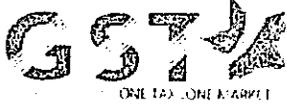


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./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

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN 20210164WT000000F153

फा.सं./F.No. STC/15-60/OA/2018

आदेश की तारीख/Date of Order :- 11.01.2021

जारी करने की तारीख/Date of Issue :- 15.01.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 34/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 रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

(1) उक्त अपील की प्रति।

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

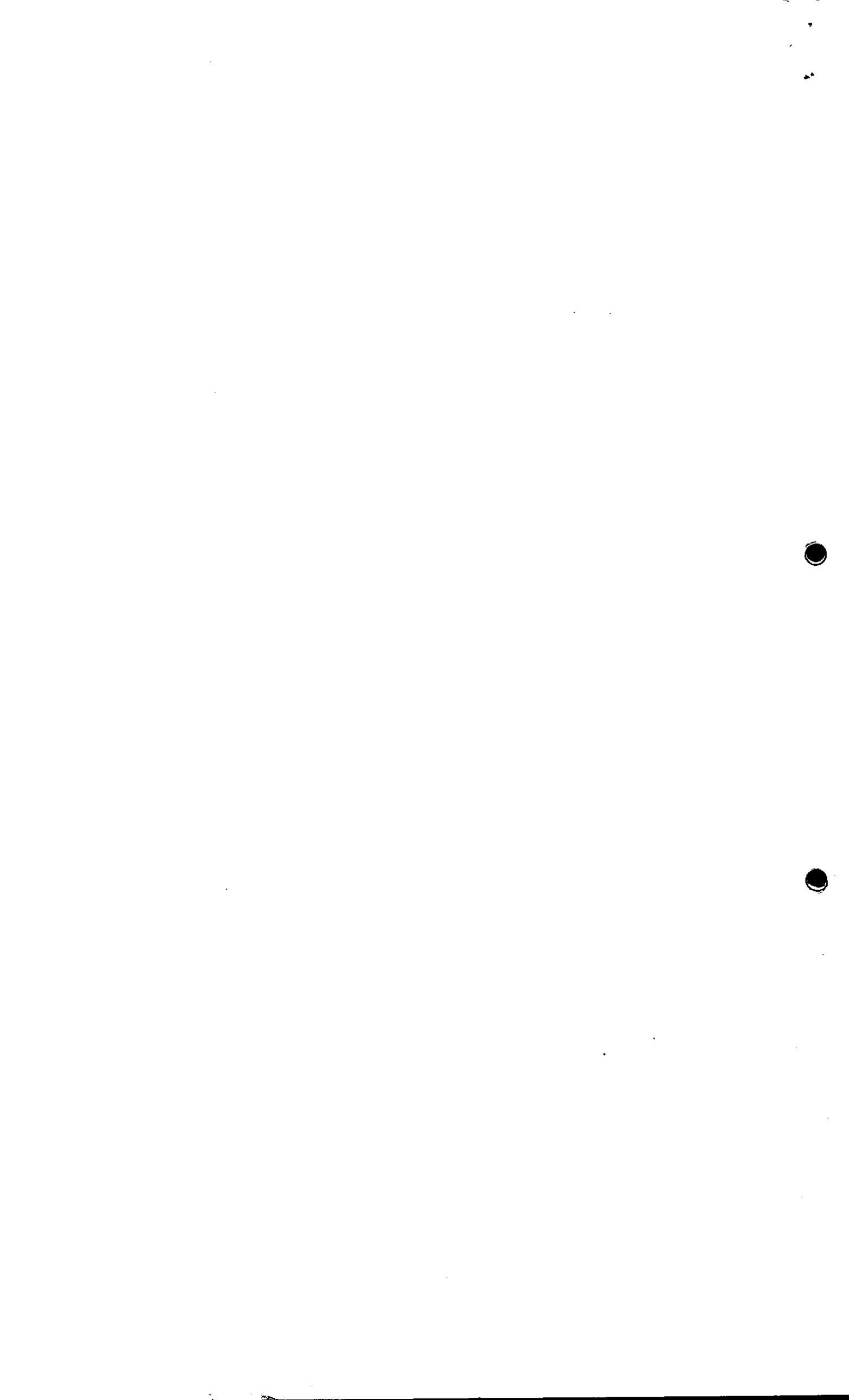
The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

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

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No.STC/04-146/Prev/Gr.VIII/Aditya/2016-17 dated 06.05.2018 issued to M/s Aditya Infracon, Gujarat Housing Board, Bapunagar, Ahmedbad.





