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| <p>आयुक्त का कार्यालय<br/>केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद<br/>शुल्क ,अहमदाबाद उत्तर,<br/>कस्टम हॉउस(तल प्रथम)<br/>नवरंगपुरा- अहमदाबाद ,380009</p> |  | <p>Office of the Commissioner of<br/>Central Goods &amp; Services Tax &amp;<br/>Central Excise,<br/>Ahmedabad North,<br/>Custom House(1<sup>st</sup> Floor)<br/>Navrangpura, Ahmedabad-380009</p> |
| <p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>     |   |   |

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. STC/4-57/OA/2014-15

आदेश की तारीख / Date of Order : 20.02.2020

जारी करने की तारीख / Date of Issue : 20.02.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-25-27/2019-20**

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 अद्योषित 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 एक 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:

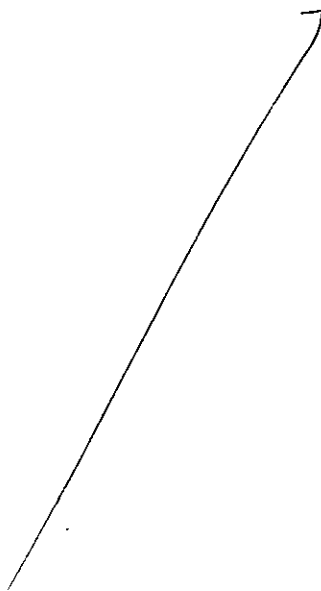
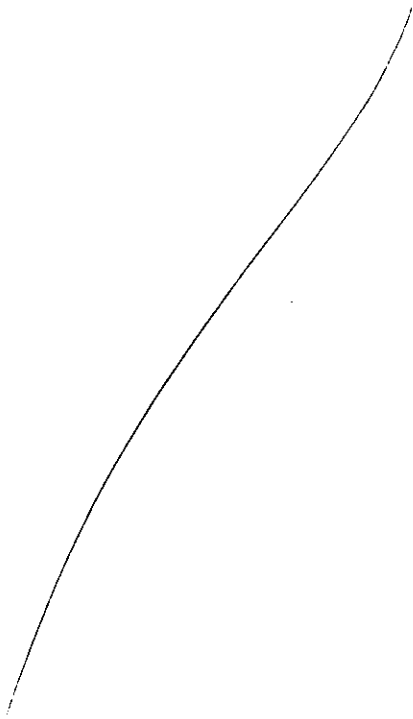
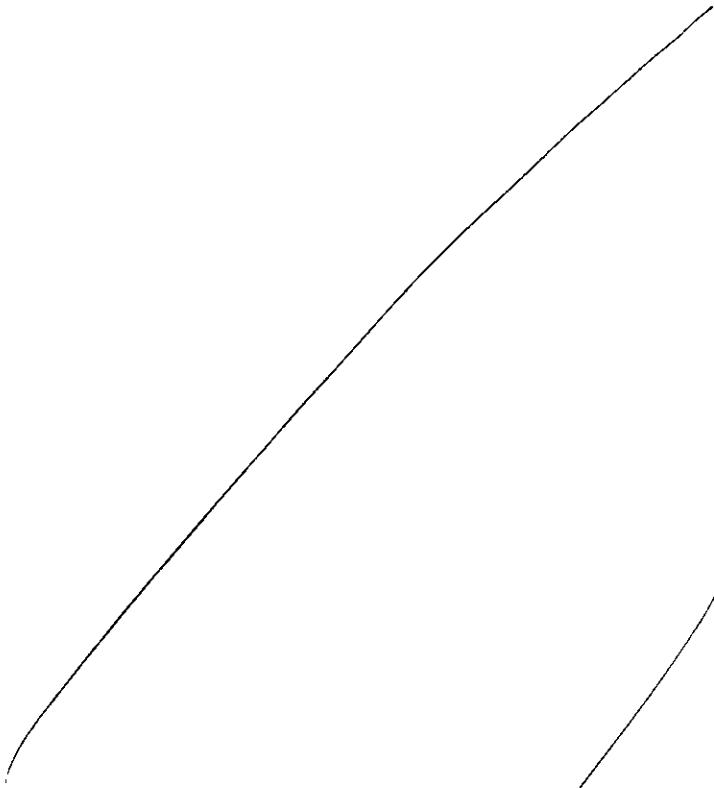
Subject- Proceedings initiated vide Show-Cause-Notices F.No. DGCEI/AZU/36-188/2014-15 dated 17.10.2014, STC/4-89/O&A/2015-16 dated 18.04.2016 and STC/4-06/O&A/Omni/2017-18 dated 17.10.2018 issued to M/s. M. V. Omni Projects (India) Ltd, 74, New York Tower-A, S. G. Highway, Thaltej, Ahmedabad.

## BRIEF FACTS OF THE CASE

The facts of the case, in brief, are that M/s. M. V. Omni Projects (India) Ltd having registered office at 74, New York Tower-A, S. G. Highway, Thaltej, Ahmedabad and head office at A-202, Shivalik Yash, Opp. Shashtrinagar BRTS Bus Stand, Naranpura, Ahmedabad [*here-in-after referred to as "MVOFIL" for the sake of brevity*] are engaged in the business activity of construction services, besides registered under "Commercial or Industrial Construction Service and Works Contract Service" and have obtained Service Tax Registration No. AADCM1155AST001 from Service Tax Commissionerate, Ahmedabad.

2. Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad [*here-in-after referred to as DGCEI for the sake of brevity*] received an information that M/s. GSPC Gas Company Ltd, Unit No. 101-106, First Floor, IT Tower-1<sup>st</sup>, Infocity, Gandhinagar – 382009 [*GSPC Gas for brevity*] and M/s. Sabarmati Gas Limited, Plot No. 907, Sector – 21, Gandhinagar- 382021 [*SGL for brevity*] have awarded Work Orders to various companies, including M/s. MVOFIL, for providing of laying/installation, Construction, Testing & Commissioning (including site restoration) of MDPE/PE 100 Polyethylene Gas Pipeline Network services, which appeared to be taxable under the category of "Commercial or Industrial Construction Services". The said service providers have raised bills for total value of labour and materials supplied and used for execution of said 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 dated 01.03.2006. M/s. GSPC Gas and M/s. SGL have 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 providers. However, none of them have 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 the said clients while charging Service Tax under abatement scheme as per Notification No. 1/2006-ST dated 01.03.2006. Exemption provided in Notification No.01/2006-ST dated 01.03.2006 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. Explanation given in respect of Commercial or Industrial Construction Service at S. No. 7 of the Table of Notification No.1/2006-ST dated 01.03.2006 stipulates "*The gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service.*" Since in respect of aforesaid services, they had not included the value of free issue materials used for execution of said work, no abatement for the value of materials can be given for said service. Hence, 100% of the gross amount charged/received by the said service providers needs to be considered for payment of Service Tax. Thus, they appeared to have not included the value of free issue materials in respect of contract/ work orders awarded by M/s. GSPC Gas and M/s. SGL while discharging service tax under abatement scheme, which resulted into wrong availment of abatement scheme under said exemption notification and subsequently evasion of service tax. Accordingly, DGCEI initiated an inquiry against M/s. MVOFIL under summon proceedings on 27.02.2013 by calling for various documents and information which appeared relevant for further investigation. On scrutiny of such details furnished by M/s. MVOFIL vide their letter dated 12.03.2013, it appeared that they were paying service tax on the abated value by availing benefit under Notification No. 1/2006-Service Tax dated 01.03.2006 for the services provided to M/s. GSPC Gas.

3.1. A statement of Shri Pinkesh Sharma, General Manager (Finance) of M/s. MVOFIL was recorded on 10.06.2014 wherein he, inter alia, stated that they are engaged in the business activity of civil construction, railway infrastructure and city gas distribution network from 2002 onwards and holding service tax registration No. AADCM1155AST001 under 'Commercial or



Industrial Construction Service and Works Contract Service'. He gave the details of works executed under civil construction, railway infrastructure and city gas distribution network as follows: -

(i) Civil Construction: They undertake work of construction of houses under JNNURM (Jawaharlal Nehru National Urban Renewal Mission). Work done for JNNURM is exempt from payment of service tax vide Notification No. 28/2010-Service Tax dated 22-06-2010. They were issued SCN No. F.No. STC/4-89/O&A/11-12 dated 21.10.2011 for recovery of service tax for the period from 2007-08 to 2010-11 on construction of houses under JNNURM by Commissioner of Service Tax, Ahmedabad.

(ii) They also undertake work of various civil construction work at M/s. Ratnagiri Gas and Power Private Limited (RGPPL). This order was received from M/s. NBCC vide letter No. SGM(West)/RGPPL/LOA//2013 dated 15-01-2013. In this work order, scope of work was to construct various structures for M/s. RGPPL at Anjanwel, Guhagar, Ratnagiri, Maharashtra with material. They have paid service tax under Works Contract Service on 40% of the gross amount charged in the bills.

(iii) Railway Infrastructure Work: They undertake works relating to leveling of railway track, laying of cable along railway track, embankment, construction of minor bridges, etc. No service tax is paid on these works as these are exempt from payment of service tax.

(iv) City Gas Distribution Network: They were executing work relating to laying of gas distribution network for M/s. GSPC Gas, M/s. Indraprasth Gas Ltd, M/s. Bhagyanagar Gas Ltd and M/s. GAIL (India) Ltd. For the services provided to these clients, wherever they have executed work with supply of material, service tax was paid on 33% value of the gross amount charged in the bills under abatement scheme of Notification No. 1/2006-ST upto 30.06.2012. For the period from 01.07.2012 onwards, they were paying service tax under Works Contract Service on 40% value of the gross amount charged in the bills in terms of Rule - 2A of the Service Tax (Determination of Value) Rules, 2006. However, in case of work orders executed for M/s. GSPC Gas in connection with PNG connection work, they were mentioning value of material and value of labour charges separately in the bills and paid service tax at full rate on the value of labour charges.

3.2. On being asked to furnish details of services provided to M/s. GSPC Gas, M/s. Indraprastha Gas Ltd, M/s. Bhagyanagar Gas Ltd and M/s. GAIL (India) Ltd for which they had paid service tax on abated value during the years from 2009-10 to 2012-13, he furnished following details: -

a) Services Provided to M/s. GSPC Gas Company Ltd (M/s. GSPC): They undertake two different work orders from M/s. GSPC Gas:-

(i) *PE Pipe laying Work*: They get work orders for construction, installation, and commissioning of 5 Bar Medium Pressure / 110 m Bar Low pressure PE 100 polyethylene pipes up to service regulator/transition box. Their scope includes supply of materials like PE electrofusion fittings, warning tapes, transition fittings, etc. M/s. GSPC Gas supplies 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 Work Orders. They paid service tax on 33% value of the gross amount charged in the bills by availing exemption provided in Notification No. 1/2006-ST upto 30.06.2012 under Commercial or Industrial Construction Service. Value of free issue materials were not included in the gross amount charged as the same was not available with them. However, after introduction of negative list based levy of service tax, M/s. GSPC Gas started to give the value of free issue material to them. Thus, they are paying service tax on 40% value of the gross amount after adding the value of free issue material in the gross amount charged in the bills.

(ii) *Piped Natural Gas (PNG) Connection Work*: M/s. MVOPIL also receive work orders for Supply of Materials, Installation, Testing, Commissioning and Conversion of

the Domestic Piped Natural Gas (PNG) connection for GSPC Gas's respective City Gas Distribution Network Project. Such Work Orders are for turnkey installation of Domestic/ Commercial Plumbing connections for their Gas Distribution Projects. In these contracts, they have supplied all the material except Gas meter and Domestic regulator. They issue bills showing the value of material supplied and value of labour charges separately in the bills and paid service tax at full rate on the value of labour charges. Service tax was paid under commercial or industrial construction service upto 30.06.2012. From 01.07.2012 onwards, service tax is paid under works contract service.

b) *Services Provided to M/s. Indraprasth Gas Ltd (M/s. Indraprasth):* MVOIPL also provided gas pipeline laying work for M/s. Indraprasth. Scope of works included laying of MDPE network and GI/ Copper installations for City Gas Distribution project on unit rate basis. M/s. Indraprasth have supplied MDPE line Pipes (PE 100, SDR 11 & 17.6), 32 mm HDPE Conduit, PE Valve, GI/Copper pipes, Service Regulator/Transition Box as 'Free Issue Materials', as per the terms and conditions of said Work Orders. As per the work orders, they laid gas pipeline by employing our labour and machineries. Further in the course of providing service, they also supplied and used materials like PE electrofusion fittings, warning tapes, transition fittings, etc. They paid service tax on 33% value of the gross amount charged in the bills by availing exemption provided in Notification No. 1/2006-ST upto 30.06.2012 under Commercial or Industrial Construction Service. However, after introduction of negative list based levy of service tax, we are paying service tax on 40% value of the gross amount charged in the bills under works contract service. Value of free issue materials were not included in the gross amount charged as the same is not available with them.

c) *Services Provided to M/s. Bhagyanagar Gas Ltd (Bhagyanagar):* MVOIPL also provided gas pipeline laying work for M/s. Bhagyanagar. Scope of works included laying of MDPE network and GI/ Copper installations for City Gas Distribution project on unit rate basis. M/s. Bhagyanagar supplied MDPE line Pipes (PE 100, SDR 11 & 17.6), 32 mm HDPE Conduit, PE Valve, GI/Copper pipes, Service Regulator/Transition Box as 'Free Issue Materials', as per the terms and conditions of said Work Orders. As per the work orders, they have laid gas pipeline by employing labour and machineries. Further in the course of providing service, they also supplied and used materials like PE electrofusion fittings, warning tapes, transition fittings, etc. They paid service tax on 33% value of the gross amount charged in the bills by availing exemption provided in Notification No. 1/2006-ST upto 30.06.2012 under Commercial or Industrial Construction Service. However, after introduction of negative list based levy of service tax, they paid service tax on 40% value of the gross amount charged in the bills under works contract service. Value of free issue materials were not included in the gross amount charged as the same is not available with them.

d) *Services Provided to M/s. GAIL Gas Ltd (M/s. GAIL):* MVOIPL also provided MDPE pipe line laying and associated works for CGD project of M/s. GAIL in Kota Zone-2 in the year 2010-11 and 2011-12. M/s. GAIL have supplied MDPE pipes as 'Free Issue Materials', as per the terms and conditions of said Work Orders. As per the work orders, they laid gas pipeline by employing labour and machineries. Further in the course of providing service, they also supplied and used materials like PE electrofusion fittings, warning tapes, transition fittings, etc. We have paid service tax on 33% value of the gross amount charged in the bills by availing exemption provided in Notification No. 1/2006-ST under Commercial or Industrial Construction Service.

3.3. Shri Pinkesh Sharma further stated that M/s. MVOIPL had not included the value of the free issue materials, i.e. MDPE pipes, HDPE Conduit, PE Valve, Service Regulator/Transition Box, etc. supplied by their clients in the gross value charged while discharging the service tax liability of gas pipeline laying work under the said contracts under abatement scheme of Notification No. 1/2006-ST dated 01.03.2006 and this practice was followed till 30.06.2012; that, after 01.07.2012 they paid service tax under works contract service on 40% value of

the gross amount charged in the bills; that they added value of free issue materials in cases of PE pipeline work done for M/s. GSPC Gas and paid service tax on 40% value of the gross amount charged; that in respect of M/s. Indraprasth and M/s. Bhagyanagar, they have not added the value of free issue material in the gross amount charged as the value of free issue material was not known to them; and that in case of M/s. GAIL, no service was provided in the year 2012-13. He was pointed out that exemption under Notification No. No. 1/2006-ST dated 01.03.2006 is available only if the gross amount charged for the services provided include the value of all materials used by it for providing the said service as Explanation given in respect of Commercial or Industrial Construction service at S. No. 7 of the Table of Notification No. 1/2006-ST, dated 01.03.2006 stipulated "*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*", and that in terms of the provisions of Notification No.1/2006-ST dated 01.03.2006 the gross value charged should be sum of the all materials including free issue materials used for execution of the works. He was also told that if the value of free issue material is not included in gross value charged, abatement under aforesaid Notification will not be available and accordingly, and hence M/s. MVOPIIL is liable to pay service tax on 100% value of such work orders wherein service tax charged on 33% of gross value charged under said Notification without adding value of the free issue materials. Please offer your comments. In this regard, he stated that work order on which they paid service tax on the abated value are not pure service contracts; that they execute work by supplying of material also and only MDPE pipes were provided by their clients; and that they carry out work execution by supplying their materials such as GI pipes, cement, bricks, sand, RCC pipe, coupling, etc., hence they have rightly claimed abatement provided in the above said notification. He submitted bill-wise details of amount charged in the bill, value of abatement claimed (67%) and value on which service tax paid (33%) under Commercial or Industrial Construction Service for the years from 2009-10 to 2012-13 in respect of PE laying work provided to M/s. GSPC Gas.

4. Since M/s. MVOPIIL have not furnished all relevant information relating to taxable services provided by them so as to enable verification about appropriate payment of service tax etc., a search was conducted at their head office situated at A-202, Shivalik Yash, Opp. Shashtrinagar BRTS Bus Stand, Naranpura, Ahmedabad on 03.09.2014 and relevant documents were withdrawn under a panchnama.

