



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/4-44/Uravi/OA/2017-18

आदेश की तारीख/Date of Order : - 06.01.2021

जारी करने की तारीख/Date of Issue :- 06.01.2021

DIN No:20210164WT000000C1CC

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / *Marut Tripathi*

संयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 32 /JC/MT/2020-21

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.

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

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

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

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

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

(67) उक्त अपील की प्रति।

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

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

(67) Copy of accompanied Appeal.

(68) Copies of the decision or, one of which at least shall be certified copy, the order appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

कारण बताओ सूचना/ The Show Cause Notice No. DGCEI/AZU/36-55/2015-16 dated 20.10.2015 issued by the Additional Director General, DGCEI, Ahmedabad Zonal Unit, Ahmedabad, issued to M/s. Uravi Construction, 120-121, Ravija Plaza, Opp: Rambaug, Thaltej-Shilaj Road, Ahmedabad.



**Brief Facts of the Case:**

M/s. Uravi Construction, 120-121, Ravija Plaza, Opp. Rambaug, Thaltej Shilaj Road, Thaltej, Ahmedabad (herein after referred to as "Uravi Construction" for the sake of brevity], a firm engaged in Construction related activities, is having Service Tax Registration No. AFSP3143EST001 under the categories of "Construction of Residential Complex Service"; "Commercial or Industrial Construction Service"; & "Works Contract Service".

**2. INTELLIGENCE GATHERED BY THE DEPARTMENT:**

2.1 Intelligence gathered by the Directorate General of Central Excise Intelligence, Ahmedabad Zonal Unit, Ahmedabad (here-in-after referred to as DGCEI for the sake of brevity) indicated that although M/s. Uravi Construction. had been engaged in Civil Construction work & executing Works Contract continuously since its inception, however, they had neither paid Service Tax nor regularly filed Service tax Returns from 2010 onwards on the taxable services provided by them although they are regularly charging service tax on the gross amount charged towards provision of aforesaid taxable services, from their clients.

**3. ACTION TAKEN ON THE INTELLIGENCE:**

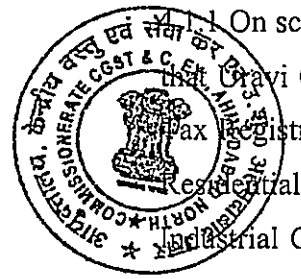
3.1 Acting on the above intelligence, a search was carried out on 18.11.2014, at the premises of M/s. Uravi Construction at 120-121, Ravija Plaza, Opp. Rambaug, Thaltej Shilaj Road, Thaltej, Ahmedabad. During the course of search, the various documents, as listed in Annexure A to the panchnama were seized under the provisions of Finance Act, 1994

3.2 During the course of Search it was gathered that M/s Uravi Construction was established in january'1999 as a proprietorship firm with Shri Sanjay Prajapati as the Proprietor. M/s Uravi Construction was engaged in execution of Works Contract of their various clients and undertake Work Contract relating to residential building, retail outlets, BTS Towers, Sump, Pumphouse, Industrial Structure, Structural Steel fabrication, Boring, Media convergence node building, optical fibre cable ducting, POI, sax, intermediate shelter building, mass precast of pull box, erection of precast structures, specialized works in chemical industry, power plant projects, cement plant project, substation cum control room.

**4. Scrutiny Of The Documents Withdrawn From M/S. Uravi Construction :**

4.1 Seized file A/37, withdrawn under panchnama dated 18.11.2014 drawn at the premises of M/s Uravi Construction contains documents viz. Service Tax Registration Certificate and ST- 3 Returns filed by M/s Uravi Construction.

On scrutiny of the said documents withdrawn from M/s Uravi Construction, it was revealed that M/s Uravi Construction took registration with Service Tax department and was allotted Service Tax Registration No. AFSP3143EST001 on 12.10.2005 under the category of "Construction of Residential Complex Service". Subsequently, they added the categories of "Commercial or Industrial Construction Service" & "Works Contract Service" to their Service Tax Registration in 2007.



4.1.2 It was further revealed that M/s. Uravi Construction filed ST-3 Returns for the period 01.04.2009 to 30.09.2009 on 10.09.2011 and for the period 01.10.2009 to 31.03.2010 on 19.09.2011.

4.2 The constitution of M/s Uravi Construction was changed to Partnership firm w.e.f. 01.04.2013 and after that they took fresh Service Tax Registration No. AADFU6776ESD001 under the category of "Construction of Residential Complex Service"; "Construction Services other than residential complex, including commercial/ industrial buildings or civil structures"; & "Works Contract Service".

4.3 As the constitution was changed w.e.f. 01.04.2013 and in turn M/s Uravi Construction took fresh Service Tax Registration, the Service Tax demand in this Show Cause Notice is restricted upto 31.03.2013 and for the later period a separate Show Cause Notice was being proposed.

4.4. From scrutiny of records withdrawn it appeared that M/s Uravi Construction had paid Service Tax upto the Financial Year 2009-10 and filed ST-3 Returns upto the said period only. From 01.04.2010, it appeared that they had neither paid their Service Tax liability nor filed ST-3 returns for the subsequent period.

4.5 Whereas it appeared that M/s Uravi Construction had executed Works Contract relating to both Commercial Construction & Residential Construction for their various clients, therefore it appeared that they had provided Works Contract Service to their clients.

#### 5. Scrutiny of Works Contract Executed By M/S Uravi Construction:

5.1 Scrutiny of records withdrawn from M/s Uravi Construction further revealed that they had executed Construction Contract relating mainly to the following clients during the period from F.Y. 2009-10 to 2012-13:

- (i) M/s Indiabulls Wholesales Services Ltd.;
- (ii) M/s ABB Ltd.;
- (iii) M/s Sahara City Homes;
- (iv) M/s Archon Engicon Pvt. Ltd.;
- (v) M/s Quality Technocast Pvt. Ltd.

Some of the Work Orders are discussed here-in-under:

#### 5.2 Work Order awarded by M/s ABB Ltd

5.2.1 M/s ABB Ltd. had awarded M/s Uravi Construction Work Order dated 21.12.2008 for execution of Civil Works for 220kV Switchyard, Control Room cum MRS building, Tower & Equipment foundation, Cable Trench, Road etc. of Tata Motors Ltd., at Sanand

On scrutiny of the said Work Order it was revealed that scope of work in the above mentioned Work Order includes Earth work, Concrete Work, Miscellaneous Work, Fencing and Gate, Structural Steel Work, and Road Work etc., all civil works pertaining to substation at Tata Motors Limited, Sanand, as per detailed Architectural, Annexure, Structural drawings and as per



specifications of Tata Motors Limited/ ABB and as per direction and instruction of the Resident Manager/ Engineer.

5.2.3 The total value of the said Contract was Rs. 2,80, 12,204. The details of each item of work along with the Bill of material cum price schedule had also been specified with the terms and conditions enclosed with the contract.

5.2.4 From the Work Order it is clear that Mis Uravi Construction had been awarded subcontract of the Civil Work for construction of Building of Tata Motors Ltd., at Sanand by M/s ABB Ltd. As per the terms and conditions of the contract, unit rates of the contract is inclusive of VAT on Works Contract but Service Tax is to be charged extra.

5.2.5 Further, M/s Uravi Contruaction had raised monthly RA bills towards execution of the said Works Contract to M/s ABB Ltd. M/s Uravi Construction had charged M/s ABB Ltd. separately for supply & service portion of the said Works Contract and had charged Service Tax on the labour part of the Works Contract i.e. they had charged & collected Service Tax at full rate on the Service portion of the Works Contract.

### 5.3 Work Order awarded by M /s Archon Engicon Pvt. Ltd.

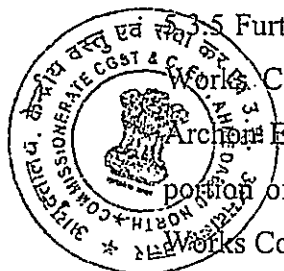
5.3.1 M/s Archon Engicon Pvt. Ltd. had awarded M/s Uravi Construction Work Order No. AEPL/HO/1001 dated 22.08.2009 for execution of Civil Works for foundation of shed.

5.3.2 On scrutiny of the said Work Order it was revealed that scope of work in the above mentioned Work Order includes Excavation of soil; Providing, Supplying & laying rubble soiling with stone boulders; Providing and laying Plain cement concrete; Providing and laying in position RMC Mix; Providing and erecting in position form work, whuttering and boxing below FCL; Providing, cutting, bending to shape, fixing and tying in position Reinforcement Steel in all RCC works; Sand filling in excavated area; fixing in position foundation bolts and plates; Providing and laying in position RMC Mix; Brick Masonary; Single Coat smooth finish plaster; Bitumin paint over concrete surface.

5.3.3 The details of each item of work along with the Bill of material cum price schedule had also been specified with the terms and conditions enclosed with the contract.

5.3.4 From the Work Order it is clear that M/s Uravi Construction had been awarded contract of the Civil Work for construction of foundation shed by M/s Archon Eng icon Pvt. Ltd. As per the terms and conditions of the contract, the rates of the contract are inclusive of VAT on Works Contract but Service Tax was to be charged extra.

5.3.5 Further, M/s Uravi Contruaction had raised monthly RA bills towards execution of the said Works Contract to M/s Archon Engicon Pvt. Ltd. M/s Uravi Construction had charged Mis Archon Engicon Pvt. Ltd. service tax extra for the consolidated contract i.e. supply & service portion of the said Works Contract i.e. they had charged Service Tax at composite rate under Works Contract Composition Scheme.



5.4 Work Order awarded by M/s Indiabulls Wholesale Services Ltd., M/s Indiabulls Constructions Ltd. & M/s Indiabulls Infrastructure Company Limited:

5.4.1 M/s Indiabulls Wholesale Services Ltd., M/s Indiabulls Constructions Ltd. & M/s Indiabulls Infrastructure Company Limited had awarded the following contracts to M/s Uravi Construction for construction of Residential Building, Commercial Complex, Underground water tanks etc.