Brief Facts of the Case.

Intelligence was gathered by the erstwhile Central Excise &, Customs & Service Tax Commissionerate, Anand that M/s Aditya Infracon having site address as Mansi Green, B/h Dev Vihar Row House, Boriyavi Road, Anand was providing taxable service i.e. "Construction of Commercial as well as Residential Complexes". The said firm has not got registered with the Service Tax Department, Anand Commissionerate. Therefore a search operation was conducted by the Preventive officers of Central Excise, Customs & Service Tax (Preventive) HQ, Anand at the premises of said Service Provider situated at Mansi Green, B/h Dev Vihar Row House, Boriyavi Road, Anand on 01.09.2016. During the search it was noticed that M/s Aditya Infracon, 408/2280, Gujarat Housing Board, Bapunagar, Ahmedabad (hereinafter referred as "Service Provider") was Centrally registered with erstwhile Service Tax Commissionerate, Ahmedabad, Division-III, Range-XV and was holding Service Tax Registration No.AASFA9481HSDO01. Further, during the search operation Shri Ravjibhai Premjibhai Patel, Partner of M/s. Aditya Infracon stated that they were maintaining their accounts and other details in their administrative office at Ahmedabad. Accordingly, the case along with all the documents withdrawn under the Panchnama proceedings was transferred to erstwhile Service Tax Commissionerate, Ahmedabad.

2 Summons dated 02.01.2017, 25.01.2017 & 02.03.2017 were issued calling for documents and details. However, nobody turned up but vide letter dated 20-03-2017 Shri Ravjibhai Premjibhai Patel, Partner of M/s Aditya Infracon submitted following documents:-

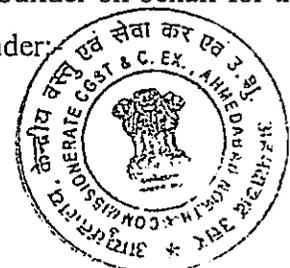
- (i) A copy of audited Balance Sheet, Profit & Loss, Along with the Schedules an ledger of Income for the year F.Y.2012-13 to 31-03-2016.
- (ii) A copy of Income Tax Return along with 26AS F.Y.2012-13 to 31.03.2016.
- (iii) A copy of Service Tax Registration certificate
- (iv) A copy of VCES-1, 2 & 3

In said letter Shri Ravjibhai Premjibhai Patel, Partner of M/s Aditya Infracon stated that they have not filed any ST-3 returns.

3. As per the FORM VCES-2 dated 04-12-2013 submitted by them it was noticed that they have opted for the VCES till 31-12-2012 and have paid the declared dues.

4. Further summons dated 19.06.2017 were issued to M/s. Aditya Infracon for calling details and submit the documents for further investigation but nobody turned up however on 28-08-2018 they submitted the details of members collection/payments received towards sale of residential units in the residential complex Mansi Green, Anand without specific information & documents related to regarding completion certificate by the competent authority specified under Section 66E (b) of Finance Act, 1994.

5. Clause (b) of the Section 66E of the Act covers services of construction for all purpose including commercial and residential and also includes construction by builder on behalf for the entire buyer. The description of services covered under this entry is as under:



“Section 66E (b): construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority”

Explanation- For the purpose of this clause-

(I) The expression "competent authority" means the Government or any authority to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following namely:

(A) Architect registered with council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(B) Chartered engineer registered with the Institution of Engineers (India); or

(C) Licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) The expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure.

6. A reading of above clause reveals that following services are covered under the above description-

i) Services of construction of a complex, building, civil structure or a part thereof;

ii) Services of construction include additions alterations, replacement or remodeling of any existing civil structure; and

iii) Services of construction of a complex or Building intended for solo a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority.

7. Further, Notification No.26/2012-Service Tax dated 20.06.2012 (effective from 01-07-2012), granted abatement to Construction of Complex' service of tax equal to 75 per cent, as the case may be, of the service tax otherwise payable. In effect, only 25 per cent, as the case may be, of the gross amount charged by assessee for providing the said taxable service will be subject to service tax at the prescribed rate. The abatement is available subject to conditions that

(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004; (ii) The value of the land is included in the amount charged from the service receiver.