5. A statement of Shri Mathuraprasad Pandey, Managing Director of the company was recorded on 03.09.2014, wherein he inter alia, stated that he was supervising over all day to day functions of the company including works relating to finance and taxation of the company; that he confirmed the panchnama dated 03.09.2014 recorded at their premises; and that it is true that they have not paid service tax on Goods Transport Agency Service, although they paid the same on transportation/ freight charges during the period from 2009-10 to 2013-14 and also worked out due amount of Service Tax payable by the company on this issue, and hence voluntarily agreed and accepted to pay Service Tax of Rs. 53,39,859/- along with interest for the above said period. He further stated that they had undertaken the work of construction of houses/offices/ other civil work under JNNURM (Jawaharlal Nehru National Urban Renewal Mission) and for construction of sewerage pipeline and buildings for Government use; that they have provided this kind of services during the period from 2009-10 to 2013-14 to (i) Ahmedabad Municipal Corporation (ii) Vadodara Mahanagar Seva Sadan (iii) NBCC Ltd. (iv) Airport Authority of India, (v) Surat Municipal Corporation, etc.; that these services are exempt from service tax under Notification No. 28/2010-Service Tax dated 22-06-2010 and after introduction of negative list based levy of service tax, the same is exempted under Notification No. 25/2012-ST dated 20.06.2012; that they also undertook works relating to leveling of railway track, laying of cable along railway track, embankment, construction of minor bridges, etc. to (i) Indian Railways (ii) Rail Vikas Nigam Ltd., and such services are also exempt from payment of service tax. He further stated that they have been executing work relating to laying of gas distribution network for M/s. GSPC Gas, M/s. Indraprasth Gas Ltd, M/s. Bhagyanagar Gas Ltd and M/s. GAIL Gas Ltd; that for the services provided to these clients, they have executed work with supply of

material and therefore they have paid service tax on 33% value of the gross amount charged in the bills under abatement scheme of Notification No. 1/2006-ST upto 30.06.2012; that for the period from 01-07-2012 onwards, they were paying service tax under Works Contract Service on 40% value of the gross amount charged in the bills in terms of Rule – 2A of the Service Tax (Determination of Value) Rules, 2006; that also provided service of laying of optical fiber cables to telecom companies such as Idea Cellular Ltd and M/s. BSNL during the period from 2009-10 to 2013-14 and paid service tax at full rate on the gross amount charged.

6. Subsequently, M/s. MVOPII submitted copies of e-payment challans as proof of payment of service tax of Rs. 53,71,545/- and interest of Rs. 17,60,140/- under Transport of Goods by Road Service, vide their letters dated 04.09.2014 and 10.09.2014.

7. On scrutiny of the documents withdrawn under panchanama dated 03.09.2014 from the premises of M/s. MVOPII, it was observed that they have not been paying service tax appropriately on the taxable services provided by them in respect of services provided to M/s. Indraprasth Gas Ltd and M/s. NBCC, and for the services provided to M/s. GSPC Gas, they have short paid service tax by wrongly availing abatement under Notification No. 1/2006-ST dated 01-03-2006.

8.1. Another statement of Shri Mathuraprasad Pandey, Managing Director of the company was recorded on 09.10.2014, wherein he inter alia, stated that since 2010-11 they have maintained region-wise ledger account by grouping under two regions viz., New Delhi and Uttar Pradesh in order to better monitor the execution of the work orders, and furnished following details: -

(i) *Service Provided in New Delhi:* From 2009-10 to 2013-14, they executed work at four different places in Delhi. Value of services provided at different sites of each year is given as below:

(Amount in Rs.)

| Year         | Indraprasth Gas Ltd, New Delhi             |                              |                        |                                       |
|--------------|--|------------------------------|------------------------|---------------------------------------|
|              | Control Room (Delhi) - PO No. 1063 (O & M) | IGL- New Delhi (PO No. 1779) | IGL Steel Line - Delhi | IGL - South Delhi (PO No.2179 & 1676) |
| 1            | 2  | 3                            | 4                      | 5                                     |
| 2009-10      | 39,16,282                                  | 2,04,13,407                  | -                      | -                                     |
| 2010-11      | 62,26,056                                  | 21,96,494                    | 24,11,692              | -                                     |
| 2011-12      | 84,41,781                                  | 44,21,782                    | 13,71,564              | 1,22,77,877                           |
| 2012-13      | -  | 8,46,514                     | -                      | 1,69,81,084                           |
| 2013-14      | -  | -                            | 9,81,638               | 1,24,69,735                           |
| <b>TOTAL</b> | <b>1,85,84,119</b>                         | <b>2,78,78,197</b>           | <b>47,64,894</b>       | <b>4,17,28,696</b>                    |

Nature of work executed differed from site to site. For example, work order mentioned at column No. 2 relates to operation and maintenance work of control room of PNG station. For this project they paid service tax at full rate on the gross amount charged. For the work order mentioned at column No. 3, they provided services relating to MDPE pipeline laying work. The value of work order was inclusive of service tax. They have not paid service tax from 2009-10 to 2011-12. However, in the year 2012-13, they paid service tax on the abated value i.e., on 33% of the gross amount charged in the bills. In case of work order mentioned at column No. 4, they have provided services relating to carbon steel pipeline laying work. The value of work order was inclusive of service tax. They have not paid service tax for this work order. For the work order mentioned at column No. 5, they have provided services relating to MDPE pipeline laying work. The value of work order was inclusive of service tax. They have not paid service tax from 2009-10 to 2011-12. However, in the year 2012-13, total value of service provided was Rs. 1,69,81,084/- but they paid service tax on Rs. 55,53,869/- the abated value i.e., on 33% of the gross amount charged in the bills and for the remaining value of Rs. 1,14,27,215/- no service tax



was paid. Further in the year 2013-14, service tax was paid under works contract composition scheme i.e., on 40% value of the gross amount charged in the bills.

(ii) *Service Provided in Uttar Pradesh:* From 2009-10 to 2013-14, they executed works at different places in Delhi. Value of services provided at different sites of each year is given as below: -

(Amount in Rs.)

| Year         | <i>M/s. INDRAPRASH GAS LTD, UTTAR PRADESH</i> |  |                                |
|--------------|---|--|--------------------------------|
|              | <i>IGL - Steel Line - UP</i>                  | <i>IGL - UP (PO No. 1328 &amp; 1993)</i> | <i>IGL - Control Room - UP</i> |
| <i>1</i>     | <i>2</i>                                      | <i>3</i>                                 | <i>4</i>                       |
| 2009-10      | -   | -  | -                              |
| 2010-11      | 6,74,434                                      | 3,43,66,707                              | -                              |
| 2011-12      | 3,80,199                                      | 3,16,87,193                              | 17,71,875                      |
| 2012-13      | 7,30,953                                      | 2,93,56,537                              | -                              |
| 2013-14      | -   | 1,52,33,792                              | -                              |
| <b>TOTAL</b> | <b>17,85,586</b>                              | <b>11,06,44,229</b>                      | <b>17,71,875</b>               |

Nature of work executed differed from site to site. For example, work order mentioned at column No. 2 relates to carbon steel pipeline laying work. The value of work order was inclusive of service tax. They paid service tax on the abated value i.e., on 33% of the gross amount charged in the bills. For the work order mentioned at column No. 3, they have provided services relating to MDPE pipeline laying work. The value of work order was inclusive of service tax. They have not paid service tax from 2009-10 to 2011-12. However, in the year 2012-13, total value of service provided was Rs. 2,93,56,537/- but they paid service tax on Rs. 2,01,23,274/- the abated value i.e., on 33% of the gross amount charged in the bills and for the remaining value of Rs. 92,33,263/- no service tax was paid. Further in the year 2013-14, service tax was paid under works contract composition scheme i.e., on 40% value of the gross amount charged in the bills. In case of work order mentioned at column No. 4, he stated that this work was related to operation and maintenance work of control room of PNG station. For this project they have paid service tax at full rate on the gross amount charged.

8.2. Shri Mathuraprasad Pandey stated that in case of MDPE laying work, M/s. Indraprasth have supplied MDPE pipes, valves, as free issue material and in case of laying of carbon steel pipes, M/s. Indraprasth had supplied carbon steel pipes as free issue materials; that their scope was to lay these pipes with use of fittings; that they have not added the values of materials supplied by M/s. Indraprasth in the gross amount charged in our bills as the same was not provided to them or not available with them; and that their company did not pay service tax on the value of services provided to M/s. Indraprasth Gas Ltd in the years 2009-10 to 2012-13 because they were not charging service tax in the bills and therefore not paid service tax because their submitted offer were not inclusive of service tax. On being asked as to why they did not pay service tax on the work orders issued by M/s. Indraprasth though it is mentioned that the value of work order includes all taxes, he stated that they did not pay service tax because they have not charged service tax in the bills, and he agreed to pay service tax payable at the earliest. On being further asked to elaborate the work orders received from M/s. GAIL Ltd and details of work executed for them, he stated that they have received work orders for execution of work in the states of Gujarat, Maharashtra and Rajasthan and paid service tax on all these work done by under abatement scheme of Notification No. 1/2006-ST dated 01-03-2006 during the year 2009-10 to 2012-13 while in the year 2013-14, no work was done for M/s. GAIL Gas Ltd. He explained the details of work done and service tax paid for each project as follows: -

(i) *Gujarat Project:* They constructed CNG station at Vadodara as per LOA No. GAIL GAS/NOIDA/CGD/VAD/WGI/CIVIL/58/09-10/WO-119 dated 12-04-2010 with supply of material, and paid service tax on abated value i.e., on 33% value of bills amount under Notification No. 1/2006-ST.

(ii) *Rajasthan Project:* They received work order vide LOA No. GAIL GAS/NOIDA/CGD/WGI/MDPE LAYING/78/09-10/PO-30 dated 28-06-2010, for MDPE laying at Kota, Rajasthan, and paid service tax on abated value i.e., on 33% value of bills amount under Notification No. 1/2006-ST. In this work order, M/s. GAIL Gas Ltd has supplied PE pipes, PE valves and PE 100 Electro Fusion Fittings including transition fittings, DRS, MRS as free issue material.

(iii) *Maharashtra Project:* They received work order vide LOA No. GAIL/MU/09/C0455300013608 dated 26-03-2010, for OFC Rectification in Hazimalangwadi-Mahape-Trambay Line, and paid service tax on abated value i.e., on 33% value of bills amount under Notification No. 1/2006-ST. In this work order, M/s. GAIL Gas Ltd has supplied PE pipes, PE valves and PE 100 Electro Fusion Fittings including transition fittings, DRS, MRS as free issue material.

8.3. Shri Mathuraprasad Pandey further stated that M/s. GAIL Gas Ltd have provided PE pipes, PE valves and PE 100 Electro Fusion Fittings including transition fittings, DRS, MRS as free issue material in respect of work done at Kota (Rajasthan) and OFC Rectification in Hazimalangwadi-Mahape-Trambay Line in Maharashtra; that they have not added the values of materials supplied by M/s. GAIL Gas Ltd in the gross amount charged in their bills as the same was not provided to them or not available with them; that their scope of work under these contracts shall include project management, procurement and supply of material, residual engineering, installation testing and pre-commissioning; that they have executed these work order with supply of material and rightly charged service tax under abatement scheme and paid to the Government. As regards the works of M/s. Mahanagar Gas Ltd he explained that they received work orders for execution of work of MDPE pipeline laying work in the states of Maharashtra at Nerul Belapur, Kalamboli and Thane; that in these cases, M/s. Mahanagar Gas Ltd has supplied PE pipes, PE valves and PE 100 Electro Fusion Fittings including transition fittings, DRS, MRS as free issue material; that they have issued bills showing the value of material and value of labour charges separately in the bills and paid service tax at full rate on labour charges; that in case of M/s. Bhagyanagar Gas Ltd, they received work orders for execution of work of MDPE pipeline laying work in the states of Andhra Pradesh at Hyderabad, Kakinada & Vijayawada; that in these cases, M/s. Bhagyanagar Gas Ltd has supplied PE pipes, PE valves and PE 100 Electro Fusion Fittings including transition fittings, DRS, MRS as free issue material; that in cases of work done at Hyderabad, they issued bills showing the value of material and value of labour charges separately in the bills and paid service tax at full rate on labour charges as per the specific condition of the work order; that in cases of work done at Kakinada & Vijayawada, they have issued combined bills for work done and charged service tax under works contract composition scheme i.e., on 40% of the gross amount charged in the bills; that they have been providing services from March, 2013 onwards; that due to clerical mistake by their site staff, service tax is charged at 4.12% but they paid service tax at 4.944% as applicable; and that they have charged service tax on combined bill value under works contract composition scheme as per the specific condition of the work order.

8.4. On being asked to explain the details of work orders received and executed for M/s. NBCC during the years 2009-10 to 2013-14, Shri Mathuraprasad Pandey furnished the following information: -

- (i) *Construction of various structures for Ratnagiri Gas & Power Private Limited at Anjanwel, Guhagar, Ratnagiri of Maharashtra:* - They were awarded work order under Letter of Award No. SGM(WEST)/RGPP/LOA/2013/2352 dated 15-01-2013 for construction of various structures for Ratnagiri Gas & Power Private Limited at Anjanwel, Guhagar, Ratnagiri of Maharashtra. This project was started in the year 2013 and still continuing. Value of the contract is Rs. 73.21 crores. They have been paying service tax on this work order under works contract composition scheme. They have subcontracted this work to M/s. Sai Construction, Mumbai on back to back basis.

- (ii) *Construction of NBCC Centre at Plot No.2, Community Centre, Okhla Phase-I, New Delhi:* - They were awarded work order under Letter of Award No. NBCC/SGM/NMB/2010/1249 dated 23-08-2010 for Construction of NBCC Centre at Plot No.2, Community Centre, Okhla Phase-I, New Delhi. This project was started in the year 2010 and still continuing. Value of the contract is Rs. 66.64 crores. As this work was for construction of NBCC centre for M/s. NBCC, which is a Government owned company, they did not pay service tax. They were issued SCN No. No. STC/4-89/O&A/11-12 dated 21-10-2011 demanding service tax of Rs. 16,36,388/- on value of Rs. 5,29,57,483/- received during the Financial Year 2010-11. This SCN was confirmed vide OIO No. STC/01/COMMR/AHD/2013 dated 12-01-2013. They have filed an appeal against this OIO with CESTAT, Ahmedabad. CESTAT, Ahmedabad has stayed this OIO vide stay order No. M/15058/2013 dated 28-10-2013 and as per the condition of the stay, they have deposited Rs. 5 lakhs. They have not paid service tax for the years 2011-12 to 2013-14.
- (iii) *Construction of 51 Houses at Netaji Nagar, New Delhi:* - They were awarded work order under Letter of Intent No. NBCC/GM/RE/NN/2007/1291 dated 09-08-2007 for redevelopment of Netaji Nagar (Part) and Moti Bagh (East), New Delhi for construction of Type – VII Houses (51 Nos.). Value of the contract is Rs. 24.29 crores. This project was completed in the year 2009-10. As this work was for construction of residential complex for Government Officers, no service tax was payable. Therefore, they have not paid any service tax on this project.
- (iv) *Construction of Social Infrastructure Development Scheme at Serchip, Mizoram:* - They were awarded work order under Letter of Award No. NBCC/GGM(EAST)/NBCCUD-MIZ/2010/2560 dated 05.01.2011 for construction of auditorium and stadium complex at Serchip, Mizoram on behalf of Ministry of Urban Development. Value of the contract is Rs. 20.40 crores. This project was started in the year 2011-12. As this work was for construction of auditorium and stadium complex at Serchip, Mizoram on behalf of Ministry of Urban Development, no service tax was payable. Therefore, they have not paid any service tax on this project.
- (v) *Construction of Boys Hostel Block II at proposed New Campus for Students of School of Planning and Architecture in Village Bhouri at Bhopal (M. P.):* - They were awarded work order under Letter of Award No. NBCC/SBG(PW)/SPA/BHOPAL/2013/194 dated 28.01.2013 for Construction of Boys Hostel Block II at proposed New Campus for Students of School of Planning and Architecture in Village Bhouri at Bhopal (M. P.). Value of the contract is Rs. 14.89 crores. This project was started in the year 2012-13 and still in progress. As this work was for hostel for students of school of planning and architecture, no service tax was payable. Therefore, they have not paid any service tax on this project.
- (vi) *Construction of Infrastructure for CISF (GBS) at Mahipalpur:* - They were awarded work order under Letter of Intent No. NBCC/GM/RE/NN/2007/1291 dated 09.08.2007 for redevelopment of Netaji Nagar (Part) and Moti Bagh (East), New Delhi for construction of Type – VII Houses (51 Nos.). This project was completed in the year 2009-10. As this work was for construction of residential complex for Government Officers, no service tax was payable. Therefore, they have not paid any service tax on this project.