S.No	Name of the firm awarding contract	Work Order No.& Date	Amount of Contract (Rs)	Scope of work
1	Lndiabulls Wholesale Services Ltd.	3344000177 dtd. 23.04.2008	5,17,24,400/	Construction of commercial complex at Hemadri Mill, Ahmedabad.
2	Lndiabulls Wholesale Services Ltd.	3344000182 dtd. 24.04.2008	31,44,802/-	Construction of compound wall, Site Office & Misc Works at Hemadri Mill, Ahmedabad.
3	Lndiabulls Wholesale Services Ltd.	3344000259 dtd. 08.06.2009	13,68,875/-	Under Ground Water Tanks.
4	Lndiabulls Wholesale Services Ltd.	3344000325 dtd. 30.01.2010	4,34,58,820/-	Construction of building block Bii, B17 & B21 of Ahmedabad project.
5	Lndiabulls Wholesale Services Ltd.	3344000355 dtd. 19.03.2010	3,72,97,221/-	Construction of building block B5 & B 10 of Central Park, Ahmedabad project
6	Lndiabulls Wholesale Services Ltd.	3344000362 dtd. 26.03.2010	12,06,006/-	External Drainage Work
7	Lndiabulls Wholesale Services Ltd.	3344000367 dtd. 05.04.2010	2,52,493	Construction of Marketing office at IWSL - Ahmedabad.
8	Lndiabulls Wholesale Services Ltd.	3344000381 dtd. 26.05.2010	21,35,262/-	External Storm Water Work.
9	Lndiabulls Wholesale Services Ltd.	3344000403 dtd. 16.07.2010	1,03,443	Civil work for corstruction of Cable trench for HT Cable of Torrent at Central Park Project, Himadri Mills,
10	Lndiabulls Wholesale Services Ltd.	3344000429 dtd. 26.10.2010	63,27,367/-	Finishing Works.
11	Lndiabulls Wholesale Services Ltd.	7001001638 dtd, 11.03.2011	2,47,638/	Excavation, filling and old structure breaking works for site cleaning & leveling at Himadri Project,
12	Lndiabulls Wholesale Services Ltd.	7001001852 dtd. 06.04.2011	4,29,054/-	Construction of Senior Citizen's sitting area At Central Park, Ahmedabad.
13	Lndiabulls Wholesale Services Ltd.	7001101871 dtd. 09.08.2011	7,89,66,688/-	Construction of building block 1, 6, 7 & 8 for phase Ilof Central Park, Ahmedabad
14	Lndiabulls Wholesale Services Ltd.	3228100790 dtd. 26.09.2012	4, 76,82,633/-	Construction of building block 1, 6, 7 & 8 for Phase- II of Central Park, Ahmedabad Project



5.4.2 On scrutiny of the above said Work Orders it was revealed that scope of work in the above mentioned Work Orders includes construction of the whole Residential Complex, commercial complex etc. for M/s Indiabulls and includes Earth Work; Concrete Work; Reinforced Cement Concrete; Brick Work; Wood Work; Flooring; Finishing Work; Water Supply; Water Proofing; Electrical distribution boards; etc.

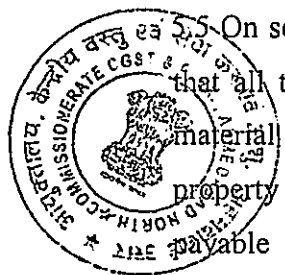
5.4.3 The details of each item of work along with the Bill of material cum price schedule had also been specified with the terms and conditions enclosed with the contract.

5.4.4 From the Work Order it was clear that M/s Uravi Construction had been awarded contract of the Civil Work for construction of residential buildings/ commercial complexes etc. by M/s. Indiabulls Wholesale Services Ltd., M/s Indiabulls Constructions Ltd. & M/s Indiabulls Infrastructure Company Limited. As per the terms and conditions of the contract, M/s Indiabulls Wholesale Services Ltd., M/s Indiabulls Constructions Ltd. & M/s Indiabulls Infrastructure Company Limited reimbursed Service Tax at composite rate under "Works Contract Service" to M/s Uravi Construction.

5.4.5 Further, M/s Uravi Construction had raised monthly RA bills towards execution of the said Works Contract to M/s Indiabulls Wholesale Services Ltd., M/s Indiabulls Constructions Ltd. & M/s Indiabulls Infrastructure Company Limited. M/s Uravi Construction had charged M/s Indiabulls Wholesale Services Ltd., M/s Indiabulls Constructions Ltd. & M/s Indiabulls Infrastructure Company Limited, Service Tax for the consolidated contract i.e. supply & service portion of the said Works Contract i.e. had charged Service Tax at composite rate under Works Contract Composition Scheme.

5.4.6 On scrutiny of Work Orders awarded by M/s Indiabulls Wholesale Services Ltd., M/s Indiabulls Constructions Ltd. & M/s Indiabulls Infrastructure Company Limited it was observed that although the Contracts are consolidated contracts and WCT will be applicable, however, it had been specified that Service Tax would be reimbursed at the rate of 3.40% of the total contract value. It appeared that M/s Indiabulls Wholesale Services Ltd., M/s Indiabulls Constructions Ltd. & M/s Indiabulls Infrastructure Company Limited had wrongly quoted the rate as that of "Construction of Residential Complex Service" by calculating Service Tax at the rate of 33%, giving 67% abatement towards value of material. However, as the above contracts involves transfer of property in goods which are leviable to tax as sale of goods in as much as VAT/ WCT was payable on them on the supply portion of the contract the same would be classifiable under "Works Contract Service" and the Service Tax chargeable thereon under composition scheme would be at the rate of 4.12% and not at the rate of 3.40%.

5.5 On scrutiny of the various Work Contracts awarded to M/s Uravi Construction it was clear that all the above mentioned Work Orders are composite contracts involving both supply of material as well as provision of service. Further, these construction contracts involves transfer of property in goods which are leviable to tax as sale of goods in as much as VAT/ WCT was payable on them on the supply portion of the contract. Therefore, these contracts will be classifiable under the category of Works Contract and the service provided by M/s Uravi



Construction is classifiable under the category of "Works Contract Service".

6. Statement of The Responsible Person Of M/S Uravi Construction:

6.1 STATEMENT DATED 18.11.2014 OF SHRI SANJAY PRAJAPATI, PROPRIETOR OF M/S. URAVI CONSTRUCTION :

6.1.1 And whereas, statement of Shri Sanjay Prajapati, Proprietor of M/s. Uravi Construction, was recorded on 18.11.2014 under Section 14 of the Central Excise Act, 1944 as made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994. The question asked and the answers given by Shri Sanjay Prajapati, is reproduced below:-

*"Ques 1.: Please peruse panchnama dated 18. 11.2014 drawn at the office premises of M/s Uravi Construction at 120-121, Ravija Plaza, Opp. Rambaug, Thaltej Shilaj Road, Thaltej, Ahmedabad and offer your comments.*

*Ansi: I have perused panchnama dated 18.11.2014 drawn at the office premises of Mis Uravi Construction at 120-121, Ravija Plaza, Opp. Rambaug, Thaltej Shilaj Road, Thaltej, Ahmedabad and state that I was present during the entire search proceedings and put my dated signature on the panchnama in token of the correctness of the facts mentioned therein.*

*Ques 2: Please provide the details of works carried out by M/s Uravi Construction.*

*Ans2: Mis Ura vi Construction is engaged in execution of Works Contract of their various clients and undertake Work Contract relating to residential building, retail outlets, BTS Towers, Sump, Pumphouse, Industrial Structure, Structural Steel fabrication, Boring, Media convergence node building, optical fibre cable ducting, POI, sax, intermediate shelter building, mass precast of pull box, erection of precast structures, specialized works in chemical industry, power plant projects, cement plant project, substation cum control room.*

*Ques3: Please state the constitution of Mis Ura vi Construction, date of incorporation and the responsible persons looking after the business.*

*Ans3: I state that Mis Uravi Construction was established in January'1999 as a proprietorship firm and I was the Proprietor. The constitution of Mis Uravi Construction was changed and it was converted into a Partnership Firm w.e.f. 01.04.2013. The following are the Partners in the firm:*

- (i) Shri Sanjay Prajapati;*
- (ii) Shri Hiran Patel;*
- (iii) Shri Jayant Patel;*
- (iv) Shri Jay Patel.*

*However, I state that I look after all the work relating to purchase, sale, administration of M/s Uravi Construction.*

*Ques4: Please state whether M/s Uravi Construction is registered with Service Tax, paid their Service Tax liability and filed ST-3 Returns.*

*Ans4: I state that Mis Uravi Construction is registered with Service Tax department. M/s Construction was allotted Service Tax Registration No. AFSP3143EST001 on 18.11.2014 under the category of "Construction of Residential Complex Service". Subsequently, on 01.04.2013 added the category of "Commercial or Industrial Construction Service" in our Service Tax*





Registration and in 2007 we got the category of "Works Contract Service" added to our Service Tax Registration.

After the constitution was changed to Partnership firm w.e.f. 01.04.2013 fresh Service Tax Registration was taken and we were allotted Service Tax Registration No. AADFU6776ESD001 under the category of "Construction of Residential Complex Service"; "Construction Services other than residential complex, including commercial/ industrial buildings or civil structures"; "Works Contract Service".

I further state that we have paid Service Tax upto the Financial Year 2009-10 and filed ST-3 Returns upto the said period. From 01.04.2010 we have neither paid our Service Tax liability nor filed ST-3 Returns for the subsequent period.

**Ques 5:** Please provide a copy of Partnership Deed executed for changing the constitution of Mis Uravi Construction from Proprietorship concern to Partnership Firm.

**Ans 5:** Partnership Deed executed for changing the constitution of M/s Uravi Construction from Proprietorship concern to Partnership Firm is not readily available with me but I will submit the same in a day or two.

**Ques 6:** Please state the various clients for whom you have provided various taxable services during the last 5 years.

**Ans 6:** I state that during the last 5 years we have provided Commercial or Industrial Construction Service and Works Contract Service to the following clients:

- (i) Mis Indiabulls Wholesales Service Ltd.;
- (ii) Mis ABB Ltd.;
- (iii) Mis Sahara City Homes;
- (iv) Mis Archon Engicon Pvt. Ltd.;
- (v) Mis Quality Technocast Pvt. Ltd. etc.

**Ques 7:** Please provide the copies of various Contract/ Work Orders given to you by your various clients for execution and the invoices/ RA bills raised by you in respect of the same.

**Ans 7:** The copies of various Contract/ Work Orders given to us by our various clients for execution, alongwith invoices/ RA Bills raised by us for execution of the same ha.ve already been withdrawn by you under the panchnama dated 18.11.2014 drawn at our office premises. I further state that we have hired a consultant for managing our financial records and hard copies of all Contract/ Work Orders along with its invoices/ RA bills are sent to their office for entering into our financial accounts and maintaining the same. If any of the Contract/ Work Orders or the invoices/ RA Bills raised towards their execution are not available, in the records withdrawn, I would submit the same immediately.

**Ques 8:** Please state whether you are charging and collecting Service Tax extra in the invoices/ RA bills raised towards provision of service/ execution of Work Contract from your

Yes, we are charging and collecting Service Tax extra in the invoices/ RA bills raised towards provision of service/ execution of Work Contract from our clients.



Ques 9: Please provide the details, for the period from April'2009 to October'2014, of the gross amount charged by you, service tax payable thereon, which have been charged & collected by you, from your various clients in lieu of provision of the taxable service.