The notification No.26/2012-ST was amended vide Notification No.02/2013-ST dated 01-03-2013 (effective from 01-03-2013) and further amended vide notification no.09/2013-ST dated 01-05-2013 as amended reads as under-

Sr.No.	Description of taxable service	Percentage	Conditions
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer wholly or partially except where entire consideration is received after issuance of completion certificate by the competent authority	25	(i) Cenvat Credit on inputs used for providing the taxable service has not been taken under the provisions of Cenvat Credit Rules, 2004 (ii) the value of land is included in the amount charged from the service receiver.

	(a) For a residential unit satisfying both the following conditions, namely:- (i) The carpet area of the unit is less than 2000 square feet; and (ii) The amount charged for the unit is less than rupees one crore;		
	(b) for other than (a) above	30	

9. Thus, the builder or a developer is entitled to avail exemption in the form of abatement of tax equal to 75 percent of the service tax if conditions (i) & (ii) stated above are fulfilled for all constructions upto 28-02-2013 however in the case of other than residential unit the criteria of abatement of tax equal to 70 percent would apply from 01-03-2013. The said notification was further amended vide notification no.08/2016-ST dated 01-03-2016 (effective from 01-4-2016) providing 70% abatement to all construction services.

10. From the foregoing legal provisions it is clear that M/s.Aditya Infracon was providing taxable service liable for payment of service tax at the prescribed rate on abated value of 25 percent upto 31.03.2016 and 30% w.e.f. 01.04.2016 for residential units in residential complex Mansi Green at Anand.

11. A details of membership collection towards sale of residential units was worked out on the basis of documents i.e. ledger accounts submitted/produced by Shri Ravjibhai Premjibhai Patel, Partner of M/s Aditya Infracon on 20-03-2017 & 28-08-2018, the service tax liability for the period 01-01-2013 to 30-06-2017 for providing Construction of a complex service was worked out to be Rs.59,32,024/- (Rupees Fifty Nine Lakhs Thirty Two Thousand Twenty Four Only) on services of construction of residential units.

12. During the scrutiny of the documents, it was also noticed that M/s Aditya Infracon has also received taxable service "Transportation of Goods by Road" or GTA service.

13. The meaning and scope of the taxable Service "Transportation of Goods by Road" brought under the category or taxable service under the Finance Act, 1994 is elaborated hereunder:

As per section 65B/26) of Finance Act, 1994, as amended defines Goods Transport Agency, as means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

It is also significant to see who are those specified persons who become liable to pay service tax when they received services from a GTA. As per Rule 2(1(d)(i)(B) of the Service Tax Rules, 1994, in relation to taxable services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,

(i) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);



- (ii) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (iii) any co-operative society established by or under any law;
- (iv) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;
- (v) any body corporate established, by or under any law; or
- (vi) any partnership firm whether registered or not under any law including association of persons;
- (vii) any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

Thus, if the recipient of GTA service belongs to any of the above category, in that case, the recipient of service is liable to pay service tax.

15. Accordingly, Reverse charge mechanism was created in case of services of Goods Transport Agency. As per sub-section (2) of section 68 of Finance Act, 1994 read with Rule 2(1(d) of Service Tax Rules, 1994, service tax shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying service tax in relation to such service. Further, as per provision to sub-section (2) of section 68 of Finance Act, 1994, the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the Service Provider.

16. As per notification No.31/2012-ST dated 20-06-2012 (effective from 01-07-2012), the liability under Reverse Charge Mechanism was fixed at:-

Sr.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
	In respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%

17. M/s. Aditya Infracon has received services in relation to Goods Transport Agency Service and the same are liable for payment of 100% service tax under reverse charge mechanism.

18. In terms of Notification No.26/2012-ST dated 20-06-2012 (effective from 01-07-2012) as amended following abatement is available for payment of service tax on Goods Transport Agency Service subject to conditions contained therein:-

(iii) The Service Provider viz. M/s Aditya Infracon has committed contraventions, evasion of service tax & failure to pay amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due. Shri Ravjibhai Premjibhai Patel, Partner of M/s Aditya Infracon, who at the time of such contravention was in-charge of, and was responsible to, the firm for the conduct of business of such firm and was knowingly concerned with such contravention, have thus, made himself liable to a penalty which may extend to one Lakh rupees under Section 78A of the Finance Act, 1994.

27. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid/short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years. All these acts of contravention of the provisions of Section 65, 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

28. Therefore, M/s. Aditya Infracon, 408/2280, Gujarat Housing Board, Bapunagar, Ahmedabad were called upon to show cause to the Additional/Joint Commissioner, CGST & C.Ex., Ahmedabad-North as to why:-

(i) the amount of evaded Service Tax to the tune of Rs.59,32.024/- (Rupees Fifty Nine Lakhs Thirty Two Thousand Twenty Four Only) (including Edu.Cess & S.H.E.Cess. Swachh Bharat Cess & Krishi Kalyan Cess, as applicable) leviable on 'Construction of Residential Complex' Services provided during the period from January-2013 to June-2017, should not be demanded & recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

(ii) the amount of evaded Service Tax to the tune of Rs.6344/- (Rupees Six Thousand Three Hundred Forty Four only) (Including Edu.Cess & S.H.E.Cess. Swachh Bharat Cess & Krishi Kalyan Cess, as applicable) leviable on Transport of Goods by Road' Service received during the period from 2012-13 to 2013-14, should not be demanded & recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

(iii) interest on such service tax at the appropriate rate prescribed under the provisions of Section 75 of the Finance Act, 1994, as amended should not be demanded and recovered from them;

(iv) penalty should not be imposed upon them under section 77 of the Finance Act, 1994, as amended, for contravention of Section 70 of the Finance Act, 1994;

(v) penalty under section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the taxable value and material facts from the department resulting into non-



payment of Service Tax, Education Cess and Secondary & High Secondary Education cess as mentioned hereinabove.

29. Shri Ravjibhai Premjibhai Patel, Partner of M/s. Aditya Infracon, 408/2280, Gujarat Housing Board, Bapunagar, Ahmedabad was called upon to show cause to the Additional/ Joint Commissioner, CGST & C.Ex., Ahmedabad-North s to why penalty should not be imposed upon him under Section 78A of the Finance Act, 1994, as amended, as he was looking after all the activities of Mansi Green Scheme at Anand of M/s. Aditya Infracon, which comprises of residential houses. Moreover the entire work relating to the Finance, Accounts, all Tax matters etc were done under his supervision and he was looking after day to day work of his company.

DEFENSE REPLY:

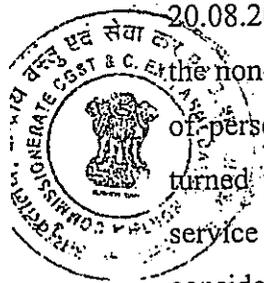
30. No reply has been filed by the service provider either by themselves or through their Advocate/Consultant till date in spite of their oral commitment made to submit the reply during the course of two personal hearings granted to them .

PERSONAL HEARING:

31. Personal hearing was fixed on 12.06.2019. Shri Ravjibhai Premjibhai Patel, Partner of M/s. Aditya Infracon appeared before my predecessor for hearing and sought time to submit the reply of SCN within 10 days i.e. on or before 24.06.2019. He also requested to supply photocopy of SCN which was given immediately. The service provider has not submitted any reply to the show cause notice in spite of their commitment made during the course of personal hearing and several telephonic request. Due to the change of adjudicating authority, further personal hearing was fixed on 29/30.06.2020. The service provider vide their letter dated 24.06.2020 requested to postpone the hearing. Further hearing was fixed on 03.08.2020. Shri Ravjibhai Prembhai Patel, Partner of M/s. Aditya Infracom appeared for hearing on 04.08.2020 and requested time of 15 days to submit the reply. His request was considered and next date of hearing was fixed on 20.08.2020. They did not turn up for the hearing and sought adjournment vide their letter dated 20.08.2020. Next hearing was fixed on 15.09.2020 which was rescheduled to 29.09.2020 due to the non-availability of adjudicating authority. Due to change of adjudicating authority, fresh date of personal hearing was granted to them on 29.12.2020. Again the service provider has not turned up for hearing nor any reply to the show cause notice was submitted. I find that the service provider is deliberately delaying the proceedings on one pretext or another due to which considerable time has elapsed. Till now, they have not cared to submit the reply to the show cause notice nor any evidence to counter the show cause notice in their defence nor any explanation has been submitted. Therefore, it is presumed that they have nothing to defend against the show cause notice and has no explanation to provide their version for non-fulfillment of Service Tax Obligation.

DISCUSSION AND FINDINGS:

32. I have gone through the records of the case. I find that during the course of two personal hearings, the service provider sought time to submit defence reply but till date, they have not



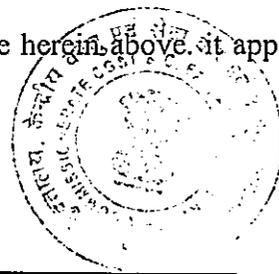
Sr.No.	Description of taxable service	Percentage	Conditions
7	Services of goods transport agency in relation to transportation of goods	25	Cenvat credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the Cenvat Credit Rules, 2004.

