
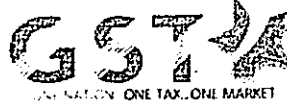


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- aaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN 20210164WT0000673542

फा.सं./F.No. STC/04-46/O&A/2015-16

आदेश की तारीख/Date of Order :- 19.01.2021

जारी करने की तारीख/Date of Issue :- 19.01.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 35/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।

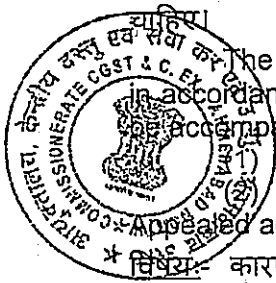
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये) का न्यायालय शुल्क टिकट लगा होना

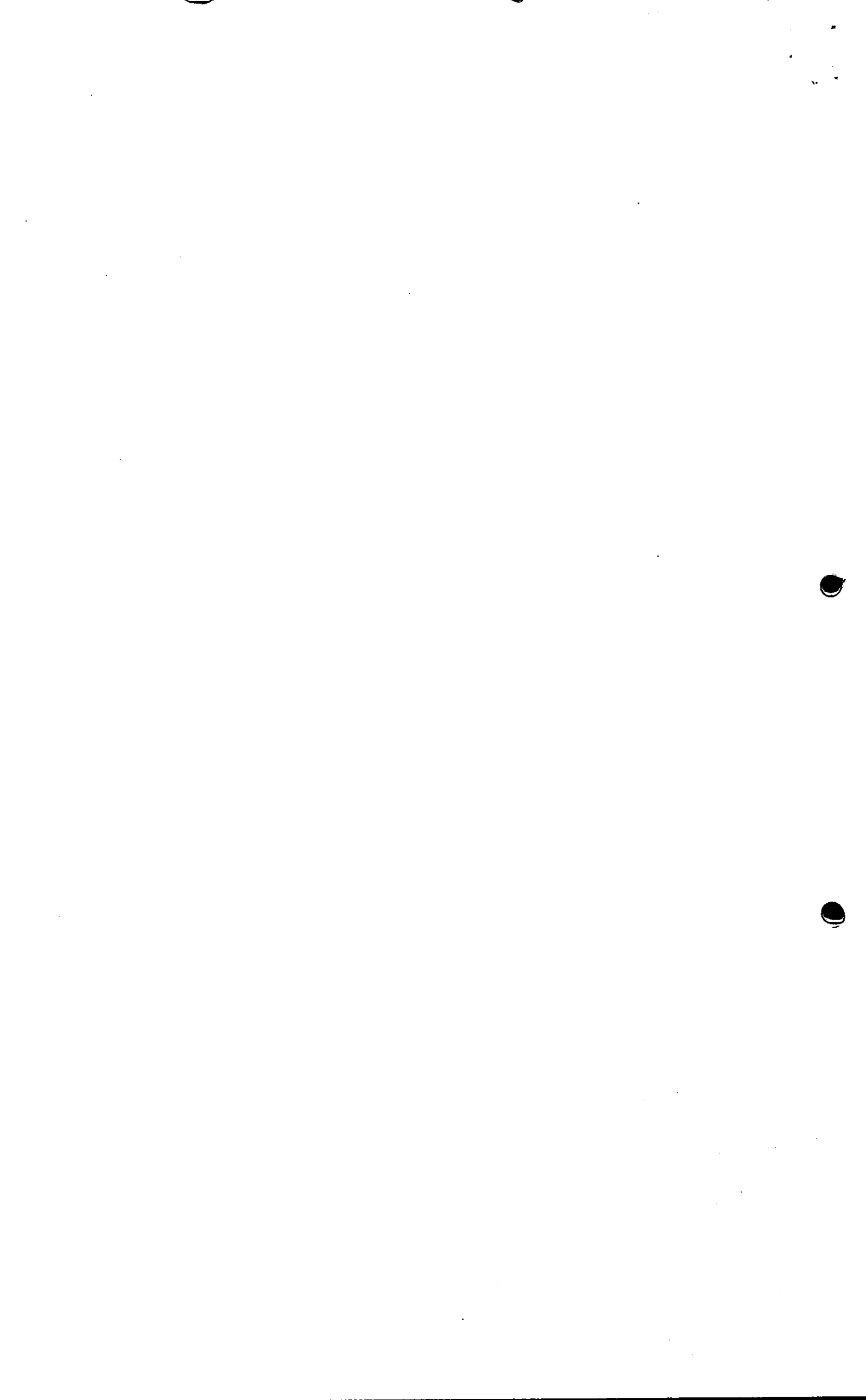
The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