Ans 9: I state that the details of year-wise service tax short-paid/ non-paid liability had been withdrawn under panchnama dated 18.11.2014. I further state that as per the worksheets available in seized file No. All withdrawn under panchnama dated 18.11.2014 from our office premises, the short paid/ non paid Service Tax liability for the period from 01.04.2009 to 31.12.2012, for Mis Uravi Construction (Proprietorship Firm), is as under:

S.No.	Period	Rate of ST	Taxable Value (Rs.)	ST payable (Rs.)	ST paid (Rs.)	Differential ST liability (Rs.)
1	2009-10	4.12%	35428920	1230130	211805	1018325
2	2009-10	12.360/0	16639838	1760643	1467716	292927
3	2010-11	4.120/a	65480617	2227438	0	2227438
4	2010-11	10.30%	16928001	1764629	0	1764629
5	2011-12	4.12%	56371547	2157860	0	2157860
6	2011-12	10.30%	36801932	3790601	0	3790601
7	2012-13 (unto 31.12.2012)	4.940/o	33989955	2224791	0	2224791
8	2012-13 (unto 31.12.2012)	12.36%	66136504	8174473	0	8174473
		TOTAL	327777314	23330565	1679521	21651044

Further for the period from 01.01.2013 to 31.03.2013 our Service Tax liability, as per books of account, for Mis Uravi Construction (Proprietorship Firm), is as under-

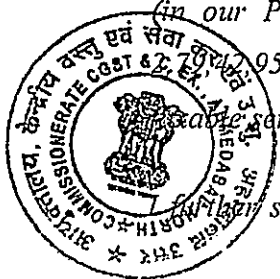
S.No.	Period	Value (Service Portion of Work Contract) (Rs.)	ST payable (Rs.)	ST paid (Rs.)	Differential ST liability (Rs.)
1	01.01.2013	2785166	3562037	0	356203
	TOTAL	2785166	3562037	0	3562037

For the period from 01.04.2013 to 31.03.2014, our Service Tax liability, as per books of account, for Mis Uravi Construction (Partnership Firm), is as under:

S.No.	Period	Value (Service Portion of Work Contract) (Rs.)	ST payable (Rs.)	ST paid (Rs.)	Differential liability (Rs.)
1	01.04.13 to	87677084	2729878	0	2729878
	TOTAL	87677084	2729878	0	2729878

I accept that, as mentioned above, we have not paid Service Tax to the tune of Rs. 2,52,13,081/- (in our Proprietorship Firm) & Rs. 27,29,878/- (in our Partnership Firm) totaling to Rs. 2,79,42,959/-, charged and collected by us, for the period from 01.04.2009 to 31.03.2014 for the taxable services provided by us to our various clients.

I state that during the Financial Year 2014-15 (upto October'2014) no Sale proceeds



have been booked in our financial records.

*Ques 10: Doyou agree to payServiceTax tothetune o/Rs. 2,79,42,959-, charged and collected by you, which was not paid by your firm namely Mis Uravi Construction leviabale on the taxable services provided by your firm to various clients?*

*Ans 10: Yes, I fully agree that our firm, Mis Uravi Construction, has not discharged the aforesaid service tax liability, to the tune ofRs. 2,79,42,959/-, charged and collected by us, in respect of taxable services provided by us to our clients for the financial year 01.04.2009 to 31.03.2014. I further confirm that we have not filed any Service Tax Returns from 01.04.2010 onwards. I will submit the details of payment of short paid/ non paid service tax liability alongwith proof as soon as possible.*

*Ques 11: Please state as to whether your company has provided any other taxable service besides stated here-in-above. If so, please provide the details thereof?*

*Ans 11: No.*

*Ques 12: Has your company disclosed the aforesaid facts of non-payment of Service Tax on taxable services provided to various clients, in any form, to the department?*

*Ans 12: No.*

*Ques 13: Doyou want tosay anything inthe matter?*

*Ans 13: No.*

**6.2 FURTHER STATEMENT DATED 17.10.2015 OF SHRI SANJAY PRATAPATI, PROPRIETOR OF M/S. URAVI CONSTRUCTION :**

6.2.1 And whereas, a further statement of Shri Sanjay Prajapati, Proprietor of M/s. Uravi Construction, was recorded on 17.10.2015 under Section 14 of the Central Excise Act, 1944 as made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994. The question asked and the answers given by Shri Sanjay Prajapati, is reproduced below:

*"Ques 1: Please peruse your statement dated 18. 11.2014 recorded at the office premises of Mis Uravi Construction at 120-121, Ravija Plaza, Opp. Rambaug, Thaltej Shilaj Road, Thaltej, Ahmedabad and offer your comments.*

*Ans 1: I have perused my earlier statement dated 18.11.2014 recorded at the office premises of Mis Uravi Construction at 120-121, Ravija Plaza, Opp. Rambaug, Thaltej Shilaj Road, Thaltej, Ahmedabad and confirm the correctness of the facts mentioned therein.*

*Ques 2: Please provide the details of works carried out by Mis Ura vi Construction.*

*Ans 2: Mis Uravi Construction is engaged in execution of Works Contract of their various clients and undertake Work Contract relating to residential building, retail outlets, BTS Towers, Sump, Pumphouse, Industrial Structure, Structural Steel fabrication, Boring, Media convergence node building, optical fibre cable ducting, POI, sax, intermediate shelter building, precast of pull box, erection of precast structures, specialized works in chemical industry, power plant projects, cement plant project, substation cum control room.*

*Ques 3: Please state the constitution of Mis Uravi Construction, date of incorporation and*



*the responsible persons looking after the business.*

*Ans 3: I state that M/s Uravi Construction was established in January'1999 as a proprietorship firm and I was the Proprietor. The constitution of Mis Uravi Construction was changed and it was converted into a Partnership Firm w.e.f. 01.04.2013. The following are the Partners in the firm:*

- (i) Shri Sanjay Prajapati;*
- (ii) Shri Hiran Patel;*
- (iii) Shri Jayant Patel;*
- (iv) Shri Jay Patel*

*However, I state that I look after all the work relating to purchase, sale, administration of M/s Uravi Construction.*

*Ques 4: Please give Service Tax registration details o/M/s Uravi Construction.*

*Ans 4: I state that Mis Uravi Construction is registered with Service Tax department. M/s Uravi Construction was allotted Service Tax Registration No. AFSP3143EST001 on 12. 10. 2005 under the category of "Construction of Residential Complex Service". Subsequently, we added the category of "Commercial or Industrial Construction Service" in our Service Tax Registration and in 2007 we got the category of "Works Contract Service" added to our Service Tax Registration.*

*After the constitution was changed to Partnership firm w.e.f. 01.04.2013 fresh Service Tax Registration was taken and we were allotted Service Tax Registration No. AADFU6776ESD001 under the category of "Construction of Residential Complex Service"; "Construction Services other than residential complex, including commercial/ industrial buildings or civil structures"; "Works Contract Service".*

*Ques 5: Please give details of Service Tax paid and ST-3 Returns filed by Mis Uravi Construction.*

*Ans 5: I state that Mis Uravi Construction have paid Service Tax upto the Financial Year 2009-10 and filed ST-3 Returns upto the said period only. From 01.04.2010 we have neither paid our Service Tax liability nor filed ST-3 Returns for the subsequent period.*

*Ques 6: Please provide a copy of Partnership Deed executed for changing the constitution of M/s Uravi Construction from Proprietorship concern to Partnership Firm.*

*Ans 6: I am hereby submitting a copy of Partnership Deed executed for changing the constitution of M/s Uravi Construction from Proprietorship concern to Partnership Firm.*

*Ques 7: Please state the various clients for whom you have provided various taxable services during the last 5 years.*

*Ans 7: I state that during the last 5 years we have provided Works Contract Service mainly to the following clients:*

- (i) Indiabulls Wholesales Service Ltd.;*
- (ii) ABB Ltd.;*
- Sahara City Homes;*



(iv) *Mis Archon Engicon Pvt. Ltd.;*

(v) *M/s Quality Technocast Pvt. Ltd. etc.*

*Ques 8: Please describe in brief about the Contracts awarded to Mis Uravi Construction by the above mentioned clients.*

*Ans 8: The brief of various Contracts awarded to us is as under:*

**(i) Work Order awarded by Mis ABB Ltd.:**

*Mis ABB Ltd. had awarded Mis Uravi Construction Work Order dated 21.12.2008 for execution of Civil Works for 220kV Switchyard, Control Room cum MRS building, Tower & Equipment foundation, Cable Trench, Road etc. of Tata Motors Ltd., at Sanand. The scope of work in the above mentioned Work Order included Earth work, Concrete Work, Miscellaneous Work, Fencing and Gate, Structural Steel Work, and Road Work etc., all civil works pertaining to substation at Tata Motors Limited, Sanand, as per detailed Architectural, Annexure, Structural drawings and as per specifications of Tata Motors Limited/ ABB and as per direction and instruction of the Resident Manager/ Engineer.*

*The total value of the said Contract is Rs. 2,80,12,204. The details of each item of work alongwith the Bill of material cum price schedule has also been specified with the terms and conditions enclosed with the contract. Mis Uravi Construction have been awarded sub-contract of the Civil Work for construction of Building of Tata Motors Ltd., at Sanand by Mis ABB Ltd. As per the terms and conditions of the contract, unit rates of the contract is inclusive of VAT on Works Contract but Service Tax is to be charged extra.*

*We have raised monthly RA bills towards execution of the said Works Contract to Mis ABB Ltd. Mis Uravi Construction has charged Mis ABB Ltd. separately for supply & service portion of the said Works Contract and have charged Service Tax on the labour part of the Works Contract and have thus charged & collected Service Tax on the Service portion of the Works Contract.*

**(ii) Work Order awarded by Mis Archon Enaicon Pvt. Ltd.**

*M/s Archon Engicon Pvt. Ltd. had awarded Mis Uravi Construction Work Order No. AEPUH011001 dated 22.08.2009 for execution of Civil Works for foundation of shed. The scope of work in the above mentioned Work Order includes Excavation of soil; Providing, Supplying & laying rubble soiling with stone boulders; Providing and laying Plain cement concrete; Providing and laying in position RMC Mix; Providing and erecting in position form work, whuttering and boxing below FCL; Providing, cutting, bending to shape, fixing and tying in position Reinforcement Steel in all RCC works; Sand filling in excavated area; fixing in position foundation bolts and plates; Providing and laying in position RMC Mix; Brick Masonary; Single Coat smooth finish plaster; Bitumin paint over concrete surface.*

*The details of each item of work alongwith the Bill of material cum price schedule has also been specified with the terms and conditions enclosed with the contract. Mis Uravi Construction have been awarded contract of the Civil Work for construction of foundation shed by Mis Archon*

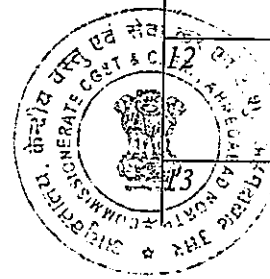


Engicon Pvt. Ltd. As per the terms and conditions of the contract, the rates of the contract is inclusive of VAT on Works Contract but Service Tax is to be charged extra. Mis Uravi Contraction have raised monthly RA bills towards execution of the said Works Contract to Mis Archon Engicon Pvt. Ltd. Mis Uravi Construction has charged Mis Archon Engicon Pvt. Ltd. extra for the consolidated contract i.e. supply & service portion of the said Works Contract and have charged Service Tax at composite rate under Works Contract Composition Scheme.

