the office premise of M/s Shakun Silver Corporation , 318, 3rd Floor, Shukan mall (from where the records of the noticee were seized) was the same amount as was admitted by him . The said amount included Rs. 1,72,27,000/- which pertained to accounted receipts and the balance amount of Rs. 68,90,800/- was cash amount which was received from buyers and was not accounted for in the books of account.

- c. The noticee had not got themselves registered under Service Tax due to ignorance, laxity and greed.

26.2.1 I therefore find that Shri Ashok Patel has in his statement confirmed the facts narrated in the panchnama dated 06.10.2013 drawn in the office premise of M/s Shukan Silver Corporation , 318, 3rd Floor, Shukan Mall, Gandhinagar.

26.3 Page number 17 and 19 of File withdrawn and listed at serial no 5 of Annexure A to the Panchnama:

On going through the documents, I find that two documents were recovered during the course search and they contained the details of sales and membership contribution received by cheque and in cash bearing the signature of Shri Kalpesh Kumar Shakalchand Patel, also a Partner of the noticee. The relevant portion of both the documents are scanned herein below for reference

Anand Corporation

31.03.2013	Sales	83,88,000/-
"	Members Contribution	88,39,000/-
		<u>1,72,27,000/-</u>

For, Anand Corporation
K. Kalpesh
G. Kalpesh
Partner

— आनंद क्रीडा संस्थान —

	1.72 Crores
	0.69 Crores
	<u>2.41 x 3.09 =</u>
	Rs. 7,26,150/-
	7,44,690/-

For, Anand Corporation
K. Kalpesh
G. Kalpesh
Partner

25 Oct - 3,72

12 Nov - 3,72

26.3.1 It is seen from the above documents that the noticee had received Rs.1,72,27,000/- which consisted of Rs.83,88,000/- on account of sales and Rs. 88,39,000/- on account of member's contribution. Further, over and above Rs.1,72,27,000/-, an amount of Rs.0.69 Crores was also received. The above documents corroborate the facts narrated by Shri Ashok Patel, Partner of the noticee, in his statement dated 06.10.2013 and the details mentioned in the panchnama dated 06.10.2013.

27. Shri Ashok Patel, Partner of the noticee vide letter dated 9.10.2013 submitted duly sworn affidavits dated 8.10.2013, made by him and Shri Ajay Chotelal Gupta, Panch No. 2 of the panchnama dated 06.10.2013 drawn in the office premise of M/s Shukan Silver

Corporation, 318, 3rd Floor, Shukan Mall, Gandhinagar, narrating the events that took place during the course of search operation. However, the facts narrated by them in their affidavits were refuted by the department after an inquiry as being baseless and devoid of merit. In fact, an opportunity to record another statement was extended to them and the date of 12.10.2013 was fixed for recording the same. However, no one from the party's side turned up.

28. On correlating the main documents i.e. Statement dated 06.10.2013 of Ashok Patel, Partner of the noticee, Panchnama dated 06.10.2013 drawn in the office premise of M/s Shakun Silver Corporation, 318, 3rd Floor, Shukan Mall, Gandhinagar, the two documents and the affidavits of Shri Ashok Patel and Shri Ajay Gupta, discussed in Para No. 26 and 27 supra, I infer as under;

- a. The fact that search operation was conducted in the office premise of M/s Shukan Silver Corporation, 318, 3rd Floor, Shukan Mall, Gandhinagar on 5/6.10.2013 has not been disputed by Shri Ashok Patel, Partner of the noticee. He has in his affidavit confirmed each and every detail mentioned in the Panchnama and in his statement dated 06.10.2013, except for the fact that he was forced to show the details of cash transactions as required by the Officers.
- b. As per the affidavit dated 08.10.2013 filed by Shri Ashok Patel, before the Notary, it is mentioned that his statement was recorded till 5.00 pm on 06.10.2013. However I find that in his statement dated 06.10.2013, Shri Ashok Patel has himself admitted that he was shown the Panchnama dated 05/06.10.2013 and that he agreed to each and every detail mentioned in the said Panchnama and that in token of its correctness, he had put his dated signature also. Thus his affidavit stating that around 5-5.30 pm, Shri Ajay Kumar Gupta, the second panch, was called telephonically for signing the Panchnama is incorrect. The admission that he was shown the Panchnama at the time of recording of his statement, confirms the fact that the Panchnama was already completed when the statement of Shri Ashok Patel was being recorded. Thus I find that the affidavit filed by Shri Ashok Patel is in contradiction to his own statement given voluntarily.
- c. Further Shri Ashok Patel has in his affidavit time and again stressed on the fact that he was forced to disclose the details of unaccounted cash transactions, as per the whims and fancies of the Officers and that he did not agree to the same. In this regard I find that two documents bearing the signature of Shri Kalpesh Kumar Sakalchand Patel, Partner of the noticee, were also recovered during the course of the search. These documents, as already discussed in Para 26.3, contained the details of transactions and the total amount of Rs.2.41 Crores shown in the document was the same as admitted by Shri Ashok Patel in his statement. Further, I also find that Shri Kalpesh Kumar Patel has not rebutted this fact at any point of the investigation. Hence I find that Shri Ashok Patel, to derail the ongoing investigation and to pressurise the Officers had filed a false affidavit.