Copy of accompanied Appeal.

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/04-46/OA/15-16 dated 14.10.2015 issued to M/s Sorath Builders, 92, City Centre, Nr. Swastik Cross Road, Navrangpura, Ahmedabad-380009.





BRIEF FACTS OF THE CASE:

M/s Sorath Builders situated at 92, City Centre, Near Swastik Cross Road, Navrangpura, Ahmedabad-380009 (the "noticee") were engaged in providing taxable Services viz. (1) Goods Transport Agency Service as defined under Sub clause (zpz) (2) Work Contract Service as defined under sub-clause (zzzza) & (3) Other Taxable Service Other Than the 119 listed, of clause (105) of Section 65 of the Finance Act, 1994 and were holding Service Tax Registration (No. AAHFS7484FST001) since 18.12.2007. The noticee firm was a partnership firm.

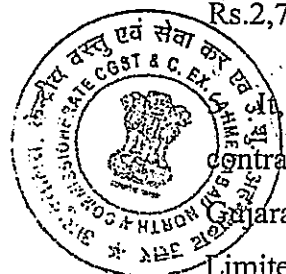
2 A search was conducted in the office premises of the noticee - 92, City Centre, Near Swastik Cross Road, Navrangpura, Ahmedabad- 380009 on 9.7.2015 and the files containing Balance Sheet, IT Returns, Ledgers, Form 26AS were resumed under panchnama for further investigation.

3. A statement of Shri Dineshkumar Laxmanbhai Patel, Partner of noticee firm was recorded on the spot on 09.07.15 under Section 14 of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994, wherein, Shri Dineshkumar, inter-alia, stated that they had provided construction services to the following Government Bodies:

- a. Road and Building Department, Government of Gujarat.
- b. Navsari Agricultural University.
- c. Gujarat State Land Development Corporation Limited.
- d. Gujarat State Police Housing Corporation Limited.
- e. Narmada Water Resources.
- f. Western Railways.

4 Further statement of Shri Dineshkumar Laxmanbhai Patel was recorded on 21.09.2015; wherein, Shri Patel, inter-alia, with regard to service tax liability of Rs.66,69,463/- worked out by the officers; he stated that his firm was engaged in providing services of Construction of Government Buildings/Projects; that he did not agree with the tax liability of Rs.66,69,463/-; that construction work of Jail and University, Residential Quarters was exempt from service tax before 01.07.2012; that he agreed with the liability in respect of work carried out for Gujarat State Police Housing Corporation Limited after 01.07.2012; that they had not collected service tax from their client; that he agreed with cum duty tax liability occurred after 01.07.2012; that their tax liability, after 01.07.2012 till 2014-15, was of Rs.2,75,923/-; Shri Patel also stated that they had filed ST-3 returns till March 2014.

therefore, appeared that the noticee had provided construction services under works contract service to Government Bodies, viz; Road and Building Department, Government of Gujarat; Navsari Agricultural University; Gujarat State Land Development Corporation Limited; Gujarat State Police Housing Corporation Limited; Narmada Water Resources;



5.1 The noticee was not paying service tax for the services provided to above mentioned clients as, according to them, the work carried out by them is for Government authority and therefore it is not taxable. Also, the noticee was paying service tax regularly on the GTA services on the freight expenses incurred for the construction activities. It, however, appeared that services provided to Gujarat State Police Housing Corporation Limited was taxable and applicable service tax was liable to be paid by the noticee.