8.5. During the statement, Shri Mathuraprasad Pandey was pointed out that as per OIO No. STC/01/COMMR/AHD/2013 dated 12.01.2013, they had stated that before the adjudicating authority that in respect of Construction of NBCC Centre at Plot No.2, Community Centre, Okhla Phase-I, New Delhi, your company had paid the entire amount of service tax liability on the services rendered to M/s. NBCC on this contract, however no such service tax appeared to be paid for the years 2011-12 to 2013-14. In this regards, he stated that they have not charged and collected service tax in this project; and that however, they have admitted liability for payment

of service tax on this project after issue of notice by service tax department, and subsequently, they have deposited Rs. 10,00,000/- vide two e-payment challans dated 30-09-2014 and the remaining service tax along with interest will be paid at earliest subject to the outcome of CESTAT order. He admitted to have not furnished any information relating to services provided to M/s. NBCC, including Construction of NBCC Centre at Plot No.2, Community Centre, Okhla Phase-I, New Delhi while filing ST-3 returns for the years 2009-10 to 2012-13. He also stated that they do not receive any instruction for not charging service tax for any project awarded by M/s. NBCC and as per the general conditions of the contract, the value of work order is inclusive of all taxes; that they only determine the service tax liability based on the use of the building/work executed by them; that they generally pay service tax if the work done by them is used for commercial use, while in case the work done is not for commercial purpose, they do not pay service tax; that generally service tax liability is mentioned in the work order itself, and in some cases, they decide whether service tax liability exists on them in view of the prevailing service tax law or not; that they also obtain the opinion from our tax consultants prior to making final decision on this account and accordingly they determine service tax liability. On being asked about the bills issued by M/s. Sai Construction, Mumbai which indicated that they are collecting service tax of 50% charged in the bills from M/s. MVOPIL in terms of Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20-06-2012 and the remaining 50% is to be paid by M/s. MVOPIL, he stated that they have contracted execution of work order received from M/s. NBCC for construction of various civil work of M/s. RGPPL to M/s. Sai Construction, which is a partnership firm; that they pay service tax on the value of bills issued to M/s. NBCC and after being pointed out by DGCEI, they realised that they are also liable to pay 50% of service tax charged in the bills of M/s. Sai Construction, Mumbai as a recipient of service because they are partnership firm. He further stated that they have been receiving services of goods transport agency mainly for receipt of goods at site office; that these expenses are paid against vouchers; that since no consignment note was received by us, they have not paid service tax payable thereon; and that, after being pointed out, they have realised that they are liable to pay service tax of Rs. 53,71,545/- on transport of goods by road service as a recipient of service; that they have worked out year-wise service tax liability for the years from 2009-10 to 2013-14; and that they have paid service tax of Rs. 53,71,545/- and interest of Rs. 17,60,140/- vide e-payment challans dated 04-09-2014, 10-09-2014 & 08-10-2014.

8.6. Shri Mathuraprasad Pandey further stated that they have undertaken MDPE pipe laying work and operations and maintenance work for M/s. Indraprasth at Delhi and Uttar Pradesh at different locations as per the work orders received; that however, they did not pay service tax in respect of work done at for MDPE laying work and Steel Line laying work they did not pay service tax upto the year 2011-12; that however, from 2012-13, they have started paying service tax under works contract composition scheme; and that M/s. Indraprasth have supplied MDPE pipes, valves, carbon steel pipes as free issue materials and value of these free issue materials were not included in the value of gross amount charged. On being pointed out that the value of work orders included all taxes, he agreed to pay service tax payable at the earliest. He further stated that they have executed three work orders for M/s. GAIL Gas Ltd in Gujarat, Rajasthan and Maharastra; that the work done at Vadodara, Gujarat related to construction of CNG station with supply of material; that the work done at Kota, Rajasthan relates to laying of MDPE pipes; the work done in Maharastra was OFC Rectification in Hazimalangwadi-Mahape-Trambay Line; that M/s. GAIL Gas Ltd have supplied PE pipes, PE valves and PE 100 Electro Fusion Fittings including transition fittings, DRS, MRS as free issue material in respect of work done at Kota (Rajasthan), and for all the above works, they paid service tax on the abated value of 33% under Notification No. 1/2006-ST dated 01-03-2006; that they have undertaken works of MDPE laying work from M/s. Bhagyanagar Gas Ltd at Hyderabad, Kakinada and Vijayawada, and in these work orders, M/s. Bhagyanagar Gas Ltd has supplied PE pipes, PE valves and PE 100 Electro Fusion Fittings including transition fittings, DRS, MRS as free issue material; that in cases of work done at Hyderabad, they have issued bills showing the value of material and value of labour charges separately in the bills and paid service tax at full rate on labour charges; and that however, in cases of work done at Kakinada & Vijayawada, they have issued combined bills for

work done and charged service tax under works contract composition scheme i.e., on 40% of the gross amount charged in the bills. He explained that they have also executed work orders received from M/s. NBCC for the following activities; viz. (i) Construction of various structures for Ratnagiri Gas & Power Private Limited at Anjanwel, Guhagar, Ratnagiri of Maharashtra; (ii) Construction of NBCC Centre at Plot No.2, Community Centre, Okhla Phase-I, New Delhi; (iii) Construction of 51 Houses at Netaji Nagar, New Delhi; (iv) Construction of Social Infrastructure Development Scheme at Serchip, Mizoram; (v) Construction of Boys Hostel Block II at proposed New Campus for Students of School of Planning and Architecture in Village Bhouri at Bhopal (M. P.) and (vi) Construction of Infrastructure for CISF (GBS) at Mahipalpur. He informed that they paid service tax on project mentioned at (i) above i.e., Construction of various structures for Ratnagiri Gas & Power Private Limited at Anjanwel, Guhagar, Ratnagiri of Maharashtra. In respect of project of Construction of NBCC Centre at Plot No.2, Community Centre, Okhla Phase-I, New Delhi, as mentioned at (ii) above, he stated that this project was started in the year 2010. They have not paid service tax because this work was for construction of NBCC centre for M/s. NBCC, which is a Government owned company. On being drawn his attention to the OIO dated 12-01-2013 therein they have admitted before adjudicating authority that they had paid the entire amount of service tax liability on the services rendered to M/s. NBCC on this contract, he stated that they have not charged and collected service tax in this project. However, they have admitted their liability for payment of service tax on this project after issue of notice by service tax department. Subsequently, they have deposited Rs. 10,00,000/- vide two e-payment challans dated 30-09-2014. Remaining service tax along with interest would be paid at earliest subject to the outcome of CESTAT order as the matter is pending with CESTAT, Ahmedabad for final decision. For other projects they have not paid service tax because these projects were for construction of residential complex for Government Officers, construction of stadium complex and auditorium and for construction of boys hostel. On being drawn his attention to provision of the work orders wherein it was mentioned that value of contract included all taxes and it was also specified that contractors bill should be submitted showing the value of work and value of service tax, he stated that the above condition regarding service tax is general condition mentioned in all contracts whether it is taxable or not taxable. They determine the service tax liability after consulting with their tax consultants as per scope of work defined in tender and as per the provisions of service tax act. Further on being drawn his attention to the CBEC's Circular No. 332/16/2010-TRU dated 24-05-2010 wherein it was clarified that "*if the NBCC, being a party to a direct contract with GOI, engages a sub-contractor for carrying out the whole or part of the construction, then the sub-contractor would be liable to pay service tax as in that case, NBCC would be the service receiver and the construction would not be for their personal use*", he stated that they are of the view that if the construction work is done for Government and the same is not for commercial use, no service tax is payable.

8.7 On being pointed out lapse of non-payment of 50% of service tax on bills issued by M/s. Sai Construction, Mumbai, which is a partnership firm, who had provided works contract service to M/s. MVOPIL, as a recipient of service in terms of Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20-06-2012, he stated that they have contracted execution of work order received from M/s. NBCC for construction of various civil work of M/s. RGPPL to M/s. Sai Construction, which is a partnership firm. They have paid service tax on the value of bills issued to M/s. NBCC. After being pointed out by DGCEI, they have realised that they are also liable to pay 50% of service tax charged in the bills of M/s. Sai Construction, Mumbai as a recipient of service because they are partnership firm. Regarding payment of service tax under Transport of Goods by Road Service as a recipient of service, he stated that they have been receiving services of goods transport agency mainly for receipt of goods at site office. Since no consignment note was received by them, they have not paid service tax payable thereon. However, after being pointed out, they have realised that they are liable to pay service tax of Rs. 53,71,545/- on transport of goods by road service as a recipient of service. Accordingly they have paid service tax of Rs. 53,71,545/- and interest of Rs. 17,60,140/- vide e-payment challans dated 04-09-2014, 10-09-2014 & 08-10-2014. On being asked the reasons for

not producing copies of all work orders and bills issued to M/s. NBCC, M/s. Indraprasth Gas Ltd, etc, he stated that generally bills are prepared by their site office situated at the place of work and kept it there and hence these documents could not be submitted; that whatever documents available with them were submitted, however, details of bills are entered in the books of accounts of their company at Ahmedabad Office; that they maintain books of accounts systematically; that they have produced ledger accounts of all the parties /clients. He accepted that the entries made in ledger accounts are factual and correct and thus, he requested to conclude the examination of their case accordingly.

9. On the basis of scrutiny of documents, it appeared that M/s. MVOPIL had not paid service tax properly on various work orders executed for different clients. In order to better comprehend the violations of provisions of service tax law resulting into non-payment of service tax or short payment of services, issues are broadly grouped into the following categories. Each category of violation is analysed separately and the amount of service tax appeared to have not paid or short paid are worked out accordingly as shown below: -

- (A) Short payment of service tax on MDPE pipeline laying work or carbon steel pipeline laying work by wrongly availing abatement under Notification No. 1/2006-ST dated 01.03.2006 without adding value of free issue materials supplied by their clients under Commercial or Industrial Construction Service during the period from 2009-10 to 2012-13 (upto June, 2012);
- (B) Short payment of service tax on MDPE pipeline laying work or carbon steel pipeline laying work by wrongly claiming benefit of composition scheme without adding value of free issue materials supplied by their clients under Works Contract Service during the period from 2012-13 (From July, 2012) to 2013-14;
- (C) Non-payment of service tax on the value of services provided to M/s. Indraprasth Gas Ltd for laying of MDPE pipeline and laying of carbon steel pipes under Commercial or Industrial Construction Service during the years 2009-10 to 2012-13;
- (D) Non-payment of service tax on the value of services provided to M/s. NBCC Ltd for construction of civil structures under Works Contract Service during the years 2009-10 to 2013-14;
- (E) Non-payment of service tax on the value of works contract service received from M/s. Sai Construction, Partnership as a recipient of service under partial reverse charge mechanism under Works Contract Service during the years 2012-13 (From July, 2012) to 2013-14;
- (F) Non-payment of service tax on the value of payment made to the transporters for receiving their services under transport of goods by road service, as a recipient of service during the years 2009-10 to 2013-14.

10. Each of the aforesaid issues are discussed in the following paras: -

*(A) Short payment of service tax on MDPE pipeline laying work or carbon steel pipeline laying work by wrongly availing abatement under notification no. 1/2006-ST dated 01.03.2006 without adding value of free issue materials supplied by their clients under commercial or industrial construction service during the period from 2009-10 to 2012-13 (upto June, 2012):*

11.1 On examination of the documents, it appeared that M/s. MVOPIL have carried out PE/MDPE pipeline laying work for various gas distribution companies such as M/s. GSPC Gas, M/s. Indraprasth Gas Ltd, M/s. GAIL Gas Ltd, M/s. Mahanagar Gas Ltd and M/s. Bhagyanagar Gas Ltd. For M/s. Indraprasth Gas Ltd, they have also executed work of carbon steel pipe laying work. All these clients have supplied MDPE line Pipes, 32 mm HDPE Conduit, PE Valve, Service Regulator/Transition Box as Free Issue Materials. In case of work order received from M/s. Indraprasth for laying carbon steel pipe, carbon steel pipe was supplied as free issue material. It is also found that in cases of services provided to M/s. Mahanagar Gas Ltd, M/s. GSPC Gas (for PNG work), they have issued invoices showing the value of material and value of labour separately and paid service tax at full rate on the value of labour. This shows that they are aware of the provisions of the service tax law that service tax is payable on service portion of the

work order. They should have followed the same pattern for all clients. However, M/s. MVOPIIL have paid service tax on 33% value of the gross amount charged in the bills by availing exemption provided in Notification No. 1/2006-ST upto 30.06.2012 under Commercial or Industrial Construction Service for the services provided to their clients relating to laying of gas pipeline work during the period from 2009-10 to 2012-13 (upto 30.06.2012). Value of free issue materials were not included in the gross amount charged in the bills. Statutory provisions relating to levy of service tax under commercial or industrial construction service is elaborated in the succeeding paras.

**11.2** 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".*

**11.3** As per clause 105(zzq) 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 a 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.

**11.4** However, as per 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% percentage 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 understanding, 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. | <i>This exemption shall not apply in such cases where the taxable services provided are 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.<br/>Explanation.- 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.</i> | 33         |

11.5 It is explicitly mentioned in Notification No. 1/2006-ST dated 01.03.2006, 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 allowed.

11.6 From the agreements entered for PE/MDPE pipeline construction work between M/s. MVOPIIL and facts stated by the authorized representative of the company, it is found that their clients have supplied them MDPE line Pipes, 32 mm HDPE Conduit, PE Valve, Service Regulator/Transition Box, carbon steel pipe, etc as Free Issue Materials. M/s. MVOPIIL have not included the value of free issue materials supplied by their client in gross value charged while discharging the service tax liability under the contracts as per Notification No. 1/2006-ST and therefore they are not eligible for payment of service tax on abated value. Thus, it appeared that they have wrongly availed exemption provided under Notification No. 1/2006-ST dated 01.03.2006 during the period from 2009-10 to 2012-13 (upto 30.06.2012). Since the value of services provided is taken from ledger accounts, the value of services is considered as inclusive of service tax and accordingly, taxable value is worked out. It appeared that M/s. MVOPIIL have wrongly claimed abatement of value of Rs. 5,75,26,750/- and thereby short paid/not paid Service Tax of Rs. 60,02,173/- (Service tax of Rs. 58,27,352/-, education cess of Rs. 1,16,547/- & higher & secondary education cess of Rs. 58,274/-), during the period from 2009-10 to 2012-13 (upto 30.06.2012), which appeared to be recoverable from them along with applicable interest.

*(B) Short payment of service tax on MDPE pipeline laying work or carbon steel pipeline laying work by wrongly availing works contract composition scheme without adding value of free issue materials supplied by their clients under works contract service during the period from 2012-13 (from July, 2012) to 2013-14:*

12.1 After introduction of negative list based levy of service tax w.e.f. 01.07.2012, service portion in the execution of a works contract has become a declared service under clause (h) of Section 66E of the Finance Act, 1994 and liable to service tax at the rate specified in Section 66B of the Finance Act, 1994. However, in case, the value of service portion of work contract is not separately notified, then the valuation of work contract is to be determined as per Rule 2A of Service Tax (Determination of Value) Rules, 2006, as amended. Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract. Where the value of property in goods transferred is not known, the person liable to pay tax on the service portion involved in the execution of works contract shall pay service tax on forty percent of the *total amount* charged for the works contract. The word total amount means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract. It was further stated that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

12.2 Thus, from the above facts, it appeared that M/s. MVOPIIL was liable to pay service tax on the value of services provided to their clients at full rate on the gross amount charged in the bills because MDPE pipes, carbon steel pipes, PE valve, Service Regulator/Transition Box, etc were supplied as free issue material and value of such free issue materials were not included in the gross amount charged. It was the pre-requisite condition under Rule 2A of the Service Tax (Determination of Value) Rules, 2006 that for availing composition scheme, gross amount charged should include the value of all materials used and the value of labour charges. Since this was not fulfilled they should pay service tax at full rate on the gross amount charged in the bills.

12.3 In case of PE pipeline laying service provided to M/s. GSPC Gas from 01.07.2012, M/s. MVOPIIL have added value of free issue materials supplied in the gross amount charged in the bills. Thus, they were aware of the provisions of the service tax law. However, they continued



to avail benefit of composition scheme in respect of services provided to M/s. Indraprasth Gas Ltd and M/s. Bhagyanagar Gas Ltd without adding the value of free issue materials in the gross amount charged in the bills. Since the value of services provided is taken from ledger accounts, the value of services is considered as inclusive of service tax and accordingly, taxable value is worked out. Thus, it appeared that M/s. MVOPIIL have wrongly claimed abatement of value of Rs. 3,49,16,195/- and thereby short paid/not paid Service Tax of Rs. 43,15,642/- (Service tax of Rs. 41,89,943/-, education cess of Rs. 83,799/- & higher & secondary education cess of Rs. 41,899/-), during the period from 2012-13 (from 01-07-2012) to 2013-14, which is required to be recovered from them along with interest.

(C) *Non-payment of service tax on the services provided to m/s. Indraprasth gas ltd during 2009-10 to 2012-13:*

13.1 M/s. MOVPIIL had provided laying of HDPE pipeline work and carbon steel pipeline laying work to M/s. Indraprasth in New Delhi and Uttar Pradesh but not paid any service tax. As per the ledger accounts of M/s. Indraprasth submitted by M/s. MVOPIIL, the site-wise details of value of services provided is given herein below: -

| Year    | Service provided to M/s. Indraprasth Gas Ltd |                        |            |                   | Total       |
|---------|--|------------------------|------------|-------------------|-------------|
|         | IGL- New Delhi                               | IGL Steel Line - Delhi | IGL - UP   | IGL - South Delhi |             |
| 1       | 2  | 3                      | 4          | 5                 | 6           |
| 2009-10 | 20,413,407                                   | -                      | -          | -                 | 20,413,407  |
| 2010-11 | 2,196,494                                    | 2,411,692              | 34,366,707 | -                 | 38,974,893  |
| 2011-12 | 4,421,782                                    | 1,371,564              | 31,687,193 | 12,277,877        | 49,758,416  |
| 2012-13 | -  | -                      | 9,233,263  | 11,427,215        | 20,660,478  |
| TOTAL   | 27,031,683                                   | 3,783,256              | 75,287,163 | 23,705,092        | 129,807,194 |

13.2 On being asked for the reasons for non-payment of service tax on such services provided to M/s. Indraprasth, Shri Mathuraprasad Pandey, Managing Director of the company stated that they did not pay service tax on the value of services provided to M/s. Indraprasth Gas Ltd in the years 2009-10 to 2012-13 because they were not charging service tax in the bills and therefore not paid service tax because their submitted offer were not inclusive of service tax. This statement appears to be incorrect because in work order it is mentioned that value of contract includes all taxes. After explaining the provision of the service tax law that it is the liability of the service provider to pay service tax, he agreed to pay service tax payable at the earliest, though they have not paid the same. In the year 2009-10 to 2012-13 (upto June, 2012), M/s. MVOPIIL paid service tax under Commercial or Industrial Construction Service in respect of services of MDPE pipe laying service provided to other clients and also filed ST-3 returns. Therefore, for the services provided to M/s. Indraprasth also they should pay service tax under Commercial or Industrial Construction Service. M/s. MVOPIIL have not charged service tax separately in the bills for the construction of work done by them for M/s. Indraprasth. Therefore, the gross amount charged by them from their clients is considered as inclusive of service tax and accordingly, their service tax liability is determined.