d. I also find that the Panch number 1 i.e Shri Hariom Dubey, has not disputed the Panchnama and hence this substantiates the fact that the Panchnama was genuinely drawn and the facts narrated therein were true and correct.

28.1 I also find that the Service Tax VCES Scheme was introduced in the Finance Bill, 2013 to encourage voluntary compliance with service tax regulations for those who had defaulted in past service tax payments. Thus, VCES provided a golden opportunity to service providers to pay all their 'tax dues' from the period 01.10.2007 to 31.12.2012 without interest, penalty and other legal proceedings including prosecution. The noticee had filed VCES declaration on 03.12.2013 making a total declaration of Rs.45,11,000/- involving Service Tax amounting to Rs.1,39,390/-. It is on record that the department had already initiated the inquiries against the noticee in the month of October, 2013 and thereafter the noticee availed the benefit of the VCES scheme by declaring Rs.45,11,000/- as taxable value and deposited Rs.1,39,390/- towards their Service Tax liability under 'Construction Services, other than Residential Complex, including Commercial / Industrial building or Civil Structures' provided by them during the period 01.04.2012 to 31.12.2012. I also find that the noticee had not themselves registered with the department till then and had not filed any ST-3 return in respect of the services being provided by them. All these facts have been admitted by Shri Ashokbha Ambalal Patel, Partner of the noticee, in his statement dated 06.10.2013 voluntarily and thereafter his firm deposited the amount of Rs 1,39,390/- towards Service Tax liability under the VCES scheme. Thus, I am of the opinion that since the investigations had already been initiated by the department, the noticee realised that it was not possible to save themselves from the Service Tax net and therefore opted to voluntarily declare under the VCES scheme so as to divert the attention of the department.

29. In view of the above discussions, I find that the noticee were providing taxable services and collecting advances from their prospective buyers on which they were liable to pay service tax. I also find that after the search was conducted and evasion of service tax by the noticee was detected by the Officers, the noticee took the benefit of VCES scheme which came into existence during the material time and thereby declared some amount towards their tax liability. Here also I find that they have deliberately not declared the actual amount of tax that they were liable with the intention of evading their full service tax liability. I am fully convinced that the retractions in the form of two affidavits filed by Shri Ashok Patel, Partner of the noticee and Shri Ajay Gupta, Witness no 2 of the Panchnama drawn on the day of the search are just an afterthought and do not merit credence especially in the light of the contradictions found in the details mentioned in the affidavit. It is also seen that the search was over on 6/10/13, but the affidavit was filed only on 8/10/2013, i.e more than 24 hours later which clearly shows that the retraction of the original statement and panchnama is only an afterthought and hence not reliable.

30. As regards the retractions filed by Shri Ashok Patel, I refer to the decision of Honourable Apex Court in the case of M/s Vinod Solanki Vs UOI as reported in 2009(233)E.L.T.157 (SC) which has also been relied upon by the noticee. The ratio of the above judgment is applicable to the instant case inasmuch as the tax liability which has been admitted by Shri Ashok Patel in his statement is supported by the documentary evidence

recovered during the course of search. I also find that the said documentary evidence has not been disputed by any other partner of the noticee.

31. The retraction filed by Shri Ajay Gupta is also an attempt by the noticee to prove that the search at the noticee, 318, Shukan Mall, Near Visat Petrol Pump, Gandhinagar-Koba Highway, Gandhinagar was carried out by the officers in absence of panchas. In this regard, I find that Shri Ashok Patel has himself in his statement admitted that he had been shown the panchnama dated 05/06.10.2013 drawn at the premises of the noticee and that he agreed to each and every details mentioned therein. This clearly shows that the Panchnama proceedings had been concluded much before the statement of Shri Ashok Patel. Also, the fact that Shri Ashok Patel has in his retraction not disputed anything with regard to the panchnama clearly shows the mindset of M/s Anand to create false evidence in one way or the other to dissuade and pressurise the officers from conducting further investigation against them.