5.2 As per CBE&C Circular No.116/10/2009-S.T., dated 15.9.2009, it appeared that the services provided to Gujarat State Police Housing Corporation Limited were not exempted. The relevant portion of the said circular is reproduced as under:

"Dams, irrigation projects, buildings or infrastructure construction under turnkeys/ EPC contract by Government not covered under Works Contract service.-

The issue is about Government taking up construction activity of dams, irrigation projects, buildings or infrastructure construction etc. through turnkey or EPC (Engineering Procurement & Construction) mode. The said service is covered under Section 65 (105)(zzzza) of Finance act, 1994. The said section itself excludes works contract in respect of dams, tunnels, canals or irrigation projects, road, airports, railways, transport terminals & bridges executed through such turnkey or EPC mode. Hence works contract in respect of above works even if done through turnkey or EPC mode are exempt from payment service tax.

5.3 As per the provision of section 65(105) (zzzza) of the Finance Act, 1994, the term "Work Contract services" defined is reproduced below:

(A) Prior to 01.07.2012, taxable service in respect of works contract was defined under section 65(105) (zzzza) which is reproduced below

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

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

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

(ii) *such contract is for the purpose of carrying out,-*

(a) *erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*

(b) *construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or*

industry; or

construction of a new residential complex or a part thereof; or completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or



- (e) turnkey projects including engineering, procurement and construction or
 (f) commissioning (EPC) projects;

6. Moreover, noticee had failed to produce any document which would support their claim for exemption. It was also observed from the RA bills produced by the noticee as sample copies vide letter dated 5.10.2015 and also as stated by Shri Dinesh kumar Patel that the noticee was not charging service tax separately. Therefore, it appeared that taxable value was required to be considered as cum duty tax value.

7. Further, it appeared that the noticee had not filed ST-3 returns for the year 2014-15 which were due to be filed by 25.10.2014 and 25.4.2015 (half yearly returns).

8. Based on reconciliation of the figures of taxable income reflected in the Books of Accounts & 26 AS, the service tax liability, in respect of services provided to Gujarat State Police Housing Corporation Limited, was worked out to be Rs. 57,67,136/- for the period from 2010-11 to 2014-15, under the category of works contract service, as detailed in the table below —

Year	Contract Income	Exempted Income	Net Taxable Income	Effective Rate of Service Tax	Cum Duty Ser Tax Liability (a)	Liability as per Partial Reverse Charge Mechanism (b)	Total Service Tax payable (a+b)
2010-11	74369310	0	74369310	4.120	2942773	N.A.	2942773
2011-12	64403789	0	64403789	4.120	2548440	N.A.	2548440
2012-13 (Apr To Jun)	0	0	0	0	0	N.A.	N.A.
2012-13 (Jul to Mar)	15509689	0	15509689	4.944	0	201805	201805
2013-14	0	0	0	4.944	0	0	0
2014-15	3746203	0	3746203	4.944	0	74118	74118
Total	158028991	0	158028991		5491213	275923	5767136

9. From the investigation made, it appeared that M/s Sorath Builders has provided services under "Work Contract Services", which is defined as taxable service under sub-clause (zzzza) of clause (105) of Section 65 of the Finance Act, 1994. From reading of the definition of service as mentioned in definition of "Work Contract Service", it transpires that M/s Sorath Builders, from the beginning, failed to assess their Service Tax liability towards rendering of service, failed to pay the required Service Tax and also failed to file Service Tax Returns for the taxable income received by them.

10. It appeared that non-assessment of tax liability at their own, non-payment of Service Tax

and filing of incorrect Service Tax Returns was found to be intentional one on the part of M/s Sorath Builders. Thus, it can be said that M/s. Sorath Builders was fully aware of their legal obligations on non-payment of Service Tax, which they did not fulfill with the mala fide intention of evading payment of Service Tax.