13.3 It appears that they have provided services valued at Rs. 11,73,51,988/- for the laying of gas pipeline work to M/s. Indraprasth but not paid service tax payable thereon amounting to Rs. 1,24,66,245/- (Service tax of Rs. 1,21,03,150/-, education cess of Rs. 2,42,063/- & higher & secondary education cess of Rs. 1,21,032/-) during the period from 2009-10 to 2012-13 under Commercial or Industrial Construction Service, which is required to be recovered from them along with interest.

(D) *Non-payment of service tax on the construction work done for M/s. NBCC during 2009-10 to 2013-14:*

14.1 M/s. MVOPIIL have received six work orders from M/s. NBCC for execution of different works as detailed above. M/s. NBCC is a central public sector undertaking registered under the Companies Act, 1956 and engaged in providing construction services in the segments of Project

Management Consultancy, Real Estate Development & Construction Business and EPC Contracts. Since M/s. NBCC is primarily working for providing construction related services to Government, the question was cropped up whether services provided to M/s. NBCC would attract service tax or not. The issue was clarified by the CBEC vide F.No. 332/16/2010-TRU dated 24/05/2010, which is reproduced herein below: -

*“Leviability of service tax on construction of residential houses by National Building Construction Corporation Limited (NBCC) for Central Government officers-regarding*

*Please refer to your letter No, E.D. (F)/Service Tax/2010 dated 20th May, 2010 seeking clarification on the above subject.*

2. *The matter has been examined. The activity of building new residential complexes falls within the definition of taxable service, namely, 'Construction of Complexes'. Normally, the type of complex proposed to be built by NBCC falls within the definition of residential complexes. However, as per definition, the residential complex (for service tax purposes) does not include a complex which is constructed by a person directly engaging any other person for designing/ planning/construction and is intended for personal use as residence by such person. The definition also explains that personal use includes promoting use of such property as residence by another person on rent or even without consideration.*

3. *As per the information provided in your letter and during discussions, the Ministry of Urban Development (GOI) has directly engaged the NBCC for constructing residential complex for central government officers. Further, the residential complexes so built are intended for the personal use of the GOI which includes promoting the use of complex as residence by other persons (i.e. the Government officers or the Ministers). As such the GOI is the service receiver and NBCC is providing services directly to the GOI for its personal use. Therefore, as for the instant arrangement between Ministry of Urban Development and NBCC is concerned, the service tax is not leviable. It may, however, be pointed out that if the NBCC, being a party to a direct contract with GOI, engages a sub-contractor for carrying out the whole or part of the construction, then the sub-contractor would be liable to pay service tax as in that case, NBCC would be the service receiver and the construction would not be for their personal use.*

*(Gautam Bhattacharya)  
Joint Secretary (TRU-II)”*

14.2 From the above clarification, it can be seen that construction services provided to Government by M/s. NBCC for constructing residential complex for central government officers are exempt from payment of service tax. However, sub-contractors engaged by M/s. NBCC for carrying out the whole or part of the construction would be liable to pay service tax as in this case, NBCC would be the service receiver and the construction would not be for their personal use. Therefore, it appeared that services provided by sub-contractors like M/s. MVOPIIL are liable to pay service tax on the construction services provided to M/s. NBCC unless such activity is exempt from payment of service tax. Meanwhile, it is pertinent to note that the work orders issued by M/s. NBCC specifically mention that the value of contract included all taxes, including service tax. They have also instructed contractors to show the element of service tax separately in the bills issued by them.

14.3 Works Contract Service was brought under service tax net w.e.f. 01.06.2007 as a distinct service category. As per Section 65(105) (zzzza) of Finance Act, 1994, Works Contract is defined as under: -

*“Taxable Service means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.*

*Explanation.—For the purposes of this sub-clause, “works contract” means a contract wherein,—*

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*

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

14.4 Construction of a pipeline primarily for the purposes of commerce or industry is covered under Works Contract Service. In cases of composite works contracts involving both labour charges and material charges, the service provider is given an option either to pay service tax at full rate on the labour charges or where labour charges and material charges are not separable, they could pay service tax at composite rate of 4% of the gross amount charged subject to the condition that the gross amount charges should also include the value of all goods used in or in relation to the execution of works contract whether received free of cost or for consideration under any other contract. CBEC's clarification issued under D.O.F. No. 334/13/2009-TRU, dated 07.07.2009 issued in this regard is reproduced below: -

*“5.1 Changes in the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007: These rules provide a simplified procedure for working out the tax liability by the service providers providing works contract service. Instead of working out the service element from the value of works contract and paying service tax at full rate (i.e.10%) the service provider is allowed to pay 4% on the ‘gross amount charged’ for the works contract. The reason for prescribing the lower rate under the scheme is that the service provider need not bifurcate the gross value of works contract. It was expected that the gross value should be shown to include the total value of materials as well as services used in providing the taxable services. However, it has been reported that in certain cases, the taxpayers are not including the full value of the goods required for execution of works contract for working out service tax liability under the Composition Scheme by either excluding the value of goods received free of cost from their client or splitting the contract into a sale contract (for a portion of goods required to execute the works contract) and works contract (for only a portion of the total value of goods and the labour charges), thus reducing the value of works contract for the purposes of calculating service tax. In order to plug this loophole, the Explanation appearing in sub-rule (3) is being amended to provide that the composition scheme would be available only to such works contracts where the gross value of works contract includes the value of all goods used in or in relation to the execution of works contract whether received free of cost or for consideration under any other contract. ....”*

14.5 It appeared that benefit of works contract composition scheme would be available if the gross value included the value of all goods used in or in relation to the execution of works contract whether received free of cost or for consideration under any other contract. This provision was in force till 30.06.2012. In the instant case, M/s. MVOPIL is eligible for works contract composition scheme because the gross amount charged included the value of materials supplied and labour charges.

14.6. Further, after introduction of negative list based levy of service tax w.e.f. 01.07.2012, services which are eligible for exemption from payment of service tax are notified in Notification No. 25/2012-ST dated 20-06-2012. Sl. No. 12 of this notification the following activities are exempt from payment of service tax: -

- “12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-
- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
  - (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
  - (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
  - (d) canal, dam or other irrigation works;
  - (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
  - (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;”

14.7 In the said notification, government authority means, “(s) governmental authority’ means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution”. Thus, even after 01.07.2012, services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration civil structures are only exempt from payment of service tax. Since M/s. NBCC being the company registered under the Company Act, 1956, not the Government, a local authority or a government authority, services provided to M/s. NBCC is not eligible for exemption from payment of service tax. Thus, M/s. MVOPIL appeared to be liable to pay service tax on the construction services provided to M/s. NBCC during the years 2009-10 to 2013-14.

14.8 For the work order of construction of various structures for M/s. Ratnagiri Gas and Power Pvt. Ltd, they are paying service tax under Works Contract Service. They have been executing this work order from December, 2012 onwards. There is no dispute on this work order. In respect of work order received for Construction of NBCC Centre at Plot No.2, Community Centre, Okhla Phase-I, New Delhi, it is found that work execution of this project was started in the year 2010. The plot admeasuring 8,597 sq. mt. has been allotted to NBCC by DDA. The plot is freehold and is meant for general commercial. The drawing for the complex have been approved by DDA vide Letter No.136 of 20th July, 2009. Other approval viz, DUAC, DFS, AAI and EIA are also in-place for this project. As they were not paying service tax on the construction NBCC Centre, the jurisdictional Commissioner of Service Tax issued SCN No. No. STC/4-89/O&A/11-12 dated 21-10-2011 demanding service tax of Rs. 16,36,388/- on value of payment of Rs. 5,29,57,483/- received from M/s. NBCC during the Financial Year 2010-11. They have informed the Commissioner of Service Tax, Ahmedabad that they had paid the entire amount of service tax liability on the services rendered to M/s. NBCC on this contract. However, they failed to produce documents evidencing payment of service tax. Therefore amount of service tax was ordered for recovery. They have filed an appeal against this OIO with CESTAT, Ahmedabad. CESTAT, Ahmedabad has also noted the submission of the party before the adjudicating authority regarding payment of service tax and accordingly, ordered for deposit Rs. 5 lakhs as a condition of stay. On being pointed out during the course of investigation, they have paid service tax of Rs. 10,00,000/- towards their service tax liability. Shri Mathuraprasad Pandey has also agreed to pay the remaining amount of service tax at the earliest. In view of the above statutory provisions, construction services provided by M/s. MVOPIL to M/s. NBCC are taxable services and M/s. MVOPIL should have paid service tax on the value of services provided by considering the value of services provided as inclusive of service tax.

14.9 It was also noticed that M/s. MVOPIL have also undertaken construction work for M/s. NBCC such as (i) Construction of Construction of 51 Houses at Netaji Nagar, New Delhi; (ii) Construction of Social Infrastructure Development Scheme at Serchip, Mizoram; (iii) Construction of Boys Hostel Block II at proposed New Campus for Students of School of Planning and Architecture in Village Bhouri at Bhopal (M.P.) and (iv) Construction of Infrastructure for CISF (GBS) at Mahipalpur. Even in these work orders, it was specifically mentioned that the bidder should quote rates inclusive of service tax along with other taxes, duties, levies, etc. Further it was specified that contractor must have registration number with service tax authorities and would provide copy of registration number to NBCC before release of any payment by the Corporation. The contractor would submit regular invoice/bill fulfilling all conditions of Rule 4A of Service Tax Rules, 1994 and should produce proof of deposit of service tax to be corporation as and when demanded. On examination of the above work orders entered with the above said clients, it was found that work order executed for M/s. NBCC was for construction of civil structures where the scope of the work order was to supply material and to provide service. There was no free issue material supplied by M/s. NBCC. Therefore, it appears that they are liable to pay @ 4.12% of the gross amount charged for the construction services provided under works contract composition scheme upto 30.06.2012.

14.10 After introduction of negative list based levy of service tax from July, 2012, all services provided under work orders are chargeable to service tax on service portion in the execution of a works contract under clause (h) of Section 66E of the Finance Act, 1994. In case the value of service portion of work contract is not separately notified, then the valuation of work contract is to be determined as per Rule 2A of Service Tax (Determination of Value) Rules, 2006, as amended. Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract. Where the value of property in goods transferred is not known, the person liable to pay tax on the service portion involved in the execution of works contract shall pay service tax on forty percent of the total amount charged for the works contract. M/s. MVOPIL have not charged service tax separately in the bills for the construction of work done by them for M/s. NBCC. Therefore, the gross amount received by them from their clients is considered as inclusive of service tax and accordingly, their service tax liability is determined. It was ascertained that they have received taxable amount of Rs. 91,81,62,365/- for the construction of services and amount of service tax payable thereon work out to Rs. 6,93,67,000/- (Service tax of Rs. 6,73,46,602/-, education cess of Rs. 13,46,932/- & higher & secondary education cess of Rs. 6,73,466/-), during the period from 2009-10 to 2013-14 under Works Contract Service, which appeared to be recoverable from them along with interest. On being pointed out, M/s. MVOPIL have paid service tax of Rs. 10,00,000/- vide two e-payment challans both dated 08.10.2014 during the course of investigation.

(E) *Service Tax on works contract service as a recipient of service under partial reverse charge mechanism during 2012-13 (from July, 2012) to 2013-14:*

15.1 M/s. MVOPIL have received work order from M/s. NBCC for construction of various civil work of M/s. RGPPL. They have sub-contracted this work to M/s. Sai Construction, Mumbai, which is a partnership firm. As per the provisions of Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20-06-2012, M/s. MVOPIL is liable for payment of 50% service tax on the bills of M/s. Sai Construction. The relevant provisions of Section 68 of the Finance Act, 1994 is explained 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 12[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 66B 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."*

15.2 Section 68(2) of the Finance Act, 1994 empowers Central Government to notify the persons liable for making payment of service tax and manner of payment of service tax at the rate specified in Section 66B and all the provisions of service tax law would apply to such persons as if he is the person liable for paying the service tax in relation to such service.

15.3 Notification No. 30/2012-ST dated 20-06-2012 notified service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, as given below: -

| Sl. No. | Description of a service   | Percentage of service tax payable by the person providing service | Percentage of service tax payable by the person receiving the service |
|---------|--|---|---|
| 2       | in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road   | Nil   | 100%  |
| 8.      | in respect of services provided or agreed to be provided by way of supply of manpower for any purpose  | 25%   | 75%   |
| 9.      | in respect of services provided or agreed to be provided in service portion in execution of works contract   | 50%   | 50%   |
| 10      | in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory | Nil   | 100%  |

15.4 Sl. No. 9 of the above table shows that 50% of service tax on works contract should be paid by the service provider and the remaining 50% of the service tax is required to be paid by the service recipient. In the instant case, the service provider i.e., M/s. Sai Construction is a partnership firm and the service recipient i.e. M/s. MVOPIIL is a service recipient is a body corporate incorporated under the Companies Act, 1956 and therefore M/s. MVOPIIL is liable to pay 50% of the service tax payable on the works contract service received from M/s. Sai Construction. Accordingly, it is worked out that M/s. MVOPIIL have failed to pay service tax of Rs. 59,95,119/- (Service Tax of Rs. 5820504/-, Education Cess of Rs. 116410/- and SHE Cess of Rs. 58205). The amount of service tax not paid by them appeared to be recovered along with interest.

(F) *Non payment of service tax on transport of goods by road service received during 2009-10 to 2013-14:*

16.1 M/s. MVOPIIL have been using transport of goods by road service for transportation of construction materials from the source of purchase to their construction site. Section 65(105)(zzp) of the Finance Act, 1994 defines taxable service as any service provided or to be provided to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage. As per Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d)(v) of the Service Tax Rules, 1994 as amended, a person liable to pay service tax in relation to taxable services provided by a goods transport agency, where the consignor or consignee of goods, is:-

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any company [formed or registered under] the companies act, 1956 (1 of 1956);
- (c) any corporation established by or under any law;
- (d) any society registered under the Societies Registration Act, 1860 (2) of 1860) or under any law corresponding to that Act in force in any part of India;
- (e) any co-operative society established by or under any law;
- (f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) of the rules made thereunder; or
- (g) any body corporate established, or a partnership firm registered, by or under any law,  
any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage. This provision was in force till 30-06-2012.

16.2 Post 01.07.2012, liability to pay entire service tax on transport of goods by road service is cast on the recipient of service specified under Notification No. 30/2012-ST dated 20-06-2012, which is as under:

"I. The taxable services,—

- (A) (ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—
  - (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
  - (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
  - (c) any co-operative society established by or under any law;
  - (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
  - (e) any body corporate established, by or under any law; or
  - (f) any partnership firm whether registered or not under any law including association of persons"

16.3 M/s. MVOPIIL have admitted that they have received services from transporters and they are liable for service tax as a recipient of service during the period from 2009-10 to 2013-14. It was worked out that M/s. MVOPIIL have paid an amount of Rs. 18,29,18,067/- to transporters during the period from 2009-10 to 2013-14. M/s. MVOPIIL should have paid service tax on 25% of the value of payment made in terms of Notification No. 1/2006-ST (Sl. No. 6) which was in force till 30-06-2012 and under Notification No. 26/2012-ST (Sl. No. 7) w.e.f. 01-07-2012. Therefore taxable value work out to Rs. 4,57,29,387 /- and service tax payable thereon amounts to Rs. 53,71,545/- (Service tax of Rs. 52,15,092/-, education cess of Rs. 1,04,302/- & higher & secondary education cess of Rs. 52,151/-), under transport of goods by road service, which appeared recoverable from them along with interest. On being pointed out during the investigation, M/s. MVOPIIL have paid service tax of Rs. 53,71,545/- and interest of Rs. 17,60,140/- under Transport of Goods by Road Service vide e-payment challans on 04.09.2014 and 10.09.2014.