(iii) Work Order awarded by Mis Indiabulls Wholesale Services Ltd. & Mis Indiabulls Constructions Ltd.

M/s Indiabulls Wholesale Services Ltd. & Mis Indiabulls Constructions Ltd. had awarded the following contracts to Mis Uravi Construction for construction of Residential Building:

S.No.	Name of the firm awarding contract	Work Order No. & Date	Amount Contract (Rs.)	Scope of work
1	Indiabulls Wholesale Services Ltd.	3344000177 dtd. 23.04.2008	5,17,24,400	Construction of commercial complex a Hemadri Mill. Ahmedabad.
2	Indiabulls Wholesale Services Ltd.	3344000182 dtd. 24.04.2008	31,44,802/-	Construction of compound wall, Site Office & Misc Works a Hemadri Mill. Ahmedabad.
3	Indiabulls Wholesale Services Ltd.	3344000259 dtd. 08.06.2009	13,68,875/-	Under Ground Water Tanks.
4	Indiabulls Wholesale Services Ltd.	3344000325 dtd. 30.01.2020	4,34,58,820/-	Construction of building block Bill 817&821 of
5	Indiabulls Wholesale Services Ltd.	3344000355 dtd. 19.03.2010	3,72,97,221	Construction of building block B5 & BIO of Central Park. Ahmedabad project
6	Indiabulls Wholesale Services Ltd.	3344000362 dtd. 26.03.2010	12,06,006/-	External Drainage Work
7	Indiabulls Wholesale Services Ltd.	3344000367 dtd. 05.04.2010	2,52,493	Construction of Marketing office at IWSL - Ahmedabad
8	Indiabulls Wholesale Services Ltd.	3344000381 dtd. 26.05.2010	21,35,262/-	External Storm Water Work.
9	Indiabulls Wholesale Set-vices Ltd.	3344000403 dtd. 16.07.2010	1,03,443	Civil work for construction of Cable trench for HT Cable on Torrent at Central Park Project, Himadri Mills, Ahmedabad.
10	Indiabulls Wholesale Services Ltd.	3344000429 dtd. 26.10.2010	63,27,367/-	Finishing Works.
11	Indiabulls Infrastructure Company Ltd.	7001001638 dtd. 11.03.2011	2,47,638	Excavation, filling and old structure breaking works for site cleaning & leveling at Himadri Project Ahmedabad.
12	Indiabul/s Infrastructure Company Ltd.	7001001852 dtd. 06.04.2011	4,29,054/-	Construction of Senior Citizen's sitting area at Central Park, Ahmedabad.
13	Indiabul/s Infrastructure	7001101871 dtd.	7,89,66,688	Construction of building block 1, 6,7 & 8 for phase



	Company Ltd.	09.08.2011		II of Central Park. Ahmedabad
14	Indiabulls Constructions Ltd.	3228100790 dtd. 26.09.2012	4,76,82,633	Construction of building block 1, 6, 7 & 8 for Phase-II of Central Park. Ahmedabad project

On scrutiny of the above said Work Orders it is revealed that scope of work in the above mentioned Work Orders includes construction of the whole Residential Complex for Mis Indiabulls and includes Earth Work; Concrete Work; Reinforced Cement Concrete; Brick Work; Wood Work; Flooring; Finishing Work; Water Supply; Water Proofing; Electrical distribution boards; etc.

The details of each item of work alongwith the Bill of material cum price schedule has also been specified with the terms and conditions enclosed with the contract. Mis Uravi Construction have been awarded contract of the Civil Work for construction of residential buildings by Mis Indiabulls Wholesale Services Ltd. & Mis Indiabulls Constructions Ltd. As per the terms and conditions of the contract, Mis Indiabulls Wholesale Services Ltd. & Mis Indiabulls Constructions Ltd reimbursed Service Tax at composite rate under "Works Contract Service" to Mis Uravi Construction. Mis Uravi Construction have raised monthly RA bills towards execution of the said Works Contract to Mis Indiabulls Wholesale Services Ltd. & Mis Indiabulls Constructions Ltd. Mis Uravi Construction has charged Mis Indiabulls Wholesale Services Ltd. & Mis Indiabulls Constructions Ltd., Service Tax for the consolidated contract i.e. supply & service portion of the said Works Contract and have charged Service Tax at composite rate under Works Contract Composition Scheme.

Ques 9: Please state whether you are charging and collecting Service Tax extra in the invoices/ RA bills raised towards provision of service/ execution of Work Contract from your clients.

Ans 9: Yes, we are charging and collecting Service Tax extra in the invoices/ RA bills raised towards provision of service/ execution of Work Contract from our clients.

Ques 10: Please provide month-wise details of income earned during the period from April'2009 to March'2013, of the gross amount charged by you, service tax charged & collected by you, from your various clients in lieu of provision of the taxable service.

Ans 10: I am providing month-wise details of income earned during the period from April'2009 to March'2013, of the gross amount charged by us, service tax charged & collected by us, from our various clients in lieu of provision of the taxable service of "Works Contract", as under:

The worksheet showing month-wise details of income earned during the F.Y. 200910 and Service Tax charged and collected thereon under "Works Contract Service" on full rate. Service Tax paid and Short paid by Mis Uravi Contraction is as per Annexure-A1 attached;

The worksheet showing month-wise details of income earned during the F.Y. 200910 and Service Tax charged and collected thereon under "Works Contract Service" under Composition



Scheme. Service Tax paid and Short paid by Mis Uravi Contraction is as per Annexure-A2 attached;

(iii) The worksheet showing month-wise details of income earned during the F. Y. 2010 11 and Service Tax charged and collected thereon under "Works Contract Service" on full rate. Service Tax paid and Short paid by Mis Uravi Contraction is as per Annexure-BI attached;

(iv) The worksheet showing month-wise details of income earned during the F.Y. 201011 and Service Tax charged and collected thereon under "Works Contract Service" under Composition Scheme. Service Tax paid and Short paid by Mis Uravi Contraction is as per Annexure-B2 attached;

(v) The worksheet showing month-wise details of income earned during the F. Y. 2011- 12 and Service Tax charged and collected thereon under "Works Contract Service" on full rate. Service Tax paid and Short paid by Mis Uravi Contraction is as per Annexure-CI attached;

(vi) The worksheet showing month-wise details of income earned during the F. Y. 201112 and Service Tax charged and collected thereon under "Works Contract Service" under Composition Scheme. Service Tax paid and Short paid by Mis Uravi Contraction is as per Annexure-C2 attached;

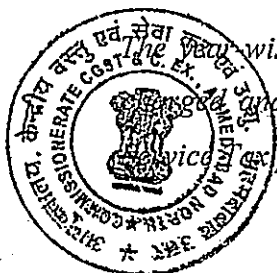
(vii) The worksheet showing month-wise details of income earned during the F. Y. 2012- 13 and Service Tax charged and collected thereon under "Works Contract Service" on full rate. Service Tax paid and Short paid by Mis Uravi Contraction is as per Annexure-DI attached;

(viii) The worksheet showing month-wise details of income earned during the F.Y. 2012- 13 and Service Tax charged and collected thereon under "Works Contract Service" under Composition Scheme. Service Tax paid and Short paid by Mis Uravi Contraction is as per Annexure-D2 attached.

The year-wise details of income earned during the F. Y. 2009-10 to 2012-13 and Service Tax charged and collected thereon under "Works Contract Service" on full rate: Service Tax paid and short paid by Mis Uravi Construction, Ahmedabad is as under:

S.No.	FY	Taxable Value	Service Tax charged	Service Tax liability of Service recipient under partial reverse charge	Service Tax payable	Service Tax paid	Service Tax short paid
1	2009-10	16639838	1760643	0	1760643	1467716	292927
2	2010-11	17136876	1760076	0	1760076	0	1760076
3	2011-12	36801932	3790601	0	3790601	0	3790601
4	2012-13	87154636	10772288	4483331	6288957	0	6288957
	TOTAL	157733282	18083608	4483331	13600277	1467716	12132561

The year-wise details of income earned during the F. Y. 2009-10 to 2012-13 and Service Tax charged and collected thereon under "Works Contract Service" under Composition Scheme: Service Tax paid and short paid by Mis Uravi Construction, Ahmedabad is as under:





(Amount in Rs.)

S.NO.	F.Y.	Taxable Value	Service Tax charged	Service Tax liability of Service recipient under partial reverse charged	Service Tax payable	Service Tax paid	Service Tax short paid
1	2009 10	35428796	1279684	0	1279684	211806	1067879
2	2010 11	65480654	2227401	0	2227401	0	2227401
3	2011 12	5637165G	2144309	0	2144309	0	2144309
	2012 13	48428637	2420744	1020237	1400507	0	1400507
	TOTAL	205709739	8072136	1020237	7051901	211806	6840096

I accept that, as mentioned above, we have not paid Service Tax to the tune of Rs. 1,89,72,567/- (in our Proprietorship Firm), charged and collected by us, for the period from 01.04.2009 to 31.03.2013 for the taxable services provided by us to our various clients.

Ques 10: Do you agree to pay Service Tax to the tune of Rs. 1,89,72,657/-, charged and collected by you, which was not paid by your firm namely Mis Uravi Construction leviable on the taxable services provided by your firm to various clients?

Ans 10: Yes, I fully agree that our firm, Mis Uravi Construction, has not discharged the aforesaid service tax liability, to the tune of Rs. 1,89,72,657/-, charged and collected by us, in respect of Works Contract Service provided by us to our clients for the financial year 01.04.2009 to 31.03.2013. I further confirm that we have not filed any Service Tax Returns from 01.04.2010 onwards. I further state that after initiation of inquiry by DGCEI, we have made the following payments towards our unpaid Service Tax liability till 31 03 2013

S.No.	STC Code	Challan No.	Date	Amount (Rs.)
1	AFSPP3143EST001	92	21.01.2015	165000C
2	AFSPP3143EST001	494	03.12.2014	40000
3	AFSPP3143EST001	676	31.12.2014	1500000
				3550000

Ques 11: Please state as to whether your company has provided any other taxable service besides stated here-in-above. If so, please provide the details thereof?