11. On scrutiny of the documents furnished by M/s Sorath Builders and the investigation carried out in the matter revealed that they have rendered "Work Contract Services" which are chargeable to Service Tax with effect from 01.06.2007. M/s Sorath Builders, Ahmedabad has engaged themselves in doing activities as described under Section 65(25b) of Chapter V of the Finance Act, 1994, as amended and provided taxable services as defined under Section 65(105)(zzzza) of the Act. For doing these activities they have received consideration and shown it as income under various heads of accounts in their Books of Accounts, wherein they have not paid Service Tax in Government Account and thereby evaded payment of it. Therefore, M/s Sorath Builders was liable to pay Service Tax on the gross income / amount received from their customers / service recipients. Thus, it appeared that M/s. Sorath Builders has not properly discharged their Service Tax liability on the income shown in their Books of Accounts.

12. The services rendered or received by the noticee, upto 30.06.2012, appeared classifiable under category of "Work Contract Service" as defined under Section 65(105)(zzzza) of the Finance Act, 1994 and hence they were liable for payment of Service Tax as a provider receiver of services. From 1.7.2012, since there is no service wise classification due to introduction of Negative List and since the activities carried out by the noticee appeared to fall under the purview of definition of "Service" in terms of Section 66B(44) read with Section 66D of the Finance Act, 1994 and since the activities were not covered under negative list nor under any Exemption Notification, noticee appeared liable to pay Service Tax for the services provided or received by them after 01.07.2012 also.

12.1 Further, w.e.f. 01.07.2012, since the introduction of Reverse Charge Mechanism (RCM), as mentioned at Sr. No. 7(b), 8 & 9 of the Table in Notification No. 30/2012 dated 20.06.2012, the new partial reverse charge mechanism was applicable to services provided or agreed to be provided by way of:

- (a) xxxxx
- (b) xxxxx
- (c) service portion in execution of a Works Contract ;

And accordingly, noticee appeared liable to pay 50% of the Service Tax and the remaining 50% of the Service Tax was to be paid by the service recipient.

13. According to Section 67 of the Finance Act, 1994, as amended, 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 for such service provided or to be provided

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. In the



present case, M/s Sorath Builders, have not paid Service Tax on the gross amount charged / received for the taxable services provided by them and thereby contravened the provisions of Section 67 of the Finance Act, 1994 read with Rule 6 of the Service Tax rules, 1994.

14. As per the provisions of the Finance Act, 1994 and rules made there under, 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/received in due course as prescribed and to follow all the procedure laid down in the Act and Rules. In this case, M/s Sorath Builders has failed to pay due Service Tax leviable on the taxable value charged. They have failed to file correct ST-3 Returns for the taxable services rendered by them and suppressed the facts for the period from 2010-11 to 2014-15. It, therefore, appeared that they have failed to make timely payment of Service Tax, as provided in Section 68 of the Act read with Rule 6 of the Rules.

15. As per Section 68(1) of the Act, 'Every person providing taxable service to any person shall pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed'. The manner and period of payment of Service Tax has been prescribed under Rule 6(1) of the Service Tax Rules, 1994. In this case, it appeared that M/s Sorath Builders has not paid Service Tax to the tune of Service Tax liability of Rs. 57,67,136/- on "Work Contract Service" thereby contravened the provisions of Section 68(1) of the Act, read with Rule 6 of the Service Tax Rules, 1994.

16. As per Section 70(1) of the Act, 'Every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed'. The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that M/s Sorath Builders has not assessed the tax dues properly, on the services provided by him, as discussed above, and failed to file correct ST-3 Returns for the Year 2010-11 to 2014-15 within stipulated time limit thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994.

17. Further, it appeared that material information and value of taxable services were concealed by the noticee from the department deliberately and consciously to evade payment of service tax purposefully by not declaring the amount received against the services rendered. Therefore, service tax not paid was required to be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years time as the noticee has suppressed/not declared the nature and value of the taxable services. Thus, it appeared that the total amount of Service Tax Rs. 57,67,136/- on "Work Contract Service" requires to be recovered from M/s Sorath Builder by applying the extended period of five years time.