17. Therefore, a Show-Cause-Notice (SCN) F.No. DGCEI/AZU/36-188/2014-15 dated 17.10.2014 was issued by the Additional Director General, DGCEI, Ahmedabad, calling upon M/s. M. V. Omni Projects (India) Ltd, 74, New York Tower A, S. G. Highway, Thaltej, Ahmedabad to show cause to the Commissioner, Service Tax, Ahmedabad as to why:-

- (i) Service Tax of Rs. 60,02,173/- [Service tax of Rs. 58,27,352/-, education cess of Rs. 1,16,547/- & higher & secondary education cess of Rs. 58,274/-] which was short paid / not paid under Commercial or Industrial Construction Service during the period from 2009-10 to 2012-13 (upto 30.06.2012) as per Annexure-A of the notice, should not be

demanded and recovered from them under proviso to sub section (1) of section 73 of the Finance Act, 1994;

- (ii) Service Tax of Rs. 43,15,642/- [*Service tax of Rs. 41,89,943/-, education cess of Rs. 83,799/- & higher & secondary education cess of Rs. 41,899/-*] which was not paid/short paid under Commercial or Industrial Construction Service during the year 2009-10 to 2012-13 as per Annexure-B of this notice, should not be demanded and recovered from them under proviso to sub section (1) of section 73 of the Finance Act, 1994;
- (iii) Service Tax of Rs. 1,24,66,245/- [*Service tax of Rs. 1,21,03,150/-, education cess of Rs. 2,42,063/- & higher & secondary education cess of Rs. 1,21,032/-*], which was not paid /short paid under Works Contract Service during the year 2009-10 to 2013-14 as per Annexure-C of this notice, should not be demanded and recovered from them under proviso to sub section (1) of section 73 of the Finance Act, 1994;
- (iv) Service Tax of Rs. 6,93,67,000/- [*Service tax of Rs. 6,73,46,602/-, education cess of Rs. 13,46,932/- & higher & secondary education cess of Rs. 6,73,466/-*], which was not paid/short paid under Works Contract Service during the year 2009-10 to 2013-14 as per Annexure-D of this notice, should not be demanded and recovered from them under proviso to sub section (1) of section 73 of the Finance Act, 1994; and the amount of Rs. 10,00,000/- paid by them during the course of investigation, should not be appropriated against their liability;
- (v) Service Tax of Rs. 59,95,119/- [*Service Tax of Rs. 5820504/-, Education Cess of Rs. 116410/- and SHE Cess of Rs. 58205/-*], which was not paid under Works Contract Service, as a recipient of service, during the year 2012-13 to 2013-14 as per Annexure-E of this notice, should not be demanded and recovered from them under proviso to sub section (1) of section 73 of the Finance Act, 1994;
- (vi) Service Tax of Rs. 53,71,545/- [*Service tax of Rs. 52,15,092/-, education cess of Rs. 1,04,302/- & higher & secondary education cess of Rs. 52,151/-*], which was not paid under Transport of Goods by Road Service during the years 2009-10 to 2013-14 as per Annexure-F of this notice, should not be demanded and recovered from them under proviso to sub section (1) of section 73 of the Finance Act, 1994; and the amount of Rs. 53,71,545/- paid by them during the course of investigation, should not be appropriated against their liability;
- (vii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax as mentioned at (i) & (vi) above, under section 75 of the Finance Act, 1994; and interest of Rs. 17,60,140/- paid during the investigation on delayed payment of service tax under Transport of Goods by Road Service should not be appropriated against their interest liability;
- (viii) Penalty under the provisions of Section 77 of the Finance Act, 1994, as amended, should not be imposed on them for contravention of provisions of the Finance Act, 1994 as explained herein above;
- (ix) 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 herein above.

18. Shri Mathuraprasad Pandey, Managing Director of M/s. M. V. Omni Projects (India) Ltd, 74, New York Tower A, S. G. Highway, Thaltej, Ahmedabad was also called upon to show cause to the Commissioner, Service Tax, Ahmedabad as to why penalty should not be imposed on him under Section 78A of the Finance Act, 1994 for failure to pay service tax dues as detailed supra.

19. Thereafter, M/s. MVOPIL were issued following two periodical show-cause-notices in terms of Section 73(1A) of the Finance Act, 1994 on the ground of similar circumstances and



contraventions involved during the subsequent period, calling upon them to show cause as to why service tax not paid as shown in the following table should not be demanded and recovered from them under Section 73(1); interest at the applicable rates should not be levied under Section 75; and penalty should not be imposed upon them under Section 76 and 77 of the Finance Act, 1994: -

| Sl No. | SCN No. & date                             | Period involved              | Gross amount involved Rs. | Rate of Service Tax | Amount of Service Tax demanded Rs. | SCN answerable to  |
|--------|--|------------------------------|---------------------------|---------------------|------------------------------------|--|
| 1      | STC/4-89/O&A/2015-16 dated 18.04.2016      | 2014-15                      | 69,40,29,056/-            | 12.36%              | 8,57,81,991/-                      | Principal Commissioner of Service Tax, Ahmedabad             |
|        |  | 2015-16<br>Apr'15 and May'15 | 0                         | 12.36%              | 0                                  |  |
|        |  | 2015-16<br>Jun'15 and Sep'15 | 7,85,41,282/-             | 14%                 | 1,09,95,780/-                      |  |
| 2      | STC/4-06/O&A/Omni/2017-18 dated 17.10.2018 | 01.10.2015 to 31.10.2015     | 1,24,61,952/-             | 14%                 | 17,44,673/-                        | Addl/Jt Commissioner, CGST & Central Excise, Ahmedabad-North |
|        |  | 01.11.2015 to 31.03.2016     | 9,53,98,483/-             | 14.50%              | 1,38,32,780/-                      |  |
|        | Total                                      |                              | 88,04,30,773              |                     | 11,23,55,224                       |  |

## **DEFENCE REPLY**

20. M/s. MVOPIIL have filed their defence reply vide letter dated 18.12.2014 wherein they denied the allegations in the aforesaid SCN. They have grouped the issues involved in the SCN as follows: -

- (i) Whether they are eligible for the benefit of notification of 1/2006-ST for the period upto 30.06.2012 on the Commercial or Industrial Construction service, in which they carried out construction work with material and discharged service tax without inclusion of free supply material value;
- (ii) Whether they are eligible for the benefit of composition tax as per the valuation rule w.e.f. 01.07.2012 on their work contract services as a contractor, in which they carried out construction work with material and discharged service tax without inclusion of free supply material value;
- (iii) Whether they are liable to pay service tax as a sub-contractor, when principal has already discharge service tax on gross value in the case of work executed for M/S. IGL Ltd or not;
- (iv) Whether the principal contractor is eligible for Cenvat credit M/s. MVOPIIL made liable for the service tax as per (iii), creating a revenue neutral situation.
- (v) Notwithstanding any contrary to the (iii) & (iv), whether M/s. MVOPIIL are eligible for the benefit of composition tax as per valuation rule on their work contract services provided to M/s. IGL Ltd. as a contractor, in which they carried out construction work with material and discharged service tax without inclusion of free supply material value;
- (vi) Whether the service they had provided to NBCC except Okhla project has been exempt from the service Tax or not.
- (vii) Whether they were eligible for exclusion of the material value as per Rule 2A of Valuation Rule when they had executed the works of NBCC Okhla project with material;

- (viii) Whether they are liable to pay service tax as a sub-contractor in the case of work executed for M/S. NBCC Ltd, when principal has already discharge service tax on gross value;
- (ix) Whether the principal contractor is eligible for the Cenvat credit if M/s. MVOPIIL are made liable for service tax as per (viii), thereby creating a revenue neutral situation;
- (x) Whether they are liable for service tax as a recipient of service on the service in case of M/s. Sai Construction Co under RCM provision or not.
- (xi) Whether they are liable to pay service tax on the purchase of consumable material accounted under the head of "transportation expenses" or not under the goods transport operator service.
- (xii) Notwithstanding Para (xi), whether they are liable to pay service tax on the bills of individual transporter under the goods transport operator service or not.

21. As regards their eligibility for abatement under Notification No. 1/2006-ST for the period upto 30.06.2012 on the Commercial or Industrial Construction service, M/s. MVOPIIL stated inter alia, that they provided such service as a contractor to M/s. GSPC Gas, M/s. Indraprasth Gas Ltd, M/s. Gail Gas Ltd on the basis of comprehensive contracts/work orders; that these clients provided principal materials as free issue material; that for composite contract, a lump sum consideration is charged from the customer as a part and parcel of such service, and so it falls under clause of Commercial or Industrial Construction service; that although there can be no vivisection of a composite contract, Government went ahead to notify "Commercial or Industrial Construction Services and issued Notification 15/2004-ST dated 10.09.2004 granting abatement of 67% towards the material component and the said notification was later consolidated into Notification 1/2006-ST dated 01.03.2006; that portion of bill amount for which they had provided composite service of labour with material was eligible for 67% abatement under Notification No.15/2004-ST dated 10.09.2004; and that the customer provides only principal material for erection work and all other ancillary materials needed for such erection work are procured and by the contractor from the market. They have relied upon the case *in re Bhayana Builders P. Ltd. Vs. Commissioner of Service Tax, Delhi cited at 2013 (32) STR 49 (Tri.LB)* and reproduced entire Para-10 of the said decision, to thrust their point that since free supply value is not within the scope of the contract for the availment of abatement benefit, it is not required to be added in gross value, hence the service provider can avail the benefit of the abatement without inclusion of the value of the free. They also relied upon the decision of Hon'ble Tribunal in the case of *Cemex Engineers Vs. Commissioner of Service Tax, Cochin cited at 2010 (17) STR 534 (Tri.Bang)*, and claimed that the value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the *gross amount charged*, within the meaning of the later expression in Section 67 of the Finance Act, 1994; and that the value of free supplies by service recipient does not comprise the *gross amount charged* under Notification No. 15/2004-S.T., including the Explanation thereto as introduced by Notification No. 4/2005-S.T. Therefore, they requested to drop the demand made under the subject SCNs on the above ground.

22. As regards wrong availment of Works Contract Composition Scheme without adding value of free issue materials supplied by their clients during the period w.e.f. 01.07.2012, M/s. MVOPIIL stated that they had opted to pay service tax under works contract service on their service of providing gas pipeline laying work for M/s. Indraprasth Gas Ltd and Bhagyanagar Gas Ltd.; and that their clients had supplied MDPE line pipes, 32 mm HDPE conduit, Service Regulator/Transition Box, carbon steel pipe as free issue materials, value of which were not included while computing service tax liability under work contract composition scheme. They cited the provisions of Work Contract (Composition scheme for payment of service tax) Rules, 2007 which provided an option to discharge his service tax liability on the works contract service

provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent, and claimed that they had gone for the said option and paid service tax accordingly. They submitted the following chart and claimed that the demand made in the SCN was in excess of what is actually payable by them: -

| Year                      | Amount of Bill | Taxable Value (including S. Tax) | Rate of S. Tax | Amount of service tax |
|---------------------------|----------------|----------------------------------|----------------|-----------------------|
| 2012-13 (from 01.07.2012) | 31777209       | 31777209                         | 4.944%         | 1497051               |
| 2013-14                   | 29901845       | 29901845                         | 4.944%         | 1408701               |
| TOTAL                     | 61679054       |                                  | -----          | 2905752               |

23. M/s. MVOPIIL further submitted that they acted in the capacity of a sub-contractor where their principal contractor, M/s. Indrapastha Gas, a joint venture of GAIL, BPCL and Govt. of New Delhi, have actually discharged the tax liability on gross amount charged for the contract, and that is why they have not separately discharged service tax during the impugned period, and cited the provisions of CBEC Circular F. No. B. 43/5/97-TRU, dated 02.07.1997 to state that service tax levy was on the prime/main consultant not on the sub-consultant or associated consultant. They also drew parallel to their services to Market Research Agency, CHA services, Consulting Engineering Service, Advertising Agency, etc. and quoted Trade Notices issued by some Commissionerates which clarified that sub-contractors need not pay service tax where the principal contractors have already discharged the same. They have also placed reliance on the decision taken by Tribunal in the case of *BBR (India) Ltd. v. CCE [2006 (4) S.T.R. 269 (Tri.)* wherein it was held that in respect of Consulting Engineer, taxable service means any service provided to a client by a consulting engineer, hence there should be a nexus between the client and the service provider, and since there was no nexus between the appellant service provider and the client Southern Railways, the liability to pay service tax is on the prime consultant and not on the sub-consultant who is the appellant". To substantiate their arguments, they also cited various Circulars issued by the Board in Courier agency service vide F.No. 341/43/96 TRU dated 31-10-1996, Custom house agent service" vide F.No:b43/1/97 TRU, dated 06.06.1997, Consulting Engineer service vide F.No.B43/5/97-TRU, dated 02.07.1997, Rent-a-Cab scheme operators service vide F.No. B-43/7/97 TRU, dated 11.07.1997, Market research agency service vide F.No. B-11/3/98-TRU, dated 07.10.1998, and Interior decorator service & Architect service vide F.No.B-11/3/98 TRU, dated 07.10.1998 etc. They also cited the decisions of Tribunal in the cases of *Crompton Greaves Ltd. Vs. Commissioner of Central Excise, Mumbai-III reported in 2006(2) S.T.R. 67 (Tri-Mumbai)*, *Semac Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore reported in 2006(4) S.T.R. 475 (Tri-Bang.)*, *Synergy Audio Visual Workshop Pvt Ltd Vs. Comm. of S.T., Bangalore cited at 2008 (10) S.T.R.578 (Tri. Bang.)*, *Newton Engineering and Chemicals Vs. CC.Ex. , Vadodara reported in 2008(12) S.T.R. 378 (Tri. Ahmd.)* etc. and stated that the demand is to be reduced on the above extent.

24. M/s. MVOPIIL further contended that if they are made liable for service tax as above, then their principal contractor would be eligible for Cenvat credit and hence the demand is revenue neutral. In order to support their argument, they relied upon the decision in *National Building Construction Corporation Ltd. Vs. CCE & ST, Patna cited at 2011 (23) S.T.R. 593 (Tri. - Kolkata)*, *Cochin Port Trust Vs. Commissioner of C.Ex., Cochin reported at 2011 (21) S.T.R. 400 (Tri. - Bang.)*, and *A.P. Enterprises Vs. Commissioner of Service Tax, Chennai reported in 2008 (12) S.T.R. 585 (Tri. - Chennai)*.

25. M/s. MVOPIIL also stated in their defence reply that, notwithstanding their aforesaid submissions, they are eligible for the benefit of composition scheme as per valuation rule on their work contract services provided to M/s. IGL Ltd. as a contractor, in which they carried out construction work with material and discharged service tax without inclusion of free supply material value that they had provided gas pipeline laying work for IGL Ltd which included laying of MDPE network and GI/Copper installations for City gas distribution project on unit rate basis; that they had carried out the work of laying gas pipeline to IGL Ltd with material for

which the noticee has opted to pay service tax under work contract service; that M/s. IGL Ltd had supplied MDPE line pipes (PE 100, SDR 11 & 17.6), 32 mm HDPE conduit, PE Valve, GI/Copper pipes, Service Regulator/Transition Box as free issue materials, value of which are not included while computing service tax liability under "Work Contract" composition scheme. They cited the relevant provisions of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 and claimed that they had opted composition scheme of Work Contract for paying service tax in respect of service provided to M/s. IGL Ltd. and accordingly they have worked out their admitted service tax liability as under, besides requested to reduce demand to that extent: -

| Year    | Amount of Bill (including S.Tax) | Rate of S. Tax | Amount of service tax |
|---------|----------------------------------|----------------|-----------------------|
| 2009-10 | 18507169                         | 4.12%          | 732324                |
| 2010-11 | 35335352                         | 4.12%          | 1398210               |
| 2011-12 | 45111891                         | 4.12%          | 1785065               |
| 2012-13 | 18397576                         | 4.944%         | 866725                |
| TOTAL   | 117351988                        | ----           | 4782324               |

26. Regarding the services provided to NBCC, M/s. MVOPIL stated that they had received total six work orders from M/s. NBCC during the impugned period; that CBEC vide Circular F147/16/2011-S.T., dated 21.10.2011 has clarified that if the sub-contractors are providing works contract service to the main contractor for completion of the main contract, then service tax is obviously not leviable on the works contract service provided by such sub-contractor; that M/S. NBCC is a government authority as defined under Sl. No. (s) of Notification No. 25/2012-ST and hence exemption provided to Government is available to NBCC; and that the demand of Rs. 41,79,777/- has to be dropped on this ground.

27. M/s. MVOPIL further stated that they would have been eligible for exclusion of the material value as per valuation rule Notification No. 12/2003 for levy of service tax Rule 2A- under Service Tax (Determination of Value) Rules, 2006 effective up to 30.06.2012 and under Notification No. 24/2012-S.T., dated 6-6-2012 w.e.f 01.07.2012 onwards, assuming that they had executed the work of NBCC Okhla project with materials; that they were awarded work order under Letter of Award No. NBCC/SGM/NMB/2010/1249 dated 23-08-2010 for Construction of NBCC Centre at Plot No.2, Community Centre, Okhla Phase-I, New Delhi; that the project was started in the year 2010 with contract value of Rs. 66.64 crores; that they were issued a SCN No. No. STC14-8910&AII 1-12 dated 21-10-2011 demanding service tax of Rs.16,36,388/- on value of Rs.5,29,57,4831/- received during the Financial Year 2010-11 which was confirmed vide OIO No. STC/01/COMMR/AHD/2013 dated 12.01.2013; that they had filed an appeal against this OIO with CESTAT, Ahmedabad, and obtained stay order No. M/15058/2013 dated 28.10.2013; that they have opted for the works contract valuation rule and agreed to pay service tax accordingly, but the department has demanded service tax on gross amount on gross value, without taking in to account the factual one; that they had raised bills w.e.f 01-06-2007 for a total Bill amount of Rs. 86,06,64,546/- including service tax of Rs. 62,20,131/-; and that accordingly, demand for service tax is required to be reduced.