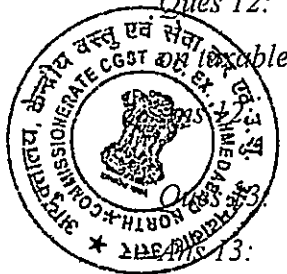
Ans 11: No.

Ques 12: Has your company disclosed the aforesaid facts of non-payment of Service Tax on taxable services provided to various clients, in any form, to the department?

No.

Do you want to say anything in the matter?

No.



## 7. OUTCOME OF ABOVE STATEMENTS:

7.1. From the above statements it appeared that:

- (i) M/s. Uravi Construction had executed Works Contracts for their various clients for both Residential as well as Commercial Construction projects.
- (ii) M/s. Uravi Construction was established in January'1999 as a proprietorship firm and the constitution was changed and it was converted into a Partnership Firm w.e.f. 01.04.2013.
- (iii) M/s. Uravi Construction was allotted Service Tax Registration No. AFSP3143EST001 on 12.10.2005 under the categories of "Construction of Residential Complex Service"; "Commercial or Industrial Construction Service" & "Works Contract Service".
- (iv) After the constitution was changed to Partnership firm w.e.f. 01.04.2013 they were allotted Service Tax Registration No. AADFU6776ESD001 under the categories of "Construction of Residential Complex Service"; "Construction Services other than residential complex, including commercial/ industrial buildings or civil structures"; "Works Contract Service".
- (v) As the construction contracts executed by them involved transfer of property in goods which are leviable to tax as sale of goods, the same are classifiable under "Works Contract" and the service provided by them was "Works Contract Service" as defined under sub-clause zzzza of section 65(105) of Finance Act, 1994 (till 30.06.2012) & under section 66E(h) of the Finance Act, 1994 (w.e.f. 01.07.2012).
- (vi) M/s. Uravi Construction had paid Service Tax upto the Financial Year 2009-10 and filed ST-3 Returns upto the said period. From 01.04.2010 they had neither paid their Service Tax liability nor filed ST-3 Returns for the subsequent period.
- (vii) M/s Uravi Construction had been charging and collecting Service Tax extra in the invoices/ RA bills raised towards provision of service/ execution of Work Contract from their clients.

## 8. LEGAL PROVISIONS:-

### 8.1 WORKS CONTRACT SERVICE (Till 30.06.2012):-

8.1.1 And whereas, Section 65(105) (zzzza) of the Finance Act, 1994 defines the term 'Taxable Service' 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;*

8.1.2 And whereas, the Explanation under this sub-clause defines the term "Works Contract" for this purpose as under:

*"For the purposes of this sub-clause, "works contract" means a contract wherein,-*

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

*such contract is for the purposes of carrying out,-*

*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 airconditioning 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 commissioning (EPC) projects;"*

8.1.3 Para 9.1 of MF(DR) Circular No. B1/16/2007-TRU dated 22.05.2007 clarifies that

"Works contract is a composite contract for supply of goods and services. A composite works contract is vivisected and (i) VAT/ sales tax is leviable on transfer of property in goods involved in the execution of works contract [Article 366(29A)(b) of the Constitution of India], and (ii) service tax will be leviable on services provided in relation to the execution of works contract".

8.1.4 Para 9.10 of MF(DR) Circular No. B1/16/2007-TRU dated 22.05.2007 clarifies that "Contracts which are treated as works contract for the purpose of levy of VAT/ sales tax shall also be treated as works contract for the purpose of levy of service tax. This is clear from the definition under section 65(105)(zzzza)".

8.1.5 Thus, if VAT/ sales tax is payable on works contract of erection, commissioning or installation service, commercial or industrial construction service or construction of complex services, it will be classified under the head of "Works Contract Service". If VAT/ sales tax is not payable, the service will be taxable under respective specific head of services.

8.1.6 As discussed in para supra, all the construction contracts awarded by various clients & executed by M/s Uravi Construction are composite contracts involving both supply of material & provision of service, therefore the same will be classifiable under "Works Contract Service" as per section 65(105)(zzzza) of the Finance Act, 1994.

## 8.2 WORKS CONTRACT SERVICE (w.e.f. 01.07.2012):-

8.2.1 After the advent of Negative List regime, w.e.f. 01.07.2012, "Works Contract" had been defined under sub-section 54 of section 65B of Finance Act, 1994, as under:

*"works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, improvement, repair, renovation, alteration of any building or structure on land or for carrying out any other similar activity or a part thereof in relation to any building or structure on land.*

8.2.2 And whereas, Section 66E(h) of Finance Act, 1994, states that "service portion in the



*execution of a works contract' is a declared service.*

8.3 In view of the discussion in the foregoing paras, it appeared that the construction contracts executed by M/s Uravi Construction involve transfer of property in goods which are leviable to tax as sale of goods, and therefore the same are classifiable under 'Works Contract' as defined under section 66E(h) of Finance Act, 1994 (w.e.f. 01.07.2012).

**8.4 SECTION 66B & 66C OF THE FINANCE ACT, 1994 (w.e.f. 01.07.2012):-**

For ease of reference and appreciation of facts, Section 66B & 66C of the Finance Act, 1994 is reproduced as under:

**Section 66B:**

*"There shall be levied a tax at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed."*

**Section 66C:**

*"(1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provide or deemed to have been agreed to be provided.*

*(2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory."*

**8.5 RULE 2(I)(d)(i)(F)(c) OF THE SERVICE TAX RULES, 1994 (W.E.F. 01.07.2012) :**

For ease of reference and appreciation of facts, Rule 2(I)(d)(i)(F)(c) of the Service Tax Rules, 1994 (w.e.f. 01.07.2012) stipulates that:-

"(1) In these rules, unless the context otherwise requires,

(a) to (c) ....

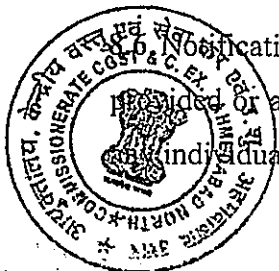
(d) "person liable for paying service tax",

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

(F) in relation to services provided or agreed to be provided by way of:- ....

(c) service portion in execution of a 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 a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified Linder sub-section (2) of section 68 of the Act, for each .respectively.



Notification No. 30/2012-ST dated 20.06.2012 prescribes that in case the taxable services provided or agreed to be provided by way of service portion in execution of works contract by 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, the extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services shall be as under:

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
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%

8.7 M/s Uravi Construction is a Proprietorship Firm till 31.03.2013 & all the clients/ service receiver are business entities registered as body corporate. Therefore, in terms of provision of Rule 2(I)(d)(i)(F)(c) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012, w.e.f. 01.07.2012, the liability for payment of Service Tax of Mis Uravi Construction under "Works Contract Service" was 50% & under the partial reverse charge mechanism, the liability to pay the remaining 50% of Service Tax was of the service receiver.

## 9. VALUE OF TAXABLE SERVICE:

### 9.1 SPECIAL VALUATION PROVISION FOR DETERMINATION OF VALUE OF SERVICES INCLUDED IN THE EXECUTION OF WORKS CONTRACT:

9.1.1 Rule 2A of the Service Tax (Determination of Value) Rules, 2006 provides that the value of taxable service in relation to services involved in the execution of works contract shall be determined by the service provider in the following manner:

#### 9.1.1.1 VALUATION PROVISIONS TILL 30.06.2012:

##### *Rule 2A. Determination of value of services involved in the execution of a work contract.*

*Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act, shall be determined by the service provider in the following manner:-*

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

*Explanation. - For the purposes of this rule,*

*gross amount (charged for the works contract shall not include value added tax or sales tax, as the case may be, paid, 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;*

*(ii) where value added tax or sales tax, as the case may be, had been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, as the case may be, shall be taken as the value of property in goods involved in the execution of the said works contract for determining the value of works contract under this clause(i);*

9.2 The department vide Circular DOF No. 334/1/2007-TRU dated 28.02.2007 clarified that taxable value under Works Contract service is that part of the value of the works contract which was relatable to services provided in the execution of a works contract. Such value was to be determined on actual basis based on the records maintained by the assessee. However, government proposed to give an option to an assessee to opt for a composition scheme. Under the composition scheme, the assessee was required to pay 2% of the total value of the works contract as service tax. Assessee opting for the composition scheme was not entitled to avail Cenvat Credit of capital goods, input or input services required for use in the works contract.

9.3 Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 were notified vide Notification No. 32/2007-ST dated 22.05.2007, is reproduced as under:

*"In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely*

1. *Short title and commencement. - (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.*

*(2) They shall come into force with effect from the 1st day of June, 2007.*

2. *Definitions. - In these rules, unless the context otherwise requires,*

*(a) "Act" means the Finance Act, 1994 (32 of 1994);*

*(b) "section" means the section of the Act;*

*(c) "works contract service" means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;*

*words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.*



3. (1) Notwithstanding anything contained in section 67 of the Act and rule 2 A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the 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 of the gross amount charged for the works contract.

*Explanation.* - For the purposes of this rule, gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

(2) 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.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

9.4 The composition rate of 2% was increased to 4% vide Notification No. 7/2008-ST dated 01.03.2008. The Composition Scheme under Works Contract Service was rescinded w.e.f. 01.07.2012 vide Notification No. 35/2012-ST dated 20.06.2012.

9.5 Therefore, Works Contract is a composite contract and hence specific provisions had been made in respect of valuation. Broadly, two options are available to the service provider

(a) Calculate value of service as per rule 2A of Service Tax (Determination of Value) Rules, 2006 and pay service tax at normal rate. In such case the service provider can avail Cenvat Credit of input services, inputs & capital goods;

(b) Pay service tax under "Composition Scheme" at 4.12% of "gross amount charged for works contract" under "Works Contract (Composition Scheme for payment of Service Tax] Rules, 2007. As per rule 3(2) of Composition Scheme, the service provider cannot avail Cenvat Credit of inputs.

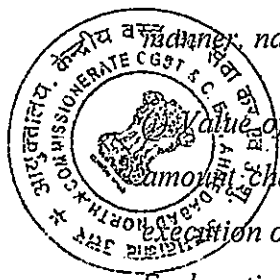
9.6 VALUATION PROVISIONS W.E.F. 01.07.2012

*RULE 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*

*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 had 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 had 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, not covered under sub-clause (A), including works contract entered into for,

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

service tax shall be payable on seventy 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 prefabricated 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.