Further, it also appeared that the value of Taxable Service in respect of aforesaid services rendered by them was not subjected to assessment. Eventually, they have willfully



made mis-statement and not paid Service Tax. Thus, M/s Sorath Builder has failed to self-assess the Service Tax payable on the Taxable Value of income received correctly. They have failed to file ST-3 Returns correctly as required under the Finance Act, 1994, and also failed to pay the Service Tax at the applicable rate on the Taxable Value. It clearly appeared that M/s Sorath Builder has deliberately and willfully evaded payment of Service Tax on Taxable Income received, as discussed above.

19. In view of the foregoing paras, it appeared the aforementioned omission and commission was well intended through which they have willfully avoided the payment of Service Tax. As non-payment of Service Tax was intended willful and the same was suppressed from the department and therefore the provisions of proviso to Section 73(1) are required to be invoked and the said Service Tax not paid by them is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994, as amended by invoking extended period of five years time. Thus, M/s Sorath Builder, has contravened provisions of the Finance Act, 1994 and the rules made there under with sole intention to evade payment of Service Tax and therefore the amount of Service Tax Rs. 57,67,136/- on "Work Contract Service" is required to be recovered along with Interest under Section 75 of the Finance Act, 1994 by invoking extended period of five years time, as per the proviso to Section 73(1) of the Finance Act, 1994.

20. As per Section 75 ibid, "Every person liable to pay the 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 Service Tax and the same is required to be recovered from them along with interest under Section 75 of the Finance Act, 1994.

21. It appeared that they are liable to penalty under Section 77(2) of the Finance Act, 1994 in as much as they have failed to assess their actual Service Tax liability and also failed to file their correct ST-3 Returns from time to time, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

22. Further, it appeared that the noticee has not taken into account the incomes received and expenses incurred by them for rendering taxable services for the purpose of payment of service tax and thereby, Service Tax liabilities were not properly discharged by them. The non-filing of correct ST-3 Returns and thereby non-declaration of correct taxable value of service in ST-3 Returns and not paying the due amount of Service Tax was in utter disregard to the requirements of law and is tantamount to breach of trust deposited on them. Such outright act in defiance of law appears to have rendered them liable for stringent penal action as provided under the provisions of Section 78 of the Finance Act, 1994 for making suppression and concealment or non furnishing of value of Taxable Service with intent to evade payment of



Service Tax.

23. It appeared from the above that M/s Sorath Builders is liable to penalty under Section 78 of the Finance Act, 1994 in as much as they have willfully and intentionally suppressed the figures of taxable income and did not assess their Service Tax liability and not paid the required Service Tax on the same. They have obtained Service Tax Registration, however not paid any Service Tax and also failed to file correct Service Tax Returns. This act of willful omission and commission becomes more serious and intended one, when Shri Dineshkumar L. Patel, who happened to be Partner of M/s Sorath Builders. In spite of obtaining Service Tax Registration and non-payment of Service Tax was well intended one. Apparently, it appears that they were aware of provisions of the Finance Act, 1994 and rules framed there under and non-compliances of provisions of the Finance Act, 1994 was intended one. This appears that the act of non-payment of Service Tax was outcome of sole intention to evade payment of Service Tax.

24. It appeared that all the above mentioned 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 of M/s Sorath Builders, has been committed by way of suppression of facts with sole intention to evade payment of Service Tax and therefore, the said Service Tax not paid by them is required to be demanded and recovered 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 time. All these acts of contravention of the provisions of Section 67, 68, 69 & 70 of the Finance Act, 1994, as amended, read with Rules 4, 6 and 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 77 & 78 of the Finance Act, 1994, as amended from time to time.