28. They further reiterated that when principal has already discharged service tax on gross value in the case of work executed for M/S. NBCC, then sub-contractor was not liable for the service tax; that if they discharge service tax liability in the capacity of sub-contractors, their principal contractor would have been eligible for Cenvat credit, creating a revenue neutral situation; that they had received work order from M/s. NBCC for construction of various civil work of M/s. RGPPL which they had sub-contracted to M/s. Sal Construction, Mumbai, which is a partnership firm; that as per the provisions of Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20-06-2012, the noticee is liable for payment of 50% service tax on the bills of M/s. Sal Construction; that they have agreed with the contention of the department, Produced the details of balance service tax has been deposited by the noticee against the noticee, only on the reason being that, it has not been shown separate in the ST-3 return,

demand of service under RCM provision was not justifiable & tenable; that on the basis of procedures followed by them, no short-payment of service tax happened in this case; and that even if they pay any additional service tax, the same would have been available as Cenvat credit and hence demand of Rs. 59,95,119/- was not justifiable. They also placed reliance on the decisions in the case of Popular Vehilces & Services Ltd. Vs. Commissioner of C.Ex. Kochi cited at 2010 (18) S.T.R. 493 (Tri. - Bang.), Agarwal Infracon Pvt. Ltd. Vs. CCE, Ahmedabad reported in 2010 (18) S.T.R. 39 (Tri.-Ahmd), and Sakthi Auto Components Ltd. Vs. Commissioner of C.Ex., Salem cited at 2009 (14) S.T.R. 694 (Tri-Chennai) to pursue their argument that no service tax liability would sustain.

29. M/s. MVOPIIL further stated that the SCN covering the period from 01.04.2009 to 31.03.2014 is time-barred as there is no suppression or wilful misstatement on their part. They also argued that penalty cannot be imposed upon them under Section 78 as they have not suppressed any information from the department and there was no wilful misstatement on their part; that the show cause notice has not brought any evidence/fact which can establish that they have suppressed anything from the department, and cited the case of *Steel Cast Ltd. reported in 2011 (21) STR 500 (Guj)*. Similarly, they also contended that no penalty under Section 77 can be imposed upon them as there is no short payment of service tax and they had no intention to evade payment of service tax. To support their argument, the said assessee placed reliance on the decisions of Hon'ble Supreme Court in the case of *Hindustan Steel Ltd. v The State of Orissa reported in AIR 1970 (SC) 253*, which was followed by the Tribunal in the case of *Kellner Pharmaceuticals Ltd. Vs CCE, reported in 1985 (20) ELT 80*, wherein it was held that proceedings under Rule 173Q are quasi-criminal in nature and as there was no intention on the part of the Noticee to evade payment of duty the imposition of penalty cannot be justified. Further, they also quoted a number of judgments and quasi-judicial decisions against the proposal to impose penalty; e.g. (i) *Pushpam Pharmaceuticals Company v CCE reported in 1995 (78) ELT 401 (SC)*; (ii) *CCE vs. Chemphar Drugs and Liniments cited at 1989 (40) ELT 276 (SC)*; (iii) *The Financers Vs. CCE, Jaipur - 2007 (8) STR 7 (Tri. Del)*; (iv) *Commissioner of Central Excise, Ludhiana Vs. Pannu Property Dealer - 2009 (14) S.T.R. 687 (Tri. - Del.)*; (v) *Commissioner of Central Excise, Chandigarh Vs City Motors - 2010 (19) S.T.R. 486 (P & H)*; (vi) *CCEC, Chandigarh Vs Cool Tech. Corporation (Service Tax Appeal No 47 of 2010) (P & H)*; (vii) *C C E, Commissionerate Vs First Flight Courers Ltd. - 2011(22) STR 622 (P&H)*; (viii) *Bharat Wagon & Engg. Co. Ltd. Vs. Commissioner of C. Ex., Patna, (146) ELT 118 (Tri. - Kolkata)*; (ix) *Goenka Woollen Mills Ltd. v. Commissioner of C. Ex., Shillong - 2001 (135) ELT 873 (Tri. - Kolkata)*; (x) *Bhilwara Spinners Ltd. Vs. Commissioner of Central Excise, Jaipur, 2001 (129) ELT 458 (Tri. - Del.)* (xi) *ETA Engineering Ltd. Vs. CCE, Chennai, - 2004 (174) E.L.T 19 (T-LB)*; (xii) *Flyingman Air Courier Pvt. Ltd. Vs. CCE 2004 (170) ELT 417 (T)*; and (xiii) *Star Neon Singh Vs. CCE, Chandigarh, 2002 (141) ELT 770 (T)*. Therefore, they requested to drop the subject SCN.

30. Shri Madhuraprasad Pandey, Managing Director of M/s. MVOPIIL also filed his defence reply vide letter dated 18.12.2014, *inter alia*, stating that he has not violated any of the provisions of the Act or the rules made there under and the SCN is based on presumptions and assumptions and is issued in sheer disregard of facts on record, legal provisions, decided case laws and departmental instructions, and hence no penalty could be imposed upon him; that the issue involved was of interpretation of statute for service tax liability by the main noticee; that it is already held by Hon'ble CESTAT in case of *Hindustan Jinx Ltd. v/s CCE, Jaipur - II, 2003 (152) ELT 148 (Tri - Del)* that penalty on employee is not imposable when his action is in the performance of duty to the employer and employee is not found guilty; that this proposition is also upheld by the Hon'ble Supreme Court by dismissing the appeal filed by the department in *CCE Vs. Hindustan Jinx Ltd., 2004 (169) ELT A 37 (SC)*; and that since there was no involvement of any guilt on his part in this case, no personal penalty could be imposed on noticee under section 78A of Finance Act, 1994. He also stated that section 78A of Finance Act, 1994 was inserted through Finance Bill, 2013 which is applicable from 01.04.2013 onwards and prior to 01.04.2013, there was no provision for imposing personal penalty on the Director. He

also relied upon the decisions of *Diwan Rahul Nanda Vs. Commissioner of C.Ex. Goa cited at 2013 (29) S.T.R. 544 (Tri - Mumbai)*, *Commissioner of C.Ex. & Cus Vs. Chandubhau Shiroya reported in 2010 (18) S.T.R. 526 (Guj.)*, besides the case laws reported at *2007(215)ELT-309 (Tri.Ahd)*, *2006(200)ELT-593 (Tri. Bang)*, *2006(199) ELT-705 (Tri.Del)*. He, therefore, requested to drop the proceedings initiated against him.

31. No separate defence replies have been filed by M/s. MVOPIIL against the two periodical SCNs issued to them.

### **PERSONAL HEARING**

32. M/s. MVOPIIL was offered a personal hearing on 08.12.2015, but their consultants M/s. Khandhar & Associates, Ahmedabad had submitted a letter dated 15.12.2015 seeking another date for hearing. Thereafter, another opportunity was given for hearing on 01.02.2016 wherein Shri Vipul Khandar, CA appeared on behalf of the noticees and reiterated their defence reply dated 18.12.2014, besides filed a written submission in the form of a synopsis. They also relied upon the CESTAT Larger Bench decision in the case of *Bhayana Builders Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi - 2013 (32) STR 49 (Tri.LB)* and discussed other judgments. After discussing all the points raised in the synopsis they had nothing more to say.

33. Consequent to the change in the adjudicating authority following introduction of GST regime resulting in reorganization of jurisdictions, further letters dated 30.10.2019, 02.12.2019 and 02.01.2020 were sent to the noticees offering personal hearing on 20.11.2019, 13.12.2019 and 17.01.2020, respectively. However, none appeared for the hearing nor any responses received in this regard.

### **DISCUSSION AND FINDINGS**

34. I have carefully gone through the case records, contents of all the three show cause notices, defence reply dated 18.12.2014 filed by the said assessee and the record of personal hearing. It is noticed that while the original SCN dated 17.10.2014 was issued by the Additional Director General, DGCEI, Ahmedabad, subsequent SCNs dated 18.04.2016 and 17.10.2018 were issued by the Principal Commissioner of Service Tax, Ahmedabad and the Joint Commissioner, CGST & Central Excise, Ahmedabad-North, respectively on identical grounds for covering the period 2014-15 and 2015-16. Since these are only periodical SCNs issued in terms of section 73(1A) and the issue involved is identical, I have taken up the same also for adjudication vide this proceedings, in the light of instructions issued under Board's Circular No. 362/78/97-CX dated 09.12.1997 which prescribes that where simultaneously different cases of the same noticee(s) involving the same issue are due to be adjudicated in a Commissionerate, all such cases will be adjudicated by an officer competent to decide the cases where duty involved is the highest amount. Since different issues are involved in these three SCNs, I would take up each of them separately for discussion.

35.1. The first issue which requires determination is whether M/s. MVOPIIL had wrongly availed the abatement given under Notification No. 1/2006-ST dated 01.03.2006 by not including the value of free issue materials supplied by their clients while providing Commercial or Industrial Construction Service during the period from 2009-10 to 2012-13 (till 30.06.2012), or not. I find no dispute with regard to the facts of the case; that is, the noticee was providing Commercial or Industrial Construction Service to their clients, viz. M/s. GSPC Gas, M/s. Indrapasth Gas and M/s. GAIL Gas; that these clients were supplying free issue materials which were utilized for providing taxable services; that the noticee paid service tax on 33% of the value of the gross amount charged in the bills by availing exemption provided under Notification No. 1/2006-ST; and that value of such free issue materials were not included in the gross amount charged in the bills, hence they have not considered such value for payment of service tax. The periodical SCNs dated 18.04.2016 and 17.10.2018 referred supra do not involve this issue, and therefore, the demand on this issue is restricted only to the original SCN dated 17.10.2014 involving taxable value of Rs. 5,75,26,750/- and service tax of Rs. 60,02,173/- as detailed in

Annexure-A to the said SCN and discussed in Para 14 thereto. The demand was raised on the basis of an explanation given under Sl. No. 7 of the said Notification No. 1/2006-ST which reads as: -

| 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. | This exemption shall not apply in such cases where the taxable services provided are 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.<br><i>Explanation.- 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.</i> | 33         |

35.2. I find that this issue has been finally settled by the CESTAT, Larger Bench's decision in *re Bhayana Builders Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi - 2013 (32) STR 49 (Tri.LB)* which also stands affirmed by the Hon'ble Supreme Court vide Order dated 19.02.2018 as reported in *2018 (10) GSTL 118 (SC)*. While considering this case, Hon'ble CESTAT has comprehensively discussed the provisions of Section 67 of the Finance Act, 1994, various exemptions notifications and Board's Circulars issued on the subject matter, and held that the value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the *gross amount charged*, within the meaning of the expression in Section 67 of the Finance Act, 1994; and that the value of free supplies by service recipient do not comprise the *gross amount charged* under Notification No. 15/2004-S.T., including the Explanation thereto as introduced by Notification No. 4/2005-S.T. The provisions relating to free issue materials given under Notifications No. 15/2004-ST and No. 1/2006-ST are *pari materia* and hence required to be construed together. Similarly, Hon'ble Supreme Court has also examined various judicial decisions on the subject matter in the light of the provisions of Finance Act, 1994 and held that the value of goods/material supplied free of cost by service recipient is not to be included in '*gross amount*' in terms of Section 67 of Finance Act, 1994 because no price is charged for them by assessee/service provider. While passing the said judgment, Hon'ble Apex Court has made following observations:

"18. In the first instance, no material is produced before us to justify that aforesaid basis of the formula was adopted while issuing the notification. In the absence of any such material, it would be anybody's guess as to what went in the mind of the Central Government in issuing these notifications and prescribing the service tax to be calculated on a value which is equivalent to 33% of the gross amount. Secondly, the language itself demolishes the argument of the Learned Counsel for the Revenue as it says '33% of the gross amount 'charged' from any person by such commercial concern for providing the said taxable service'. According to these notifications, service tax is to be calculated on a value which is 33% of the gross amount that is charged from the service recipient. Obviously, no amount is charged (and it could not be) by the service provider in respect of goods or materials which are supplied by the service recipient. It also makes it clear that valuation of gross amount has a causal connection with the amount that is charged by the service provider as that becomes the element of 'taxable service'. Thirdly, even when the explanation was added vide notification dated March 1, 2005, it only explained that the gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of construction service. Thus, though it took care of the value of goods and materials supplied by the service provider/assessee by including value of such goods and materials for the purpose of arriving at gross amount charged, it

*did not deal with any eventuality whereby value of goods and material supplied or provided by the service recipient were also to be included in arriving at gross amount 'gross amount charged'.*"

35.3. The ratio of the aforesaid decisions of Hon'ble Apex Court and CESTAT have been followed in a plethora of similar cases by different High Courts and Tribunals across the country, and I find no reason to take a divergent view on this settled principle of law. Therefore, I am constrained to drop the demand raised on M/s. MVOPIIL on the same grounds.

36.1. The second issue involved in this case is that during the period from 2012-13 (from July, 2012) to 2013-14, M/s. MVOPIIL had wrongly availed works contract composition scheme by not adding the value of free issue materials supplied by their clients. Here also, I find no dispute regarding the facts of the case. The periodical SCNs dated 18.04.2016 and 17.10.2018 referred supra do not involve this issue, and therefore, the demand on this issue is restricted only to the original SCN dated 17.10.2014 involving taxable value of Rs. 3,49,16,195/- and service tax of Rs. 43,15,642/- as detailed in Annexure-B to the said SCN and discussed in Para 15 thereto.

36.2. Here, I find that consequent to introduction of negative list based levy of service tax w.e.f. 01.07.2012, Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 which was introduced vide Notification No. 32/2007-ST dated 22.05.2007 was withdrawn and the said notification was rescinded vide Notification No. 32/2012-ST dated 20.06.2012. From the facts of the case, it is evident that except for the change in the statute during the month of July, 2012, the practice of assessment followed by the noticee company prior to and after introduction of negative list based levy remained the same regarding non-inclusion of the value of free issue materials for the purpose of payment of service tax. The present demand was raised on the basis of clause (h) of Section 66E of the Finance Act, 1994 read with Rule 2A of Service Tax (Determination of Value) Rules, 2006, as amended. As per the said Section 66E(h) of the Act *ibid*, service portion in the execution of a works contract is a declared service for levy of service tax. For better understanding, the text of the said Rule 2A is given below: - (*emphasis provided*)

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

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

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

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

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

*(i) labour charges for execution of the works;*

*(ii) amount paid to a sub-contractor for labour and services;*

*(iii) charges for planning, designing and architect's fees;*

*(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;*

*(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;*

*(vi) cost of establishment of the contractor relatable to supply of labour and services;*

*(vii) other similar expenses relatable to supply of labour and services; and*

*(viii) profit earned by the service provider relatable to supply of labour and services;*



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

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

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

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy per cent. of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty per cent. of the total amount charged for the works contract.

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

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

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

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon :

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

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

36.3. A simple comparison of the phrase "gross amount charged" as appearing in Section 67 of the Finance Act, vis-à-vis the same phrase used in the Explanation given under Sl. No. 7 of Notification No. 1/2006-ST dated 01.03.2006 as well as in the aforesaid Rule 2A of Service Tax (Determination of Value) Rules, 2006 would reveal that the legislative intent of its usage is the same. I find that the aforesaid decision of CESTAT, Larger Bench's in the case of *Bhayana Builders Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi* cited at 2013 (32) STR 49 (Tri.LB) and affirmed by the Hon'ble Supreme Court vide Order dated 19.02.2018 as reported in 2018 (10) GSTL 118 (SC), specifically deal with this issue to settle the statutory intent of this phrase. Hon'ble Apex Court has observed that explanation given under Section 67 removes any doubt by clarifying that the gross amount charged for the taxable service shall include the amount received towards the taxable service before, during or after provision of such service, which implies that where no amount is charged that has not to be included in respect of such materials/goods which are supplied by the service recipient, naturally, no amount is received by the service provider.

The expression 'the gross amount charged by the service provider for such service provided or to be provided by him' would lead to the obvious conclusion that the value of goods/material that is provided by the service recipient free of charge is not to be included while arriving at the 'gross amount' because of the reason that no price is charged by the assessee/service provider from the service recipient in respect of such goods/materials. This further gets strengthened from the words 'for such service provided or to be provided' by the service provider/assessee. Again, so far as the goods/materials supplied by the service recipient, no service could be considered as provided by the assessee/service provider.