#### 10. OUTCOME OF THE INVESTIGATIONS/CONCLUSION:

10.1. In view of discussions in the foregoing paras and the evidences brought on records during the investigation was appeared that:

(i) M/s. Uravi Construction had been engaged in execution of construction contracts involving transfer of property in goods which are leviable to tax as sale of goods, and therefore the same are classifiable under "Works Contract" as defined under Explanation to sub-clause zzzza of section 65(105) of Finance Act, 1994 (till 30.06.2012) and under sub-section 54 of section 658 of Finance Act, 1994 (w.e.f. 01.07.2012).

(ii) The Services provided by Mis Uravi Construction are covered under "Works Contract Service" as defined under Section 65(105)(zzzza) of the Finance Act, 1994 (till 30.06.2012) & under section 66E(h) of Finance Act, 1994 (w.e.f. 01.07.2012).

(iii) Among the various Contracts executed by them, they had opted to pay Service Tax on the service portion at full rate in some contracts and in some contracts they had availed the option of Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 and had paid Service Tax on the composite rate.

(iv) On going through the Agreements, Invoices/ RA Bills raised by M/s Uravi Construction and other documents, it appeared that Mis Uravi Construction had charged & recovered Service Tax from their clients while providing Works Contract Services to them. Accordingly, the said services are correctly classifiable under "Works Contract Services" as defined under Section 65(105)(zzzaa) of the Finance Act, 1994 (till 30.06.2012) & are classifiable under section 66E(h) of Finance Act, 1994 (w.e.f. 01.07.2012).

(v) After 01.07.2012, M/s Uravi Construction, being a proprietorship firm, were required to pay only 50% of the Service Tax as service provider under "Works Contract Service", and the remaining 50% of Service Tax was to be paid by the Recipient of Service, in terms of, Rule 2(d)(i)(F)(c) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012.

(vi) M/s. Uravi Construction had even though taken the Service Tax registration under the



taxable category of "Works Contract Service" within the stipulated time limit but had not deposited amount of Service Tax with Govt. Exchequers till starting of investigation by DGCEI.

(vii) M/s. Uravi Construction had never informed the department about the payment received from their clients for providing the services of "Works Contract". Thus, M/s. Uravi Construction, had failed to declare the provision of the above taxable services to the jurisdictional officer and suppressed the correct nature of taxable services received by them with a blatant intention to evade payment of Service Tax on the value of said taxable services.

11. In the instant case, it appeared that the taxable service viz. "Works Contract Service", had been provided by M/s Uravi Construction to their various clients, which fall under Section 65 (105) (zzzza) of the Finance Act, 1994 (effective till 30.06.2012), and classifiable under section 66E(h) of Finance Act, 1994 (w.e.f. 01.07.2012).

## 12. QUANTIFICATION AND DEMAND OF SERVICE TAX.

12.1 M/s. Uravi Construction had provided the taxable services of "Works Contract" and had received payment from their clients. Among the various Contracts executed by them, they had opted to pay Service Tax on the service portion at full rate in some contracts and in some contracts they had availed the option of Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 and had paid Service Tax on the composite rate.

12.2 M/s Uravi Construction had provided the details regarding month-wise income received towards execution of various Works Contract. The income earned towards contracts on which service tax had been charged on full rate of service portion and the contracts where service tax had been charged under composition scheme had been calculated separately.

12.3 As discussed earlier, on scrutiny of Work Orders awarded by M/s Indiabulls Wholesale Services Ltd., M/s Indiabulls Constructions Ltd. & M/s Indiabulls Infrastructure Company Limited it was observed that although the Contracts are consolidated contracts and WCT will be applicable, however, it had been specified that Service Tax would be reimbursed at the rate of 3.40% of the total contract value. It appeared that M/s Indiabulls Wholesale Services Ltd., M/s Indiabulls Constructions Ltd. & Mis Indiabulls Infrastructure Company Limited had wrongly quoted the rate as that of "Construction of Residential Complex Service" by calculating Service Tax at the rate of 33%, giving 67% abatement towards value of material. However, as the above contracts involves transfer of property in goods which are leviable to tax as sale of goods in as much as VAT/ WCT was payable on them on the supply portion of the contract the same would be classifiable under "Works Contract Service" and the Service Tax chargeable thereon under composition scheme would be at the rate of 4.12% and not at the rate of 3.40%. Therefore, the applicable Service Tax on the income earned for execution of the said contracts under composition scheme was 4.12% and had been computed accordingly.

The month-wise details of income earned during the period from April'2009 to March'2013, i.e. the gross amount charged by M/s Uravi Construction, service tax charged & collected by from their various clients in lieu of provision of the taxable service of "Works Contract" is



as under:

(i) Month-wise details of income earned during the F.Y. 2009-10 and Service Tax charged and collected thereon under "Works Contract Service" on full rate. Service Tax payable, Service Tax paid and Short paid by M/s Uravi Construction is as per Annexure-AI attached to the SCN. M/s Uravi Construction had earned an income of Rs. 1,66,39,838/- for execution of Works Contract during April'2009 to March'2010, on which they had charged Service Tax of Rs. 17,60,643/-. Out of this they had paid Service Tax of Rs. 14,67,716/-, thereby they had short paid an amount of Rs. 2,92,927/- of Service Tax calculated on full rate on the service portion of the Works Contract;

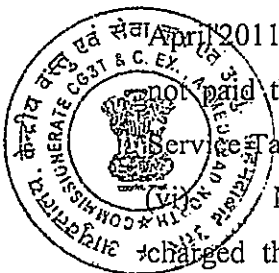
(ii) Month-wise details of income earned during the FY. 2009-10 and Service Tax charged and collected thereon under "Works Contract Service" under Composition Scheme. Service Tax payable, Service Tax paid and Short paid by M/s Uravi Construction is as per Annexure-A2 attached to the SCN. M/s Uravi Construction had earned an income of Rs. 3,54,28,798/- for execution of Works Contract during April'2009 to March'2010, on which they had charged Service Tax of Rs. 14,59,666/-. Out of this they had paid Service Tax of Rs. 2,11,805/-, thereby they had short paid an amount of Rs. 12,47,861/- of Service Tax calculated. under composition scheme on the gross value of the Works Contract;

(iii) Month-wise details of income earned during the F.Y. 2010-11 and Service Tax charged thereon under "Works Contract Service" on full rate. Service Tax payable, Service Tax paid and Short paid by M/s Uravi Construction is as per Annexure-8I attached to the SCN. M/s Uravi Construction had earned an income of Rs. 1,71,36,876- for execution of Works Contract during April'2010 to March'2011, on which they had charged Service Tax of Rs. 17,60,076/-. They had not paid the entire amount of Rs. 17,60,076/- of Service Tax calculated on full rate on the service portion of the Works Contract;

(iv) Month-wise details of income earned during the F.Y. 2010-11 and Service Tax charged thereon under "Works Contract Service" under Composition Scheme. Service Tax payable, Service Tax paid and Short paid by M/s Uravi Construction is as per Annexure-B2 attached to the SCN. M/s Uravi Construction had earned an income of Rs. 6,54,80,654/- for execution of Works Contract during April'2010 to March'2011, on which they had charged Service Tax of Rs. 26,97,803/-. They had not paid the entire amount of Rs. 26,97,803/- of Service Tax calculated under composition scheme on the gross value of the Works Contract;

(v) Month-wise details of income earned during the F.Y. 2011-12 and Service Tax charged thereon under "Works Contract Service" on full rate. Service Tax payable, Service Tax paid and Short paid by M/s Uravi Construction is as per Annexure-CI attached to the SCN. M/s Uravi Construction had earned an income of Rs. 3,68,01,932/- for execution of Works. Contract during April'2011 to March'2012, on which they had charged Service Tax of Rs. 37,90,601/-. They had not paid the entire amount of Rs. 37,90,601/- of Service Tax calculated on full rate on the service portion of the Works Contract.

Month-wise details of income earned during the F.Y. 2011-12 and Service Tax charged thereon under "Works Contract Service" under Composition Scheme. Service Tax payable, Service Tax paid and Short paid by M/s Uravi Construction is as per Annexure-C2



attached to this SCN. M/s Uravi Construction had earned an income of Rs. 5,63,71,650/- for execution of Works Contract during April'2011 to March'2012, on which they had charged Service Tax of Rs. 23,22,512/-. They had not paid the entire amount of Rs. 23,22,512/- of Service Tax calculated under composition scheme on the gross value of the Works Contract;

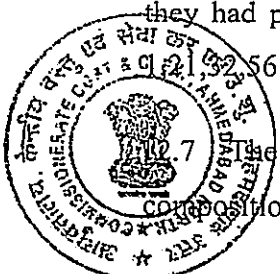
(vii) Month-wise details of income earned during the F.Y. 2012-13 and Service Tax charged thereon under "Works Contract Service" on full rate. Service Tax liability of the service recipient under partial reverse charge mechanism, Service Tax payable, Service Tax paid and Short paid by M/s Uravi Construction is as per Annexure-DI attached to this SCN. M/s Uravi Construction had earned an income of Rs. 8,71,54,636/- for execution of Works Contract during April'2012 to March'2013, on which they had charged Service Tax of Rs. 1,07,72,288/-. Out of this the Service Tax liability of service recipient under partial reverse charge was Rs. 44,83,331/-. M/s Uravi Construction had not paid any amount of service tax from their service tax liability and thereby had not paid an amount of Rs. 62,88,957/- of Service Tax calculated on full rate on the service portion of the Works Contract;

(viii) Month-wise details of income earned during the F.Y. 2012-13 and Service Tax charged thereon under "Works Contract Service" under Composition Scheme. Service Tax liability of the service recipient under partial reverse charge mechanism, Service Tax payable, Service Tax paid and Short paid by M/s Uravi Construction is as per Annexure-D2 attached to this SCN. M/s Uravi Construction had earned an income of Rs. 4,84,28,637/- for execution of Works Contract during April'2012 to March'2013, on which they had charged Service Tax of Rs. 24,20,744/-. Out of this the Service Tax liability of service recipient under partial reverse charge was Rs. 10,20,237/-. M/s Uravi Construction had not paid any amount of service tax from their service tax liability and thereby had not paid an amount of Rs. 14,00,508/- of Service Tax calculated under composition scheme on the gross value of the Works Contract.

12.5 On the basis of Annexures A-I to 0-1 & A-2 to D-2, the year-wise details of income earned by M/s Uravi Construction during F.Y. 2009-10 to 2012-13, Service Tax charged thereon under "Works Contract Service" on full rate as well as under composition scheme, Service tax liability of the service recipient under partial reverse mechanism, Service Tax payable by M/s Uravi Construction and Service Tax actually paid as well as short payment of Service Tax had been worked out.