32. Thus in view of the discussions made in the foregoing paras, I find that that the noticee had given substantially false declaration within the meaning of Section 111 of the Finance Act, 2013 inasmuch as against the total declaration of Rs.3,52,316/-, they had declared only Rs.1,39,390/-, thereby declaring less. Service Tax dues to the tune of Rs.2,12,926/- as on 31.12.2012 in their VCES declaration filed on 03.12.2013. Therefore, I find that the declaration under VCES filed by the noticee merited rejection and consequently, the entire Service Tax dues of Rs.3,52,316/- was liable for recovery under Section 111 of the Finance Act, 2013, invoking the relevant provisions of the Finance Act, 1994. However, as they had declared Service Tax of Rs.1,39,390/- under VCES and paid the same, the said payment of Service Tax appeared liable to be appropriated towards their total Service Tax dues. I find that the noticee had wilfully avoided obtaining Service Tax Registration, filing of the ST-3 Returns as well as payment of Service Tax due within the dates stipulated under Service Tax Rules, 1994 (herein after referred to as 'STR, 1994), in respect of 'Construction Service, other than Residential Complex, including Commercial / Industrial buildings or Civil Structures' provided by them, with the sole intention to evade the Service Tax liability. Thus, the noticee wilfully suppressed the value of the aforesaid taxable service with the intent to evade payment of Service Tax leviable thereon and as such the extended period specified in the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 was invocable to demand and recover the Service Tax due from them. Therefore, Service Tax dues of Rs. 3,52,316/- is liable for recovery in terms of proviso to Section 73 of the Finance Act, 1994, along with interest under Section 75 of the Finance Act, 1994.

33. From the above, I find that the noticee had contravened the following provisions of the Finance Act, 1994 and STR, 1994, with intent to evade payment of Service Tax, in as much as they –

- (i) Failed to make an application under Section 69 of the Finance Act, 1994 for registration with the Superintendent of Service Tax, within the stipulated time of 30 days from the date on which the Service Tax under Section 66 of the Finance Act, 1994 was leviable, read with Rule 4 of the STR, 1994, as the said

firm had obtained Service Tax Registration (ST-2) only on 11.11.2013 for 'Construction Services, other than Residential Complex, including Commercial / Industrial buildings or Civil Structures' provided before 05.10.2013;

- (ii) Failed to pay Service Tax (including Education Cess and Secondary and Higher Education Cess) on the taxable services i.e. 'Construction Services, other than Residential Complex, including Commercial / Industrial buildings or Civil Structures' provided by them, at the rate specified in Section 66 /66B of the Finance Act, 1994, in the manner prescribed and within such period as required under Section 68 of the Finance Act, 1994, read with Rule 6 of the STR, 1994;
- (iii) Failed to determine the gross value of said taxable services correctly as required under Section 67 of the Finance Act, 1994;
- (iv) Failed to furnish to the jurisdictional Superintendent of Central Excise, a list of all accounts maintained by them in relation to the Service Tax payable on their taxable services, as required under Rule 5 of the STR, 1994;
- (v) Failed to assess the Service Tax due on their services and to maintain records and furnish returns, in such form and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994, read with Rule 7 of the STR, 1994.

34. Thus, the noticee had evaded Service Tax to the tune of Rs.3,52,316/- leviable on taxable value of Rs.1,14,01,800/- (arrived at after abatement of 75% of the gross value) charged for 'Construction Services, other than Residential Complex, including Commercial / Industrial buildings or Civil Structures' provided during the period 01.04.2012 to 31.12.2012, as detailed in Annexure 'A' to the show cause notice, and therefore I find that the same is recoverable from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994. Consequently, the noticee is also liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of Service Tax evaded by them as mentioned above. The noticee had paid amount of evaded Service Tax to the tune of Rs.1,39,390/- against 'Construction Services, other than Residential Complex, including Commercial / Industrial buildings or Civil Structures' provided by them, vide GAR-7 Challans as detailed in Annexure-A to the show cause notice, accordingly, the same is required to be appropriated against aforesaid liability.