19. In view of legal provisions in respect of Goods Transport Agency Service, based on the records available service tax liability of Rs.6344/- (Rupees Six Thousand Three Hundred Forty Four Only) was found for the period 2012-13 to June-2017 (details of which are annexed herewith and marked as per Annexure B to the Show cause notice).

20. The government has from the very beginning placed full trust on the Service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or Separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the Service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appeared that the service provider has not taken into account the incomes received by them for rendering taxable services for the purpose of payment of service tax and thereby, service tax liabilities are not properly discharged by them. The non- filing of ST-3, returns and thereby non- declaration of the value of taxable service correctly in ST-3 returns and not paying the amount of service tax is utter disregard to the requirements of law and breach of trust deposited on them. Such outright act in defiance of law appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of erstwhile Finance Act 1994 for suppression, and concealment or non-furnishing value of taxable service with intent to evade payment of service tax.

21. In view of the above discussion, it is clearly comes out that all these material information and value of taxable services have been concealed from the department deliberately and consciously to evade payment of service tax purposefully by not declaring the amount received against the services rendered. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts and to commit fraud. Therefore, service tax is required to be demanded and recovered from them by invoking extended period of five years under the proviso to Section 73(1) of the erstwhile Finance Act, 1994 (32 of 1994) as the service provider has suppressed/ not declared the nature and value of the taxable services. Thus, the outstanding Service Tax liability requires to be recovered from the service provider by applying the extended period of five years.

22. From the foregoing paras and discussion made herein above, it appeared that the service provider has contravened the provisions of -



i) Section 66 of the erstwhile Finance Act, 1994 in as much as they have failed to pay the service tax as detailed above, to the credit of Central Government.

ii) Section 67 of the erstwhile Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2012-13 to 2017-18 (Upto June-2017);

(iii) Section 68 of the erstwhile 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 during the period 2012-13 to 2017-18 (Upto June-2017), to the credit of the Government account within the stipulated time limit;

(iv) Section 70 of the erstwhile Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file ST-3 returns during the period 2012-13 to 2017-18 (Upto June-2017).

23. In view of the foregoing paras, it appeared that the service provider has contravened provisions of Finance Act, 1994 and the rules made there under with intent to evade payment of Service Tax and therefore the amount of outstanding Service Tax liability is required to be recovered along with interest under sections 73 and 75 of the Finance Act, 1994 and by invoking the extended period of five years as per the proviso to Section 73(1) of the Finance Act, 1994.

24. Further, as per Section 75 *ibid*, every person liable to pay tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the service provider along with interest under Section 75 of the Finance Act, 1994.

25. The service provider has failed to self-assess the Service Tax payable on the taxable value received correctly; failed to file S.T-3 returns as per provisions of the Finance Act, 1994, and also failed to pay the Service Tax at the applicable rate on the taxable value. Thus, on going through the facts and circumstances of the instant case, it appeared to lead towards a conclusion that the service provider has deliberately and wilfully evaded payment of service tax on income received as discussed above.

26. On account of all the acts of commission and omissions narrated above on the part of the service provider, they have rendered themselves liable to penalty under the following provisions of the Finance Act, 1994, as amended:

(i) Section 77 of the Finance Act, 1994; in as much as they failed to self assess the tax due on the services provided/received;

(ii) Section 78 of the Finance Act, 1994, in as much as they suppressed the taxable value of the services provided/received by them and they have, knowingly and willfully not paid the Service Tax leviable on such amount.

submitted the reply. They deliberately tried to delay the proceedings on every notice for personal hearing. I find that they were granted sufficient time to defend their case and submit their explanation/reply. They have not sent any reply by themselves or through their Advocate/Consultants. I find that giving further opportunities would delay the proceedings. Therefore, I have no option but to take up the matter for adjudication.

33. I find that that two issues are involved in the present show cause notice they are-

- (i) Non-payment of Service tax on 'Construction of Residential Complex' Services provided by the service provider during the period from January-2013 to June-2017.
- (ii) Non-payment of Service Tax on Transport of Goods by Road' Service received by the service provider during the period from 2012-13 to 2013-14.