36.4. The aforesaid decision of the Larger Bench of Tribunal also comprehensively deals with the meaning of the term "gross amount charged" as appearing in Section 67 for the purpose of levy of service tax. Relevant portion from the Tribunal's decision in *Bhayana Builders Pvt. Ltd* (supra) is produced below: -

*"7. Before we deal with the issue referred to us namely, whether the 'Explanation' to Notification No. 15/2004-S.T. enjoins inclusion of the value of "free supplies" used by the service provider, in the 'gross amount charged' for the service provided and such inclusion is mandatory for availment of benefits under Notification No. 15/2004-S.T., the scope of section 67 requires to be considered.*

**8. Scope of Section 67 of the Act :**

(i) *We have earlier extracted the pre and post-amended provisions of Section 67. This provision, both prior and subsequent to the amendment enacts that the value of any taxable service shall be the gross amount charged by the service provider for such service. Explanation-1 of the pre-amended provision specified various components that are included in the value of a taxable service; such as the aggregate commission or brokerage charged by a broker on the sale/purchase of securities; the commission received by the travel agent from the airline; the reimbursement received by the authorized service station from the manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer; etc. Explanation-1 also enumerated components which are to be excluded from the value of taxable service, such as an initial deposit made by the subscriber while applying for telephone a connection; or pager or facsimile; the cost of unexposed photography film or unrecorded magnetic tape; the cost of parts or accessories or consumables such as lubricants and coolants, if any sold to the customer during the course of service or repair of motor cars; air fare or rail fare collected by an air/rail the travel agent in respect of service provided; the cost of parts or other materials, if any sold to the customer during the course of providing maintenance or repair services, etc.*

(ii) *After the amendment, which substitutes Section 67 with effect from 18-4-2006, where service tax is chargeable on any taxable service with reference to its value then such value shall, in a case when the provision of service is for consideration in money, be the gross amount charged by the service provider for such service [sub-clause (i)]. Where provision of service is for a consideration not wholly or partly consisting of money, the value shall be such amount in money as, with the addition of service tax charged, is equivalent to the consideration [sub-clause (ii)]; and where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner. The Explanation to the amended Section 67 purports to define the expressions "consideration", "money" and "gross amount charged".*

(iii) *Though Revenue has contended that the value of "free supplies" to a construction service provider ought to be included in the value of taxable services for determination of the liability to tax under Section 67 of the Act in view of sub-clause (ii) of Section 67(1), we are not persuaded that this is the appropriate construction of the provision. Sub-clause (ii) applies where a taxable service is provided for a consideration which is not either wholly or partly, for money. Therefore the non-monetary consideration must still be a consideration accruing to the benefit of the service provider, from the service recipient and for the service provided.*

(iv) *The expression "consideration" occurring in the U.P. Imposition of Ceiling on Land Holdings Act, 1961 fell for consideration in *Ku. Sonia Bhatia v. State of U.P.**

and Others - AIR 1981 SC 1274 the Court explained that since the expression "consideration" was not defined in the U.P. Act, its meaning as derived from the definition of the expression in Section 2(d) of the Contract Act, 1872 could be considered. After considering the definition of the expression in the Contract Act and referring to Black's Law Dictionary; other dictionaries, English judgments and Corpus Juris Secundum, the Supreme Court held that : the inescapable conclusion that follows is that consideration means a reasonable equivalent for other valuable benefit passed on by the promisor to the promisee or by the transfer of to the transferee.

(v) Clearly, Section 67 of the Act deals with valuation of taxable services and intends to define what constitutes the value received by the service provider as "consideration" from the service recipient for the service provided. Implicit in this legislative architecture is the concept that any consideration whether monetary or otherwise should have flown or should flow from the service recipient to the service provider and should accrue to the benefit of the later. "Free supplies", incorporated into construction (cement or steel for instance), even on an extravagant inference, would not constitute a non-monetary consideration remitted by the service recipient to the service provider for providing a service, particularly since no part of the goods and materials so supplied accrues to or is retained by the service provider. Wherever a monetary consideration is charged for providing the taxable service and no non-monetary consideration forms part of the agreement between the parties, it is clause (i) that applies and the value of the taxable service would in such case be the gross amount charged by the service provider and paid by the service recipient.

(vi) In *Intercontinental Consultants and Technocrats Pvt. Ltd. v. Union of India - 2013 (29) S.T.R. 9 (Del.)*, the Delhi High Court was essentially considering a challenge of the validity of Rule 5 of the Service Tax (Determination of Value) Rules, 2006. This provision was challenged to the extent it includes reimbursement of expenses in the value of taxable services for the purpose of levy of service tax. Apart from the challenge to its constitutionality, the provision was challenged on the ground that it is ultra vires the provisions of Sections 66 and 67 of the Act. The High Court held that Section 66 of the Act levies tax only on the taxable services; that this is an inbuilt mechanism to ensure that only the taxable service shall be evaluated under the provisions of Section 67; that on construing the provisions of Sections 66 and 67(1)(i) together and harmoniously, it is clear that the value of taxable service shall be the gross amount charged by the service provider; and nothing more and nothing less than the consideration paid as a quid pro quo for the service can be brought to charge. The High Court further held that the common thread that runs through Sections 66 and 67 and 94 (the Rule making power), manifests that only the service actually provided by the service provider can be valued and assessed to tax. The High Court concluded that the provisions of Rule 5(i) of the valuation Rules are repugnant to Sections 66 and 67 of the Act since the provision purport to tax not, what is due from the service provider under the charging section, but seeks to extract something more from him by including in the valuation of the taxable service other expenditure and costs which are incurred by the service provider in the course of providing taxable service.

(vii) In the light of the clear Legislative text, the unambiguous provisions of Sections 66 and 67 of the Act and in the light of the judgment in *Intercontinental Consultants and Technocrats Pvt. Ltd. (supra)*, the conclusion is compelling and inviolable that the value "free supplies" by a construction services recipient, for incorporation in the constructions would not constitute a non-monetary consideration to the service provider nor form part of the gross amount charged for the services provided. Whether the legislature may enact that the value of "free supplies" should be included in the value of the service provided for levy of tax; and within its legislative competence, is an aspect that is speculative for the nonce and outside the purview of either the substantive appeals or the issue referred to us. In this view of the matter it is not necessary to consider the contention on behalf of the assesseees that an interpretation that Section 67 of the Act enables or mandates inclusion of the value of goods and materials incorporated into construction services (whether provided by the service provider or as a free supplies by the service recipient) would render the legislative provision unconstitutional, since value of the goods incorporated being sale of goods would be liable to sales tax, an area within

the legislative competence of State, the value of goods sold would thus be beyond the legislative competence of Parliament for levy of tax on such sale; consequently could not also constitute the value of taxable services. *Ld. Counsel* placed reliance on the judgment in *M/s. Gannon Dunkerley and Co. and Others v. State of Rajasthan and Others - (1993) 1 SCC 364*; and *State of Andhra Pradesh and Others v. Larsen & Toubro Limited and Others - (2008) 9 SCC 191*, to buttress this contention.

(viii) Since Section 67 of the Act, as currently structured does not, in our view require inclusion of free supplies in the gross value charged, for computation of the value of taxable services; and as this is the only issue presented (on Section 67 of the Act); we find no justification for a wider analysis of a speculative theatre, of potential conflict.

(ix) On the above analysis, we hold that the conclusion in *Jaihind Projects Ltd.* that Section 67 itself mandates inclusion of the value of "free supplies" by service recipients for incorporation into the service, for valuation of the taxable service, is with respect, incorrect. Similarly, the analysis in Para 24 of *Jaihind Projects Ltd.*, that since goods supplied by service recipients are essential components for providing the agreed service, these must be treated as non-monetary consideration and included in the value of the taxable service, proceeds on a flawed interpretation of the provisions of Section 67. In Para 27 another reason offered is that the explanation is intended to bring parity among all service providers providing such services. In the words of the judgment :

"Basically, the objective of the explanation is to bring parity among all the service providers providing such services. Let us take a case of two pipe laying service providers. In one case, the pipes are provided by the service receiver free of cost and in such case, the service receiver leaves it to the provider to supply the pipes or sell the pipes to him. In latter case, the value of the services would include the value of the pipes. In the former case, the value of the pipes gets excluded just because of the service receiver has provided the same free.....The objective of the explanation and the proviso is to ensure that in different situations, the liability of Service tax would remain the same and it is very difficult to find fault with this objective."

It would appear that this part of the *Jaihind Projects Ltd.* analyses was endeavouring to identify equities in a fiscal legislation (the Act) or in an exemption Notification issued thereunder. In *Union of India and Others v. Bombay Tyre International Ltd. & Others - 1983 (14) E.L.T. 1896 (S.C.)* the Court negated the assessee's, contention that uniformity of incidence is a basic character of excise (tax/duty). The contention was that the principle of uniformity of taxation requires exclusion of post-manufacturing expanses and profits, a factor which would vary from one manufacturer to another. Rejecting this contention the Court held that levy in this country has the status of a constitutional concept and the point of collection is located where the statute declares it will be and the legislature is free to adopt any standard for determining the value. Further, in *Union of India v. Nitdip Textile Processors Pvt. Ltd. - 2011 (273) E.L.T. 321 (S.C.)* the Court ruled that advantages or disadvantages to individual assesseees are accidental, inevitable and inherent in every taxing Statute. The relevant observations are :

"Advantages or disadvantages to individual assesseees are accidental and inevitable and are inherent in every taxing Statute as it has to draw a line somewhere and some cases necessarily fall on the other side of the line. The point is illustrated by two decisions of this Court. In *Khandige Sham Bhat v. Agricultural Income Tax Officer, Kasaragod and Anr. (AIR 1963 SC 591)*. *Tranvancore Cochin Agricultural Income Tax Act* was extended to Malabar area on November 1, 1956 after formation of the State of Kerala. Prior to that date, there was no agricultural income tax in that area. The challenge under Article 14 was that the income of the petitioner was from areca nut and pepper crops, which were harvested after November in every year while persons who grew certain other crops could harvest before November and thus escape the liability to pay tax. It was held that, that was only accidental and did not amount to violation of Article 14. In *Jain Bros. v. Union of India (supra)*, Section 297(2)(g) of *Income Tax Act, 1961* was challenged because under that Section proceedings completed prior to April, 1962 was to be dealt under the old Act and proceedings completed after the said date had to be dealt with under the *Income Tax Act, 1961* for the purpose of imposition of penalty. April 1, 1962 was the date of commencement of *Income Tax Act, 1961*. It was held that the crucial date for imposition of penalty was the date of completion of assessment or the formation of satisfaction of authority that such act had been committed. It was also held that for the application and implementation of the new Act, it was necessary to fix a date and provide for continuation of penalty proceedings. It was also held that the mere possibility that some officer might intentionally delay the disposal of a case could hardly be a ground for striking down the provision as discriminatory."

(x) In *Moriroku UT India (P) Ltd. v. State of U.P.* - 2008 (224) E.L.T. 365 (S.C.), the issue for consideration was whether Revenue could impose sales tax on the value of moulds (toolings) supplied by appellant's customer i.e. Honda Siel Cars India Ltd., free of cost, under Section 3 of the UP Trade Tax Act, 1948. In particular, the question considered was whether the amortization cost of toolings was includable in the sale price of auto components as in the case of excise duty under Central Excise Act, 1944; and whether Revenue was right in equating sales tax to excise duty. After considering the provisions of Sections 2(h), 2(i) and 3 of the 1948 Act, the Supreme Court explained the principle and the concepts, under excise duty and sales tax, as follows :

"19. U.P. Trade Tax Act, 1948 is a self-contained code for levy of tax on sale or purchase of goods in Uttar Pradesh. Clause (bb) of Section 2 defines the expression "trade tax" to mean a tax payable under the Act. Clause (h) of Section 2 defines the expression "sale" to include transfer of the right to use any goods for any purpose for cash or deferred payment or other valuable consideration. In this case we are concerned only with Section 3 and not with Section 3-F of the 1948 Act. Section 3 inter alia provides that every dealer shall for each assessment year pay a tax at the rates provided under Section 3-A, Section 3-D or Section 3-H on his turnover of sales or purchases or both, as the case may be, which shall be determined in such manner as may be prescribed. Section 3-F provides for tax on transfer of right to use any goods or goods involved in execution of works contract. The definition of "sale" in Section 2(h) is in two parts. The first part covers the normal sale and the second part covers deemed sales. In the present case, we are concerned with sale of auto components to the buyer. It is a normal sale. The aggregate amount for which these auto parts/components are sold constitutes the turnover relating to such sales within the meaning of turnover in Section 2(i). Therefore, it is on such turnover that liability of tax under Section 3 of the 1948 Act has to be determined. Therefore, sales-tax or trade-tax under the 1948 Act is leviable on sale, whether actual or deemed, and for every sale there has to be a consideration. On the other hand, excise duty is a levy on a taxable event of "manufacture" and it is calculated on the "value" of manufactured goods. Excise duty is not concerned with ownership or sale. The liability under the excise law is event-based and irrespective of whether the goods are sold or captively consumed. Under the excise law, the liability is there even when the manufacturer is not the owner of raw material or finished goods (as in the case of job workers). Excise duty, therefore, is independent of ownership (see : *Ujagar Prints & Ors. v. Union of India & Ors.* also reported in [(1989) 3 SCC 488]. Therefore, for sales-tax purposes, what has to be taken into account is the consideration for transfer of property in goods from the seller to the buyer. For this purpose, tax is to be levied on the agreed consideration for transfer of property in the goods and in such a case cost of manufacture is irrelevant. As compared to the sales-tax law, the scheme of levy of excise duty is totally different. For excise duty purposes, transfer of property in goods or ownership is irrelevant. As stated, excise duty is a duty on manufacture. The provisions relating to measure (Section 4 of 1944 Act read with Excise Valuation Rules, 2000) aim at taking into consideration all items of costs of manufacture and all expenses which lead to value addition to be taken into account and for that purpose Rule 6 makes a deeming provision by providing for notional additions. Such deeming fictions and notional additions in excise law are totally irrelevant for sales-tax purposes."

*From the above decision, the principle is clear that for the purposes of levy of sales tax it is the consideration for the transfer of the property in goods from the seller to the buyer, that has to be taken into consideration and tax must be levied on the consideration for the transfer of property, unlike in the case of excise duty where the levy is event based and irrespective of whether goods are sold or captively consumed, the liability inheres even where the manufacturer is not the owner of the raw material or finished goods. This principle is equally applicable to the levy of service tax under the provisions of the Act and in particular in the context of the specific language in Section 67 of the Act."*

36.5. Furthermore, the provisions of Rule 2A *ibid* specifically requires that there should be a transfer of value of the property involved in the execution of the works contract, evidently from the service provider to the service recipient which has also never taken place in the present case. Perusal of the said Rule 2A makes it abundantly clear that it speaks about inclusion of value which are directly or indirectly accrued to the service provider from service recipient in the form of service charges, labour, commission, consumables, supplies, and such other things. When the highest echelons of the judicial authorities have considered and interpreted the statute, I find no reason to go beyond such settled provisions of law. I am, therefore, of the view that the ratio of the aforesaid judgments of Hon'ble Supreme Court and CESTAT is squarely applicable in this case, even for the period subsequent to 01.07.2012. Accordingly, I hold that the value of free issue materials supplied by the service recipients (clients) to M/s. MVOPIIL while providing

works contract services cannot form part of the taxable value and hence the demand for service tax raised on this ground cannot be confirmed.

37.1. The third issue involved in this case is non-payment of service tax by M/s. MVOPIIL on their services provided to M/s. Indrapasth Gas Ltd. during the period from 2009-10 to 2012-13. Here also, the periodical SCNs dated 18.04.2016 and 17.10.2018 referred supra do not involve this issue, and therefore, the demand on this issue is restricted only to the original SCN dated 17.10.2014 involving taxable value of Rs. 11,73,51,988/- and service tax of Rs. 1,24,66,245/- as detailed in Annexure-C to the said SCN and discussed in Para 16 thereto. It is alleged that during this period, M/s. MVOPIIL had provided taxable services to M/s. Indrapasth Gas Ltd. involving total value of Rs. 12,98,07,194/-, as per the ledger account produced by the noticee company, which was inclusive of service tax. I find that the noticee company has put up their defence on the grounds that they are not liable to pay service tax in the capacity as a sub-contractor when the principal contractor has already paid the same on the works executed by them; that even if they pay service tax as a sub-contractor the same would be available to the principal contractor as Cenvat credit which would create a revenue neutral situation; that even if they are liable to pay service tax in this case, the same could be charged only on the labour value and not on the materials; and that such service tax, if payable by them on labour charges would be worked out to Rs. 47,82,324/- as against the demand of Rs. 1,24,66,245/- made in the SCN.

37.2. The definition of 'taxable services' given under section 65(105)(zzzza) of the Finance Act, 1994 which existed during the relevant period, covered services provided to any person by any other person in relation to the execution of works contract. There is no dispute that the M/s. MVOPIIL had entered into a works contract with M/s. Indrapasth Gas and had provided such works contract services to M/s. Indrapasth Gas for a consideration which flowed from the said M/s. Indrapasth Gas to M/s. MVOPIIL, and I find no merit in their argument that the noticee company, who are service providers in this case, are not required to pay service tax. In fact, I find from the statement dated 09.10.2014 of Shri Mathuraprasad Pandey, Managing Director of M/s. MVOPIIL, as discussed in Para 11 of the SCN, where he had admitted in answer to Qn. Nos. 3 to 5 that the value charged by them from M/s. Indrapasth Gas was inclusive of service tax, besides agreed to pay their service tax liability at an early date.