12.6 The year-wise details for the contracts on which Service Tax had been calculated on full rate of the service portion of the Works Contract are as per Annexure E-I, attached to this SCN. M/s Uravi Construction had earned an income of Rs. 15,77,33,282/- for execution of Works Contract during April'2009 to March'2013, on which they had charged Service Tax of Rs. 1,80,83,608/-. Out of this the Service Tax liability of service recipient under partial reverse charge was Rs. 44,83,331/-, therefore the Service Tax payable was Rs. 1,36,00,277/-. Out of this they had paid Service Tax of Rs. 14,67,716/-, thereby they had short paid an amount of Rs. 1,21,32,561/- of Service Tax calculated on full rate on the service portion of the Works Contract.

The year-wise details for the contracts on which Service Tax had been calculated under composition scheme of the Works Contract are as per Annexure E-2, attached to this SCN. MIS



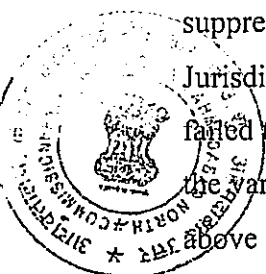
Uravi Construction had earned an income of Rs. 20,57,09,739/- for execution of Works Contract during April'2009 to March'2013, on which they had charged Service Tax of Rs. 89,00,725/-. Out of this the Service Tax liability of service recipient under partial reverse charge was Rs. 10,20,237/-, therefore the Service Tax payable was Rs. 78,80,488/-. Out of this they had paid Service Tax of Rs. 2,11,805/-, thereby they had short paid an amount of Rs. 76,68,683/- of Service Tax calculated under composition scheme on the gross value of the Works Contract.

12.8 Based on the Annexures E-I & E-2 a consolidated working in prepared as shown in Annexure F to this Show Cause Notice. The said Annexure F contains year-wise details for the entire contracts on which either Service Tax had been calculated on full rate of the service portion of the Works Contract or under composition scheme of the Works Contract. M/s Uravi Construction have earned an income of Rs. 36,34,43,021/- for execution of the entire Works Contract during April'2009 to March'2013, on which they had charged Service Tax of Rs. 2,69,84,333/-. Out of this the Service Tax liability of service recipient under partial reverse charge, from July'2012 to March'2013, was Rs. 55,03,568/-, therefore the Service Tax payable was Rs. 2, 14,80,765/-. Out of this they had paid Service Tax of Rs. 16,79,521/-, thereby they had short paid an amount of Rs. 1,98,01,244/- of Service Tax under Works Contract Service.

12.9 The amount of Service Tax at the applicable rate payable on said services had been calculated, which comes to Rs. 1,98,01 ,244/-, as detailed in Annexure-F hereto, under the provisions of erstwhile section 66 of Finance Act, 1994 read with Rule 2A of the Service Tax (Determination of Value) Rules., 2006 (in force till 30.06.2012) and section 66B & 66C of Finance Act, 1994 read with the provisions of Rule 3 of the Place of Provision of Services Rules, 2012; Rule 2(1) (d) (i) (F) (c) of the Service Tax Rules, 2012 read with Notification No. 30/2012-ST dated 20.06.2012 (w.e.f. 01-07-2012). However, till initiation of inquiry by DGCEI, they had not deposited any amount of Service Tax leviable on aforesaid taxable service.

12.10 After initiation of inquiry, M/s Uravi Construction had deposited an amount of Rs. 35,50,000/- against their unpaid service tax liability for the period from 01.10.2009 to 31.03.2013, as detailed in Annexure G attached to this Show Cause Notice.

13.1 M/s. Uravi Construction, in spite of having knowledge of the various provisions of Service Tax and had obtained Service Tax registration for payment of Service Tax under "Works Contract service", but they suppressed the taxable value in the ST-3 Returns filed upto March'2010. However, from April'2010, M/s Uravi Construction had deliberately and willfully, to evade Service Tax, did not file the ST-3 Returns neither they paid the Service Tax. It, thus, appeared that M/s. Uravi Construction, as provider of taxable service, had deliberately suppressed the correct nature and value of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax and failed to file ST-3 Returns with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made there under, as discussed herein. Above in length. By willful act of suppression and misdeclaration with sole intention to evade Service Tax, the extended period of five years, as provided in proviso of sub-section (1) of



Section 73 of Finance Act, 1994 is invocable for demanding and recovering the Service Tax in the subject matter.

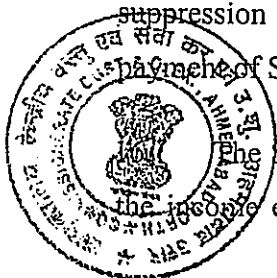
13.2 The period of the current demand includes the demand for the F.Y. 2009-10 as M/s Uravi Construction filed their ST-3 Return for the period from April'2009 to September'2009, on 10.09.2011, therefore in terms of section 73(6)(i)(a) of the Finance Act, 1994, the relevant date will be the date of filing of Return. Consequently, M/s. Uravi Construction also appeared to be liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of aforesaid amount of Service Tax. For the willful act of suppression & mis-declaration with the intent to evade Service Tax, they are also liable for penalty under section 78 of Finance Act, 1994.

14. In light of the facts discussed hereinabove and the material evidences available on records, it was further revealed that M/s. Uravi Construction had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax:

- (i) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the value of taxable service viz. "Works Contract Services" provided by them.
- (ii) Section 66 of Finance Act, 1994 read with Rule 2A of the Service Tax (Determination of Value) Rules, 2006 (in force till 30.06.2012) and section 668 & 66C of Finance Act, 1994 read with the provisions of Rule 3 of the Place of Provision of Services Rules, 2012; Rule 2(1) (d) (i) (F) (c) of the Service Tax Rules, 2012 read with Notification No. 30/2012-ST dated 20.06.2012 (w.e.f. 01-07-2012).
- (iii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they failed to make payment of Service Tax in such manner and within the period prescribed.
- (iv) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, they failed to assess the Service Tax due on said taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided therein and incorporating the required information to the jurisdictional Superintendent of Service Tax, as required under Section 70 of the FA, 1994, read with Rule 7 of the STR, 1994.

15. Further, all above acts of contravention constitute an offence of the nature as described under the provisions of Section 77 of the Finance act, 1994, for failure to pay Service Tax by due dates and not furnishing the information in respect of import of above taxable service provided by them and taxable value thereof in prescribed periodical ST-3 returns as well as for suppression of taxable value of said taxable services provided by them with intent to evade payment of Service Tax leviable thereon.

The Service Tax liabilities of M/s. Uravi Construction as provider of taxable services, on the turnover earned by them for execution of Works Contract for their various clients, for the



period from 01.04.2009 to 31.03.2013, had been worked out on the basis of data/information withdrawn/ submitted by M/s. Uravi Construction. Thus, the present notice relates exclusively to the issue of Service Tax liability of M/s. Uravi Construction for provision of "Works Contract Service" worked out as per the details of the income earned. Service Tax charged. Service Tax payable, paid and short paid, for providing the above said taxable service, as worked out on the basis of documents withdrawn from the premises of M/s. Uravi Construction as well as submitted by them during investigation.

17. Therefore, M/s. Uravi Construction, 120-121, Ravija Plaza, Opp: Rambaug, Thaltej Shilaj Road, Thaltej, Ahmedabad were called upon to show cause to the Commissioner of Service Tax, Ahmedabad vide Show Cause Notice No. DGCEI/AZU/36-55/2015-16 dated 20.10.2015 as to why-

i) The income earned for execution of Works Contract for various clients shall not be treated as taxable service under the category of "Works Contract Service" under section 65(105)(zzzza) of the Finance Act, 1994 (till 30.06.2012) and as declared services "service portion in the execution of a works contract" under Section 66(E)(h) of the Finance Act, 1994 (w.e.f. 01.07.2012).

ii) An amount of Service Tax of Rs.1,98,01,244/- (Rupees one crore ninety eight lakhs one thousand two hundred and forty four only) leviable on the provision of "Works Contract Service" by them, during the period from 01.04.2009 to 31.03.2013 should not be demanded and recovered from M/s. Uravi Construction, under proviso to Section 73(i) of Chapter V of the Finance Act, 1994.

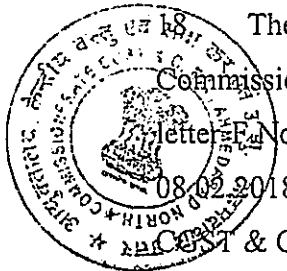
iii) An amount of Rs.35,50,000/- (Rupees thirty five lakhs fifty thousand only) deposited by them vide GAR-7 Challans should not be appropriated against the service Tax as demanded and mentioned at (ii) above.

iv) Interest for delay in payment of Service Tax evaded as mentioned at Sr.No.(iii) should not be recovered from them under Section 75 of Chapter V of the Finance Act, 1994.

v) Penalty for not furnishing the information in respect of taxable services provided by them and taxable value thereof in prescribed periodical ST-3 returns and for contravention of the provisions of Sections 68 & 70 of Chapter V of the Finance Act, 1994 read with Rules 4 and 7 of the Service tax Rules, 1994 should not be imposed under Section 77 of Chapter V of the Finance Act, 1994; and

vi) Penalty for suppression of value of taxable service viz. "Works Contract Service" provided by them with intent to evade payment of Service Tax leviable thereon, should not be imposed upon them under Section 78 of Chapter V of the Finance Act, 1994.

The aforesaid show cause notice was transferred to the jurisdiction of this Commissionerate by the Additional Commissioner, Central GST, Ahmedabad South vide his letter No. STC/4-44/Uravi/OA/2017-18 dated 24.01.2018. Subsequently, a corrigendum dated 08.02.2018 was also issued making the show cause answerable to the Joint Commissioner, GST & Central Excise, Ahmedabad North.



**Defence Reply:**

19. No written reply has been submitted by M/s.Uravi Construction nor any request for extension for filing reply to the show cause notice has been sought by them in spite of request by this office. Vide this office letter of even number dated 23.04.2018, the assessee was also informed about the option available to them to approach the Settlement Commission if they wish.

**Personal Hearing:**

20. Personal hearings in this case were fixed on 18.12.2018, 28.12.2018, 28.01.2018, 07.03.2018, 07.03.2019 and 18.12.2019. Nobody appeared for the personal hearing nor any request for adjournment has been received. Meanwhile, M/s.Uravi Construction had filed application under SVLDRS, 2019 and they have been issued SVLDRS-3. However, they failed to make payment and therefore, SVLDRS-4 has not been issued. Therefore, further hearing dated 12.11.2020 was fixed. Due to the change of adjudicating authority, another hearing was fixed on 29.12.2020. Neither they turned up for personal hearing nor did they pay the amount as required under SVLDRS, 2019. As the matter has already delayed and considerable time has been elapsed, I do not want to further delay the matter and therefore, I am taking up the matter for adjudication.