34. I find that the service provider had submitted the details of members collection/payments received towards sale of residential units in the residential Complex Mansi Green, Anand. I find that Clause (b) of the Section 66E of the Finance Act, 1994 covers services of construction for all purpose including commercial and residential and also includes construction by builder on behalf for the entire buyer. The description of services covered under this entry is as under:-

“Section 66E (b): construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority”

Explanation- For the purpose of this clause-

(II) The expression "competent authority' means the Government or any authority to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following namely:

(A) Architect registered with council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(B) Chartered engineer registered with the Institution of Engineers (India); or

C) Licensed surveyor of the respective local body of the city or town or village or development or planning authority;

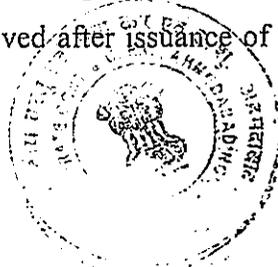
(II) The expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure.

35. A reading of above clause reveals that following services are covered under the above description-

i) Services of construction of a complex, building, civil structure or a part thereof;

ii) Services of construction include additions alterations, replacement or remodeling of any existing civil structure; and

iii) Services of construction of a complex or Building intended for solo a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority.



36. I find that Notification No.26/2012-Service Tax dated 20.06.2012 (effective from 01-07-2012), granted abatement to Construction of Complex' service of tax equal to 75 per cent, as the case may be, of the service tax otherwise payable. In effect, only 25 per cent, as the case may be, of the gross amount charged by assessee for providing the said taxable service will be subject to service tax at the prescribed rate. The abatement is available subject to conditions that (i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004; (ii) The value of the land is included in the amount charged from the service receiver.

37. The notification No.26/2012-ST was amended vide Notification No.02/2013-ST dated 01-03-2013 (effective from 01-03-2013) and further amended vide notification no.09/2013-ST dated 01-05-2013 wherein the builder or a developer is entitled to avail exemption in the form of abatement of tax equal to 75 percent of the service tax if conditions are fulfilled for all constructions upto 28-02-2013 however in the case of other than residential unit the criteria of abatement of tax equal to 70 percent would apply from 01-03-2013. The said notification was further amended vide notification no.08/2016-ST dated 01-03-2016 (effective from 01-4-2016) providing 70% abatement to all construction services.

38. I find that M/s.Aditya Infracon was providing taxable service liable for payment of service tax at the prescribed rate on abated value of 25 percent upto 31.03.2016 and 30% w.e.f. 01.04.2016 for residential units in residential complex Mansi Green at Anand. The data of membership collection towards sale of residential units was worked out on the basis of documents i.e. ledger accounts submitted/produced by Shri Ravjibhai Premjibhai Patel, Partner of M/s Aditya Infracon on 20-03-2017 & 28-08-2018, the service tax liability for the period 01-01-2013 to 30-06-2017 for providing Construction of a complex service was arrived at Rs.59,32,024/- (Rupees Fifty Nine Lakhs Thirty Two Thousand Twenty Four Only) on services of construction of residential units.

I find that M/s Aditya Infracon has also received taxable service "Transportation of Goods by Road" or GTA service. As per section 65B(26) of Finance Act, 1994, as amended defines Goods Transport Agency, as means any person who provides service in relation to transport of goods by road and issued consignment note, by whatever name called. It is also significant to see who are those specified persons who become liable to pay service tax when they received services from a GTA. As per Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994, in relation to taxable services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,

- (i) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (ii) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (iii) any co-operative society established by or under any law;
- (iv) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;



- (v) any body corporate established, by or under any law; or
- (vi) any partnership firm whether registered or not under any law including association of persons;
- (vii) any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax

Thus, if the recipient of GTA service belongs to any of the above category, in that case, the recipient of service is liable to pay service tax.

40. As per sub-section (2) of section 68 of Finance Act, 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994, service tax shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying service tax in relation to such service. Further, as per provision to sub-section (2) of section 68 of Finance Act, 1994, the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the Service Provider.

41. As per notification No.31/2012-ST dated 20-06-2012 (effective from 01-07-2012), the liability under Reverse Charge Mechanism was fixed at 100% of service tax payable by the person receiving the service. I find that M/s. Aditya Infracon received services in relation to Goods Transport Agency Service and the same are liable for payment of 100% service tax under reverse charge mechanism.

42. In terms of Notification No.26/2012-ST dated 20-06-2012 (effective from 01-07-2012) as amended following abatement is available for payment of service tax on Goods Transport Agency Service subject to conditions contained therein:-

Sr.No.	Description of taxable service	Percentage	Conditions
7	Services of goods transport agency in relation to transportation of goods	25	Cenvat credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the Cenvat Credit Rules, 2004.