37.3. I have examined the contents of various Circulars issued by the Board during the period 1996 to 1998 which were vehemently cited by M/s. MVOPIIL in their defence reply to submit that sub-contractors are not liable to pay service tax if the principal contractor has already paid service tax on the services rendered to the client. However, I find that none of these circulars will help in their defence as Board had issued its Master Circular No. 96/7/2007-S.T., dated 23.08.2007 superseding all its previous all circulars, clarifications and communications, other than Orders issued under section 37B of the Central Excise Act, 1944 (as made applicable to service tax by section 83 of the Finance Act, 1994), issued from time to time by the CBEC, DG (Service Tax) and various field formations on all technical issues including the scope and classification of taxable services, valuation of taxable services, export of services, services received from outside India, scope of exemptions and all other matters on levy of service tax. Para 6 of the master circular specifies that with the issue of this circular, all earlier clarifications issued on technical issues relating to service tax stood withdrawn. The operative part of the said circular speaks about the comprehensive review exercise carried out by the Government before withdrawing such previous circulars, which I quote as follows: -

*"Service Tax was introduced in the year 1994 with three taxable services. At present, one hundred services are specified as taxable services. Since the introduction of service tax, number of clarifications in the form of circulars/ instructions/letters have been issued by the Central Board of Excise & Customs (CBEC), Director General (Service Tax) and field formations.*

*2. Government decided to undertake a comprehensive review of all the clarifications issued since the introduction of service tax on matters relating to service tax in various forms by different authorities keeping in view the changes that had been made in the statutory provisions, the judicial pronouncements and other relevant factors, and appointed a Committee under Shri T.R. Rustagi, former Chief Commissioner of Customs & Central Excise and Director General of Inspection to undertake the review of the clarifications.*

3. Comments, views and suggestions were also sought from the trade and industry associations, departmental officers and interested persons.

4. Shri T.R. Rustagi submitted his report to the Government. The report of Shri T.R. Rustagi was placed on the CBEC web site for comments and suggestions.

5. Taking into consideration the report submitted by Shri T.R. Rustagi and the views and suggestions received from the trade and industry associations, departmental officers and other stakeholders, it is proposed to codify and issue a comprehensive circular on the technical issues.

6. This circular supersedes all circulars, clarifications and communications, other than Orders issued under section 37B of the Central Excise Act, 1944 (as made applicable to service tax by section 83 of the Finance Act, 1994), issued from time to time by the CBEC, DG (Service Tax) and various field formations on all technical issues including the scope and classification of taxable services, valuation of taxable services, export of services, services received from outside India, scope of exemptions and all other matters on levy of service tax. With the issue of this circular, all earlier clarifications issued on technical issues relating to service tax stand withdrawn."

37.4. The said master circular also specifically clarify about taxability of services rendered by sub-contractors, which I quote below: -

| Reference code     | Issue   | Clarification  |
|--------------------|---|--|
| 999.03/<br>23-8-07 | A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work. | A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.<br><br>Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided. |

37.5. Similarly, I have also examined the case laws cited by the noticee company on the above context, and find that these cases pertained to the period prior to issuance of the aforesaid master circulars, besides most of them being stay orders cannot be cited precedent. Therefore, I hold that M/s. MVOPI are liable to pay service tax on the services rendered to M/s. Indraprasth Gas by execution of their works contract, and the taxable value shall be the gross value charged by them from their clients as per the ledger account produced by them as discussed in Para 16.1 of the SCN and worked out in Annexure-C thereto.

38.1. The fourth issue involved in this case is non-payment of service tax by M/s. MVOPI on the construction works done for M/s. NBCC during the period from 2009-10 to 2015-16. In this case, the periodical SCNs dated 18.04.2016 and 17.10.2018 referred supra also involve this issue, and therefore, the demand of service tax is extended to the subsequent period as tabulated below: -

| Sl No. | SCN No. & date                                  | Period involved                    | Total taxable value as per SCN | Total Service Tax demanded |
|--------|---|------------------------------------|--------------------------------|----------------------------|
| 1      | F.No. DGCEI/AZU/36-188/2014-15 dated 17.10.2014 | 2009-10 to 2013-14                 | Rs. 91,81,62,365/-             | Rs. 6,93,67,000/-          |
| 2      | STC/4-89/O&A/2015-16 dated 18.04.2016           | 2014-15 to 2015-16 [Till Sept '15] | Rs. 77,25,70,338/-             | Rs. 9,67,77,771/-          |
| 3      | STC/4-06/O&A/Omni/                              | 2015-16 [Oct to                    | Rs. 10,78,60,435/-             | Rs. 1,55,77,453/-          |

|  |                          |          |                  |                  |
|--|--------------------------|----------|------------------|------------------|
|  | 2017-18 dated 17.10.2018 | Mar '16] |                  |                  |
|  | Total                    |          | Rs. 1798593138/- | Rs. 18,17,22,224 |

38.2. It is alleged that during the above period, M/s. MVOPIIL had provided taxable services to M/s. NBCC for construction of their various projects at Delhi, Mizoram, Mahipalpur, Bhopal, etc. which included construction of M/s. NBCC Center at Okhla, New Delhi; that the work orders executed for M/s. NBCC was for construction of civil structures where the scope of the work order was to supply material and to provide service; and that there was no free issue material supplied by M/s. NBCC. The SCN quoted the clarification issued by CBEC vide F.No. 332/16/2010-TRU dated 24.05.2010 to state that the services rendered by the contractors to M/s. NBCC are taxable as such services cannot be considered to have rendered directly to the Government. Service Tax has been demanded @ 4.12% of the gross amount charged by the noticee company from M/s. NBCC for the period upto 30.06.2012 in terms of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. For the period w.e.f. 01.07.2012, Service Tax has been demanded at the prevailing rate on 40% of the total amount charged for the works contract as per the value determined under Rule 2A of the Service Tax (Determination of Value) Rules, 2006. The SCN also proposes to appropriate Rs. 10,00,000/- which was paid by the noticee company on this issue during the course of investigation.

38.3. M/s. MVOPIIL has cited Board's Circular No. 147/16/2011-S.T., dated 21.10.2011 to argue that they are not liable to pay service tax. However, a plain reading of the said circular makes it abundantly clear that the works carried out by the noticee company do not qualify the items of works specified in the circular, such as roads, airports, railways, transport terminals, bridges, tunnels and dams and hence they are not eligible for the benefits described in the circular. I also find that since no free issue materials are supplied by the recipient clients in this case as specifically mentioned in Para 17.13 of the SCN, unlike the services rendered to M/s. GSPC Gas, M/s. GAIL Gas, etc. as discussed earlier, the gross amount charged by the noticee company included the value of property transferred during the execution of the works contract and hence service tax is leviable on such total amount. I find no other defence put up by the noticee, and on the other hand, they had admitted their liability and paid part amount of Rs. 10 Lakhs during the investigation. Accordingly, I hold that they are liable to pay service tax on the works contract services rendered to M/s. NBCC as discussed and demanded in Para 17 of the original SCN dated 17.10.2014 and worked out in Annexure-D thereto, and also demanded in the aforesaid two periodical SCNs dated 18.04.2016 and 17.10.2018 discussed supra.

39.1. The fifth issue involved in this case is non-payment of the 50% share of service tax payable on the taxable services provided by M/s. Sai Construction, Mumbai to the noticee company. Here also, no dispute exists on the facts of the case. The periodical SCNs dated 18.04.2016 and 17.10.2018 referred supra do not involve this issue, and therefore, the demand on this issue is restricted only to the original SCN dated 17.10.2014 involving taxable value of Rs. 24,25,20,997/- and service tax of Rs. 59,95,119/- as detailed in Annexure-E to the said SCN and discussed in Para 18 thereto. In this case, M/s. MVOIPL had sub-contracted certain civil works to the said M/s. Sai Construction, Mumbai which is a partnership firm. It is stated that as per Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20.06.2012, M/s. MVOIPL is liable to pay 50% of service tax on the bills raised by M/s. Sai Construction. The said Notification No. 30/2012-ST has notified the service portion in execution of works contract by any individual, HUF or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate located in the taxable territory and the extent of service tax payable thereon by the person liable to pay service tax for the purpose of the said sub-section, as given below: -

| Sl. No. | Description of a service                        | Percentage of service tax payable by the person providing service | Percentage of service tax payable by the person receiving the service |
|---------|---|---|---|
| 2.      | in respect of services provided or agreed to be | Nil   | 100%  |



|     |   |     |      |
|-----|---|-----|------|
|     | <i>provided by a goods transport agency in respect of transportation of goods by road</i>   |     |      |
| 8.  | <i>in respect of services provided or agreed to be provided by way of supply of manpower for any purpose</i>  | 25% | 75 % |
| 9.  | <i>in respect of services provided or agreed to be provided in service portion in execution of works contract</i>   | 50% | 50%  |
| 10. | <i>in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory</i> | Nil | 100% |

39.2. In their defence reply, the noticee company has worked out a reverse formula to show that they are eligible for Cenvat credit of 50% of the service tax paid by the sub-contractor and that the scheme available under the aforesaid Notification No. 30/2012-ST dated 20.06.2012 would be revenue neutral, etc. I am of the view that payment of service tax is a statutory requirement to be complied by the persons who are providing taxable services in the manner and at such value, rate and calculation as provided in the statute, and such persons cannot judge the wisdom of the statute or the purpose of levy of such tax so that they could determine the manner and method for compliance. I find that during the course of recording his statement on 09.10.2014, Shri Mathuraprasad Pandey, Managing Director of the noticee company had admitted their liability arising out of the aforesaid Notification No. 30/2012-ST. With no valid reasons submitted by the noticee company to disprove their tax liability, I hold that M/s. MVOPIL are liable to pay 50% of the service tax on the services received from M/s. Sai Constructions, Mumbai as discussed in Para 18 of the SCN and as worked out as per Annexure-E thereto.

40.1. The sixth and last issue involved in this case is non-payment of service tax by the noticee company on Transport of Goods by Road Service used for transportation of construction materials from the source of purchase to their construction site. Here also, the periodical SCNs dated 18.04.2016 and 17.10.2018 referred supra do not involve this issue, and therefore, the demand on this issue is restricted only to the original SCN dated 17.10.2014 involving taxable value of Rs. 4,57,29,387/- and service tax of Rs. 53,71,545/- as detailed in Annexure-F to the said SCN and discussed in Para 20 thereto. It is stated that Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d)(5) of the Service Tax Rules, 1994 defines the person who is required to pay service tax as the one who pays or is liable to pay the freight either himself or through his agent for the transportation of such goods in a goods carriage; that this provision existed till 30.06.2012; and that after introduction of negative list based levy of service tax, the entire service tax on transport of goods by road transport is cast on the recipient of service specified under Notification No. 30/2012-ST dated 20.06.2012. As per Para 20 of the SCN, M/s. MVOPIL have admitted their total liability of service tax amounting to Rs. 53,71,545/- leviable on taxable value of Rs. 4,57,29,387/- as worked out in Annexure-F thereto, and have also paid up the entire tax amount of Rs. 53,71,545/- together with interest of Rs. 17,60,140/- which is required to be confirmed and appropriated.

40.2. Although the noticee company has stated that the taxable value worked out for determining their liability did not constitute necessary element of transportation, they have failed to substantiate their argument with cogent reasons and records. They have also raised the issue of revenue neutrality which does not warrant any consideration for discharging one's tax liability which is worked out as per statute.

41. M/s. MVOPIL also submitted that the demand is time-barred but could not explain any grounds and evidences to substantiate their point. Similarly, they have also argued against the proposal to impose penalty upon them under Section 77 and Section 78 of the Finance Act, 1994 and on Shri Mathuraprasad Pandey, Managing Director under Section 78A of the Act and have cited a number of case laws. While, Para 22 to 27 of the SCN described the contraventions along



with the manner and method of mis-declaration and suppression of facts with intent to evade service tax, they have not refuted these charges with cogent reasons or evidences. While the SCN quoted the instances where the noticee company was fully aware about their taxability and had even avoided declaring the details of all taxable services in respect of M/s. NBCC while filing their ST Returns, they have not come up with any evidences to deny such charges. Even the case laws cited by them in the defence reply are of general nature without specifically pointing out its applicability in their case. Therefore, I hold that the noticee company have deliberately contravened the relevant provisions of the statute with intent to evade service tax and hence extended period is applicable for computation of demand, besides they are liable for penalty under Section 77 and 78 of the Act *ibid*. Similarly, I also hold that Shri Mathuraprasad Pandey as admittedly the responsible person of M/s. MVOPIL and admittedly in charge of all its activities during the period when the aforesaid contraventions and evasion of service has taken place. By his acts of omission and commission, he has also rendered himself liable for penalty under Section 78A of the Finance Act, 1994.

42. In the light of foregoing discussions, I pass the following order:-

### ORDER

- (i) I drop the demand of Service Tax amounting to Rs. 60,02,173/- [*Rupees Sixty Lakhs Two Thousands One Hundred and Seventy Three only*] raised on M/s. M.V. Omni Projects (India) Ltd., Ahmedabad vide Para 28(i) of the SCN dated 17.10.2014 and indicated in Annexure-A thereto, on the grounds and circumstances discussed in Para 35 above;
- (ii) I drop the demand of Service Tax amounting to Rs. 43,15,642/- [*Rupees Forty Three Lakhs Fifteen Thousand Six Hundred and Forty Two only*] raised on M/s. MVOPIL vide Para 28(ii) of the SCN dated 17.10.2014 and indicated in Annexure-B thereto, on the grounds and circumstances discussed in Para 36 above;
- (iii) I confirm demand of Service Tax totalling Rs. 1,24,66,245/- [*Rupees One Crore Twenty Four Lakhs Sixty Six Thousand Two Hundred and Forty Five only*] not paid/short-paid by M/s. MVOPIL under Works Contract Service during the period 2009-10 to 2013-14, leviable on the taxable value of Rs. 11,73,51,988/- as shown in Para 28(iii) read with Annexure-C of the SCN dated 17.10.2014, under Section 73(2) of the Finance Act, 1994;
- (iv) I confirm demand of Service Tax totalling Rs. 18,17,22,224/- [*Rupees Eighteen Crores Seventeen Lakhs Twenty Two Thousand Two Hundred Twenty Four only*] not paid/short-paid by M/s. MVOPIL under Works Contract Service during the period 2009-10 to 2015-16, leviable on the taxable value of Rs. 179,85,93,138/- as shown in Para 28(iv) read with Annexure-D of the SCN dated 17.10.2014 and the two periodical SCNs dated 18.04.2016 and 17.10.2018, under Section 73(2) of the Finance Act, 1994. Since M/s. MVOIPL has deposited an amount of Rs. 10,00,000/- during the course of investigation, I order appropriation of the amount against this confirmed demand;
- (v) I confirm demand of Service Tax totalling Rs. 59,95,119/- [*Rupees Fifty Nine Lakhs Ninety Five Thousand One Hundred Nineteen only*] not paid by M/s. MVOPIL under Works Contract Service, as a recipient of the service, during the period 2012-13 to 2013-14, as shown in Para 28(v) read with Annexure-E of the SCN dated 17.10.2014, under Section 73(2) of the Finance Act, 1994;
- (vi) I confirm demand of Service Tax totalling Rs. 53,71,545/- [*Rupees Fifty Three Lakhs Seventy One Thousand Five Hundred Forty Five only*] not paid by M/s. MVOPIL under Transport of Goods by Road Service, during the period 2009-10 to 2013-14, leviable on the taxable value of Rs. 4,57,29,387/- as shown in Para 28(vi) read with Annexure-F of the SCN dated 17.10.2014, under Section 73(2) of the

Finance Act, 1994. Since M/s. MVOIPL has already paid the amount of Rs. 53,71,545/- during the course of investigation, I order appropriation of the amount against this confirmed demand;

- (vii) I order that M/s. MVOIPL should pay interest at the applicable rates under Section 75 of the Finance Act, 1994 on the above confirmed demand of service tax, and also order appropriation of an amount of Rs. 17,60,140/- deposited by them towards interest, during the investigation;
- (viii) I impose penalty of Rs. 10,000/- [*Rupees Ten Thousand only*] on M/s. MVOIPL under Section 77(2) of the Finance Act, 1994 for their failure to file the correct ST-3 Return showing the correct value of taxable service and the actual amount of service tax payable, etc.;
- (ix) I also impose a penalty of Rs. 20,55,55,133/- [*Rupees Twenty Crores Fifty Five Lakhs Fifty Five Thousand One Hundred Thirty Three only*] on M/s. MVOIPL under Section 78 of the Finance Act, 1994;
- (x) The amount of penalty imposed under Section 78 of the Finance Act, 1994 as above shall be reduced to twenty-five percent of the service tax determined under Section 73(2) as per Para 42(iii) to (vi) above, provided 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; and
- (xi) I impose penalty of Rs. 10,00,000/- [*Rupees Ten Lakhs only*] on Shri Mathuraprasad Pandey, Managing Director of M/s. MVOIPL under Section 78A of the Finance Act, 1994.
- (xii) The three (03) Show-Cause-Notices issued to M/s. M. V. Omni Projects (India) Ltd., Ahmedabad as referred above, are accordingly disposed of.

  
(DR. BALBIR SINGH)  
COMMISSIONER

CGST & CEX, AHMEDABAD NORTH

F.NO. STC/4-57/OA/2014-15

Date: 20.02.2020

BY REGD POST AD/S.P

To

DIN - 20200264WT000034DC36

- (1) M/s. M. V. Omni Projects (India) Ltd  
74, New York Tower-A,  
S. G. Highway, Thaltej, Ahmedabad.
- (2) Shri Mathuraprasad Pandey,  
Managing Director,  
M/s. M. V. Omni Projects (India) Ltd  
74, New York Tower-A,  
S. G. Highway, Thaltej, Ahmedabad.

Copy to: -

1. The Principal Chief Commissioner, CGST & Central Excise Zone, Ahmedabad.
2. The Deputy/Assistant Commissioner of CGST & C.Excise, Division-VII, Ahmedabad-North.
3. The Superintendent of CGST & Central Excise, Range-II, Division-VII, Ahmedabad-North.
4.  Guard file.