**Discussion and Finding:**

21. I have carefully gone through the records of the case. I find that in spite of request by the Department, M/s.Uravi Construction has not cared to submit reply to the show cause notice. Further, ample opportunities were given to them for personal hearing to defend their case. Also, they informed about the option availed to them to approach Settlement Commission. They did not turn up for the hearing. I find that in one occasion, the Partner of M/s.Uravi Construction has personally collected the personal hearing letter and even though he has not turned up for hearing. Further, they also failed to utilise the opportunity given under SVLDRS. As they had not appeared for the hearing and also not submitted any written communication, I presume that they have no defence to be submitted and the charges levelled in the show cause notice are accepted by them. Therefore, I am taking up the matter for adjudication as they have been given more than three opportunities for personal hearing.

22. In this case, the show cause notice has alleged that M/s.Uravi Construction has not paid Service Tax to the tune of Rs.1,98,01,244/- on the taxable income earned by them for execution of Works Contract for their various clients for the period from 01.04.2009 to 31.03.2013. I find that the Service Tax liabilities have been worked out on the basis of data/information withdrawn/submitted by M/s.Uravi Construction. I find that the instant case involve the issue of non-payment of Service Tax by M/s.Uravi Construction on the Service Tax liability of Works Contract Service.

I find that the present show cause notice has been issued after investigation by the Zonal Unit, Ahmedabad and the investigating officials have worked out the Service Tax





liability based on various contract executed by them, Agreement, Invoices/RA Bills and other documents and it has been arrived at a conclusion that the contract services rendered by them classifiable under Section 65(105)(zzzzaa) of the Finance Act, 1994 till 30.06.2012 and are classifiable under Section 66E(h) of the Finance Act, 1994 w.e.f. 01.07.2012.

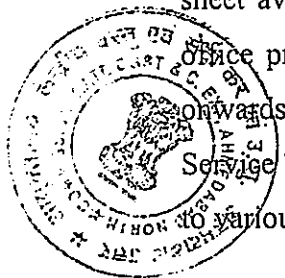
24. I also find that M/s.Uravi Construction had taken Service Tax Registration under the taxable category of Works Contract Service but had not deposited the amount of Service Tax with the Government till DGCEI investigation. I find that subsequently M/s.Uravi Construction has paid an amount of Rs.35,50,000/- towards the Service Tax liability. The said amount is to be appropriated adjusted towards their Service Tax liabilities.

25. I find that this is a clear cut case of evasion of Service Tax, as the documents retrieved/submitted by M/s.Uravi Construction revealed that they have not fulfilled the Service Tax liabilities. It is also revealed that M/s.Uravi Construction have been engaged in execution of construction contracts involving transfer of property in goods which are leviable to tax as sale of goods and therefore, the same are classifiable under Works Contract as defined under Explanation to sub-clause zzzza of Section 65(105) of Finance Act, 1994 till 30.06.2012 and under sub-Section 54 of Section 65B of Finance Act, 1994 w.e.f. 01.07.2012. It is also revealed during the investigation that among various Contracts executed by them, they have opted to pay Service Tax on the service portion at full rate in some contracts and in some contracts they have availed the option of Works Contract (Composition Scheme for payment of Service Tax Rules, 2007 and have paid Service Tax on the composite rate.

26. It was also revealed during the investigation that after 01.07.2012 M/s.Uravi Construction, being a proprietorship firm, were required to pay only 50% of the Service Tax as service provider under Sorks Contract Service and the remaining 50% of Service Tax is to be paid by the recipient of Service in terms of Rule 2(l)(d)(i)(F)(c) of the Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 20.06.2012.

27. I find that Shri Sanjay Prajapati, Proprietor of M/s.Uravi Construction recorded on 18.11.2014 and 17.10.2015 under Section 14 of the Central Excise Act, 1944 as made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994 has confessed that they have provided taxable services to various clients in the last five years and they were charging and collecting Service Tax extra in the invoices/RA bills raised towards provision of service/execution of Work Contract from their clients. He also confessed that as per the work sheet availed in seized file No.A/1 withdrawn under panchnama dated 18.11.2014 from their office premises, the short paid/non paid Service Tax liability for the period from 01.04.2009 onwards to 31.03.2014 were mentioned year-wise. He also accepted the short payment of Service Tax for the period from 01.04.2009 to 31.03.2014 for taxable service provided by them to various clients.

28. From the records, I find that M/s.Uravi Construction had never informed the department about the payment received from their clients for providing the services of Works Contract. Therefore, M/s.Uravi Construction failed to declare the provision of the above taxable services



to the Department and thus has suppressed the correct nature of taxable services with intention to evade payment of Service Tax on the value of the said taxable services.

29. I hold that the service (Works Contract Service) rendered by M/s. Uravi Construction will fall under the definition of Section 65(105)(zzzza) of the Finance Act, 1994 upto 30.06.2012 and w.e.f. 01.07.2012 as declared service of "service portion in the execution of a Works Contract" under Section 66E(h) of the Finance Act, 1994..

30. In view of the facts discussed above and the material evidences available on records, it is revealed that M/s. Uravi Construction had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax:

(i) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the value of taxable service viz. "Works Contract Services" provided by them.

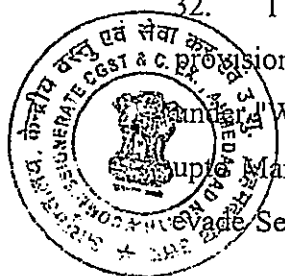
(ii) Section 66 of Finance Act, 1994 read with Rule 2A of the Service Tax (Determination of Value) Rules, 2006 (in force till 30.06.2012) and section 668 & 66C of Finance Act, 1994 read with the provisions of Rule 3 of the Place of Provision of Services Rules, 2012; Rule 2(1) (d) (i) (F) (c) of the Service Tax Rules, 2012 read with Notification No. 30/2012-ST dated 20.06.2012 (w.e.f.01-07-2012).

(iii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as as they failed to make payment of Service Tax in such manner and within the period prescribed.

(iv) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, they failed to assess the Service Tax due on said taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided therein and incorporating the required information to the jurisdictional Superintendent of Service Tax as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

31. Further, all above acts of contravention constitute an offence of the nature as described under the provisions of Section 77 of the Finance act, 1994, for failure to pay Service Tax by due dates and not furnishing the information in respect of import of above taxable service provided by them and taxable value thereof in prescribed periodical ST-3 returns as well as for suppression of taxable value of said taxable services provided by them with intent to evade payment of Service Tax leviable thereon.

32. I find that M/s. Uravi Construction, in spite of having knowledge of the various provisions of Service Tax and had obtained Service Tax registration for payment of Service Tax and "Works Contract service", but they suppressed the taxable value in the ST-3 Returns filed in April'2010. From April'2010, M/s Uravi Construction had deliberately and willfully, to evade Service Tax, did not file the ST-3 Returns neither they paid the Service Tax. M/s. Uravi



Construction, as provider of taxable service, had deliberately suppressed the correct nature and value of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax and failed to file ST-3 Returns with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made there under, as discussed herein above in length. By willful act of suppression and misdeclaration with sole intention to evade Service Tax, the extended period of five years, as provided in proviso of sub-section (1) of Section 73 of Finance Act, 1994 is invocable for demanding and recovering the Service Tax in the subject matter.

33. Therefore, M/s. Uravi Construction also liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of aforesaid amount of Service Tax. For the willful act of suppression & mis-declaration with the intent to evade Service Tax, they are also liable for penalty under section 78 of Finance Act, 1994.

34. In view of the foregoing discussion and my findings above, I pass the following orders:-

#### ORDER

i) I order that the income earned by M/s. Uravi Construction, Ahmedabad, for execution of Works Contract for various clients be treated as taxable service under the category of "Works Contract Service" under section 65(105)(zzzza) of the Finance Act, 1994 (till 30.06.2012) and as declared services "service portion in the execution of a works contract" under Section 66(E)(h) of the Finance Act, 1994 (w.e.f. 01.07.2012).

ii) I confirm the amount of Service Tax of Rs.1,98,01,244/- (Rupees one crore ninety eight lakhs one thousand two hundred and forty four only) leviable on the provision of "Works Contract Service" by them, during the period from 01.04.2009 to 31.03.2013 and order that the said amount of Service Tax be recovered from M/s. Uravi Construction, under proviso to Section 73(i) of Chapter V of the Finance Act, 1994.

iii) I appropriate and adjust an amount of Rs.35,50,000/- (Rupees thirty five lakhs fifty thousand only) deposited by them vide GAR-7 Challans against the service Tax as confirmed at (ii) above. I order M/s. Uravi Construction to pay up the remaining amount of Rs.1,62,51,244/- immediately.

iv) I order M/s. Uravi Construction to pay interest at the appropriate on the amount of Rs.1,98,01,244/- for delay in payment of Service Tax evaded under Section 75 of Chapter V of the Finance Act, 1994.

v) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s. Uravi Constructions, Ahmedabad under Section 77 of Chapter V of the Finance Act, 1994.

I impose a penalty of Rs.1,98,01,244/- on M/s. Uravi Construction, Ahmedabad under Section 78 of Chapter V of the Finance Act, 1994.

I further Order that in the event the entire amount demanded as above is paid within thirty days from the receipt of this Order along with applicable interest, the amount of penalty liable to be paid by them shall be 25% (twenty five per cent) of the penalty imposed at Sr.



No.(vi) above, subject to the condition that such reduced penalty is also paid within the said period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

35. The Show Cause Notice No. DGCEI/AZU/36-55/2015-16 dated 20.10.2015 issued by the Additional Director General, DGCEI, Ahmedabad Zonal Unit, Ahmedabad, issued to M/s. Uravi Construction, 120-121, Ravija Plaza, Opp: Rambaug, Thaltej-Shilaj Road, Ahmedabad is disposed-of in the above manner.



(Maruti Tripathi)  
Joint Commissioner  
Central Excise & CGST,  
Ahmedabad-North

F.No.STC/4-44/Uravi/OA/2017-18

Date: 06.01.2021.

To

M/s.Uravi Construction,  
120-121, Ravija Plaza  
Opp: Rambaug, Thaltej Shilaj Road,  
Ahmedabad.

Copy to :

1. The Commissioner, Central GST & Central Excise, Ahmedabad North
2. The Additional Director, Directorate General of Goods & Service Tax Intelligence, Ahmedabad Zonal Unit, 6<sup>th</sup> & 7<sup>th</sup> Floor, I-The Address, Near Sola Fly Over, Sarkhej-Gandhinagar Road, Thaltej, Ahmedabad.
3. The Assistant Commissioner, CGST & Central Excise, Division-VI, Ahmedabad North
4. The Superintendent, CGST & Central Excise, Range-II, Division-VI, Ahmedabad North
5. Guard File