43. In view of the above, M/s. Aditya Infracon liable to pay Service Tax in respect of Goods Transport Agency Service of Rs.6344/- (Rupees Six Thousand Three Hundred Forty Four Only) for the period 2012-13 to June-2017.

44. As per Section 67 of the Finance Act, 1994 as amended from time to time where service tax is chargeable on any taxable service with reference to its value, then such value shall be the gross amount charged by the service provider (subject to abatements prevailing) for such service provided or to be provided by him. The gross amount charged for the taxable service shall



include any amount received towards the taxable service before, during or after provision of such service. Thus, the value to be considered for calculation of service tax was the gross amount charged for providing taxable services. The said service provider was not paying the service tax charged for taxable services rendered. In other words, they have short paid on the gross amount charged/received for the taxable services and thereby contravened the provisions of Section 67 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994.

45. Further, as per the provisions of the Finance Act, 1994 and rules made thereunder, the service provider was required to assess correct value for the service provided by them as well as to pay service tax on the actual amount of income received by them for services rendered in due course as prescribed and to follow all the procedure laid down in the Act and Rules. In this case, the service provider had rendered/received taxable service under category "Construction of Complexes" defined under Section 66E(b) *ibid* and "Transport of Goods by Road Service" defined under Section 65B(26) *ibid*, and failed to pay service tax at applicable rate. Further, the service provider had failed to file ST-3 returns for the taxable services rendered by them. It clears that the service provider had failed to make timely payment of the Service Tax as provided in Section 68 of the Act read with Rule 6 of the Service Tax Rule, 1994.

46. As per section 68 (1) of the act that 'every person providing taxable service to any person shall pay service tax at the rate specified in section 66 and 66(B) in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. M/s Aditya Infracon had not paid/ short paid service tax total amounting to Rs.59,38,368/- (Rupees Fifty Nine Lakhs Thirty Eight Thousand Three Hundred Sixty Eight Only) (including Education Cess and Secondary & Higher Secondary Education Cess, Suwachh Bharat Cess & Krishi Kalyan Cess), towards their service provided/received and thereby violated the provision of Section 68(1) of the Act read with Rule 6 of the erstwhile Service Tax Rule, 1994.

47. As per Section 70 of the erstwhile Finance Act, 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. The said service provider has not assessed the tax due, properly, on the services provided by him, and failed to file correct ST-3 Returns in time thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the erstwhile Service Tax Rules, 1994.

48. The service provider has not taken into account the incomes received by them for rendering taxable services for the purpose of payment of service tax and thereby, service tax liabilities are not properly discharged by them. The non- filing of ST-3, returns and thereby non-declaration of the value of taxable service correctly in ST-3 returns and not paying the amount of service tax is utter disregard to the requirements of law and breach of trust deposited on them. Such outright act in defiance of law appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of erstwhile Finance Act 1994 for suppression, and

53. On account of all the acts of commission and omissions narrated above on the part of the service provider, they have rendered themselves liable to penalty under the following provisions of the Finance Act, 1994, as amended:

(i) Section 77 of the Finance Act, 1994; in as much as they failed to self assess the tax due on the services provided/received;

(ii) Section 78 of the Finance Act, 1994, in as much as they suppressed the taxable value of the services provided/received by them and they have, knowingly and willfully not paid the Service Tax leviable on such amount.

(iii) The Service Provider viz. M/s Aditya Infracom has committed contraventions of evasion of service tax & failure to pay amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

(iv) A vital role has been played by Shri Ravjibhai Premjibhai Patel, Partner of M/s Aditya Infracom, for the evasion of Service Tax. Without his knowledge, the non-payment of Service Tax would not have been possible. He was the sole person, at the time of such contravention in-charge of, and was responsible to, the firm for the conduct of business of such firm and was knowingly concerned with such contravention, have thus, made himself liable to a penalty under Section 78A of the Finance Act, 1994.

54. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid/short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years. All these acts of contravention of the provisions of Section 65, 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 liable to penal action under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

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

ORDER

(i) I confirm the Service Tax of Rs.59,32,024/- (Rupees Fifty Nine Lakhs Thirty Two Thousand Twenty Four Only) (including Edu.Cess & S.H.E.Cess. Swachh Bharat Cess & Krishi Kalyan Cess, as applicable) and order M/s. Aditya Infracom, Ahmedabad to pay the said amount immediately under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

(ii) I confirm the Service Tax of Rs.6344/- (Rupees Six Thousand Three Hundred Forty Four only) (Including Edu.Cess & S.H.E.Cess. Swachh Bharat Cess & Krishi Kalyan Cess, as applicable) leviable on Transport of Goods by Road' Service received during the period from 2012-13 to 2013-14, under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994 and order M/s.Aditya Infracom, Ahmedabad to pay the said amount immediately.



concealment or non-furnishing value of taxable service with intent to evade payment of service tax.