35. I now take up the issue of imposition of penalty under Section 76, 77 and 78 of the Act.

35.1 As found in the preceding paragraphs, the noticee had suppressed the facts with an intention to evade payment of service tax. Where non-payment of service tax is by reason of suppression of facts, etc., penalty under Section 78 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). Therefore, penalty is imposable on the noticee under Section 78 of the Finance Act, 1994.

35.2 As regards imposition of penalty under Section 76 of the Finance Act, 1994, I observe that penalty under Section 76 and 78 of the Finance Act, 1994 are mutually exclusive and once penalty under Section 78 is imposed, no penalty under Section 76 can be imposed in terms of the proviso inserted in Section 78 w.e.f 10.5.2008. Therefore, no penalty under Section 76 is imposable for the period from 10.5.2008 onwards. In the case before me, the demand of service tax is for the period 01.04.2012 to 31.12.2012, therefore, I hold that penalty under Section 76 of the said Act is not imposable.

35.3 As regards imposition of penalty under Section 77 of the Finance Act, 1994, I find that inspite of the liability to pay service tax under the category of 'Commercial or Industrial Construction Services' under the provisions of section 65(105)(zzq) / 66E(b) of the Finance Act, 1994, as provider of service, the noticee failed to obtain registration as required under Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 and failed to pay the amount of Service Tax which was liable to be paid by them. They had provided the aforesaid services prior to obtaining the Service Tax registration in the said category. Thus the said contraventions have made the noticee liable to penalty under section 77 of the Finance Act, 1994.

36. In view of the foregoing discussion and findings, I pass the following order:

ORDER

- (i) The Declaration dated 03.12.2013 filed under Voluntary Compliance Encouragement Scheme, 2013 is treated as 'substantially false' declaration;
- (ii) Construction work carried out by the noticee is classifiable as taxable service of 'Commercial or Industrial Construction Services' defined under Section 65(105)(zzq) / 66E(b) of the Finance Act, 1994 and gross amount received towards the same is taxable value under Section 67 of the Finance Act, 1994 for charging Service Tax;
- (iii) I demand and order recovery of the amount of Service Tax evaded to the tune of Rs.3,52,316/- (Rupees Three Lakh Fifty Two Thousand Three Hundred and Sixteen Only) leviable on taxable value of Rs.1,14,01,800/- arrived at after abatement of 75% of the gross value charged for construction of 'Commercial-cum-Industrial Complex Service' provided during the period 01.04.2012 to 31.12.2012 under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Sections 66 and 68 of the Finance Act, 1994, as detailed in Annexure- A to the Show Cause Notice. Further, Service Tax of Rs.1,39,390/- declared under VCES declaration and paid by them on 27.12.2013, 30.12.2013


and 25.06.2014 is ordered to be appropriated towards their Service Tax liability of Rs.3,52,316/-.

- (iv) I order recovery of Interest at appropriate rate under Section 75 of the Finance Act, 1994;
- (v) I impose penalty of Rs. 3,52,316/- (Rupees Three Lakh Fifty Two Thousand Three Hundred and Sixteen Only) upon them under Section 78 of the Finance Act, 1994, for non payment of Service Tax by reason of suppression of facts and contravention of provisions of the Finance Act, 1994 and the Service Tax Rules, 1994 with an intent to evade payment of Service Tax;

The amount of penalty imposed under Section 78 as above shall be reduced to twenty-five percent of the service tax determined under Section 73(2) of the Finance Act, 1994, provided that such reduced penalty is also paid along with the service tax so determined and the interest as applicable, within a period of thirty days of the date of receipt of this order, in terms of second proviso given under section 78(1).

- (vi) I do not impose penalty under Section 76 of the Finance Act, 1994 in view of the discussion at para 35.2 above
- (vii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand) upon them under Section 77 of the Finance Act, 1994 for contravention of various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed above.

37. Proceedings under the above mentioned provisions are saved by Section 174(2)(e) of the Central Goods and Service Act, 2017.


(J.A KHAN)
Commissioner,
CGST & Central Excise,
Ahmedabad North.

F.No.STC/4-56/O&A/2014-15

Date:-

BY REGD POST AD.

To
M/s. Anand Corporation,
318, Shukan Mall, Near Visat Petrol Pump,
Gandhinagar-Koba Highway,
Gandhinagar – 382 470

Copy to :

1. The Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Assistant Commissioner, Division-II, CGST and Central Excise, Ahmedabad North.
3. Superintendent, Range-IV, Division-II, CGST and Central Excise, Ahmedabad North.
4. Guard File.