49. In view of the above facts, it is clearly comes out that all these material information and value of taxable services have been concealed from the department deliberately and consciously to evade payment of service tax purposefully by not declaring the amount received against the services rendered. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts and to commit fraud. Therefore, service tax is required to be recovered from them by invoking extended period of five years under the proviso to Section 73(1) of the erstwhile Finance Act, 1994 (32 of 1994) as the service provider has suppressed/ not declared the nature and value of the taxable services.

50. In view of the discussion above, it is obvious that the service provider has contravened the following provisions of -

- i) Section 66 of the erstwhile Finance Act, 1994 in as much as they have failed to pay the service tax as detailed above, to the credit of Central Government.
- ii) Section 67 of the erstwhile Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2012-13 to 2017-18 (Upto June-2017);
- (iii) Section 68 of the erstwhile 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 during the period 2012-13 to 2017-18 (Upto June-2017), to the credit of the Government account within the stipulated time limit;
- (iv) Section 70 of the erstwhile Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file ST-3 returns during the period 2012-13 to 2017-18 (Upto June-2017).

51. The service provider has contravened provisions of Finance Act, 1994 and the rules made there under with intent to evade payment of Service Tax and therefore the amount of outstanding Service Tax liability is required to be recovered along with interest under sections 73 and 75 of the Finance Act, 1994 and by invoking the extended period of five years as per the proviso to Section 73(1) of the Finance Act, 1994.

52. The service provider has failed to self-assess the Service Tax payable on the taxable value received correctly; failed to file S.T-3 returns as per provisions of the Finance Act, 1994, and also failed to pay the Service Tax at the applicable rate on the taxable value. Thus, on going through the facts and circumstances of the instant case, lead towards a conclusion that the service provider has deliberately and wilfully evaded payment of service tax on income received by them.



(iii) I order M/s.Aditya Infracom, Ahmedabad to pay interest on the amount of Service Tax confirmed above at (Sr.No. (i) and (ii) at the appropriate rate under the provisions of Section 75 of the Finance Act, 1994, as amended.

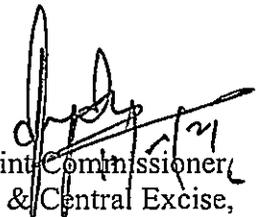
(iv) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s.Aditya Infracom, Ahmedabad, under section 77 of the Finance Act, 1994, as amended.

(v) I impose a penalty of Rs.59,38,368/- (Rs.59,32,024+Rs.6,344/-) (Rupees fifty nine lakhs thirty eight thousand three hundred sixty eight only) on M/s.Aditya Infracom, Ahmedabad, under section 78 of the Finance Act, 1994, as amended.

I further Order that in the event the entire amount confirmed 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.(v) above, subject to the condition that such reduced penalty is also paid within the period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

21. I impose a penalty of Rs 1,00,000/-(Rupees One Lakh only) on Shri Ravjibhai Premjibhai Patel, Partner of M/s. Aditya Infracom, 408/2280, Gujarat Housing Board, Bapunagar, Ahmedabad under Section 78A of the Finance Act, 1994, as amended.

Show Cause Notice No.STC/04-146/Prev/Gr.VIII/Aditya/2016-17 dated 06.05.2018 issued to M/s.Aditya Infracom, 408/2280, Gujarat Housing Board, Bapunagar, Ahmedabad is disposed-off in the above manner.

  
Joint Commissioner,  
Central GST & Central Excise,  
Ahmedabad North.

By Regd Post AD

F. No. STC/15-60/OA/2018

Date: 15.01.2021

To

- (1) M/s.Aditya Infracom,  
408/2280, Gujarat Housing Board,  
Bapunagar, Ahmedabad.
- (2) Shri Ravjibhai Premjibhai Patel,  
Partner of M/s.Aditya Infracom,  
408/2280, Gujarat Housing Board,  
Bapunagar, Ahmedabad.

Copy to:

- (1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
- (2) The Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad North
- (3) The Superintendent, Central GST & Central Excise, Range- V, Division-II, Ahmedabad North
- (4) Guard File.