25. Therefore, show cause notice F. No. STC/4-46/O&A/15-16 dated 14.10.2015 was issued by the Principal Commissioner, Service Tax, Ahmedabad, calling upon the noticee to show cause as to why –

i) The Income of Rs. 15,80,28,991/- received by them from M/s Gujarat State Police Housing Corporation Limited during the Year from 2010-11 to 2014-15 should not be considered as Taxable Income for the purpose of levy of Service Tax under the category of "Work Contract Service" falling under Section 65(105)(zzzza) of the Finance Act, 1994 up to 30.06.2012 (as tabulated in Annexure-B attached to the SCN) and as "Service" in terms of Section 65B(44) read with Section 65D of the Finance Act, 1994 with effect from 01.07.2012 onwards;

ii) The Service Tax amounting to Rs.57,67,136/- (inclusive of Edu. cess + HSEC) (Rupees Fifty Seven Lakhs Sixty Seven Thousand One Hundred Thirty Six only) on the aforementioned Taxable Income of Rs. 15,80,28,991/- received during the Year from 2010-11 to 2014-15 should not be demanded and recovered from them under proviso to Section 73(1) read with Section 68 of the Finance Act, 1994, by invoking extended period of five years.

iii) Interest at the prescribed rate should not be charged and recovered in terms

of the provisions of Section 75 of the Finance Act, 1994, as amended from time to time;

iv) the Penalty under sub-Section (2) of Section 77 of the Finance Act, 1994 should not be imposed on them in as much as they failed to assess their correct Service Tax liability and failed filed their correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994;

v) the Penalty under Section 78 of the Finance Act, 1994, as amended should not be imposed on them for suppressing the material facts of providing of Taxable Service from the department and for not disclosing the value of the said taxable service from the department with sole intention to evade payment of applicable Service Tax.

The said SCN was made answerable to the Additional/Joint Commissioner, CGST & Central Excise, Ahmedabad North vide corrigendum dated 21.12.2018.

Defence Reply :

26. The said noticee submitted written submission vide letter dated 25.11.2015 and 08.01.2019 wherein it has been *inter-alia* submitted, in response to Point No.1, 2, 3 of Para 27 of SCN regarding taxability of service, demanding service tax & interest thereon that they have provided Works Contract Services of Rs.7,43,69,310, Rs.6,44,03,789, Rs.53,09,715, Rs.1,01,99,974, Rs.37,46,203 For the F.Y. 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15 respectively. The Work Sheet, Annexure-A, attached to the reply. Further, the noticee submitted that, the SCN have alleged that service tax is to be leviable as per Para 3 of Circular No.116/10/2009-S.T. dated 15.09.2009 which is narrated as below:

"3. The second issue is about Government taking up construction activity of dams, buildings or infrastructure construction etc. through EPC (Engineering Procurement & Construction) mode. The said service is covered under section 65(105)(zzzza) of Finance Act, 1994. The said section, itself excludes works contract in respect of dams, roads, airports, railways, transport terminals, bridges and tunnels executed through EPC mode. Hence works contract in respect of above works even if done through EPC mode are exempt from payment of service tax."

27. The noticee submitted that the said circular is not at all applicable to them as they have not provided services through EPC (Engineering, procurement & Construction) mode but in fact, they have just provided construction related services in terms of Works Contract Services to M/s. GSPHCL which can be clearly seen from the work order issued by M/s GSPHCL. According to the definition, it seems that only construction service provided for the purpose of Commerce or industry then the same would be chargeable to service tax as per point no.(b) of (ii) of explanation to section 65(105)(zzzza) but in their case, they have provided service to M/s GSPHCL which is non commercial in nature and therefore, their service is not for the purpose of Commerce or industry but for the purpose of public use. Further, they have reproduced clause to sub section 105 of Section 65 of the Finance Act, 1994 for reference.



"Section 65(105)(zzzza) 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, funnels and dams.

Explanation.- For the purpose 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

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

(a) *Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or waterproofing, lift and escalator, fire escape staircases or elevators;*

or

(b) *Construction of a new building or a civil structure or a pad 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;*

28. The noticee further submitted that the service is Works Contract Services and that same is also accepted by the department in various paras of Show Cause notice and therefore the classification of service is not debatable but the question is that whether the service provided to M/s. GSPHCL would be chargeable or not. The answer to that is clearly 'No'. As the definition of the "Work Contract Services" is inclusive in nature before 01.07.2012, their services shall not be falling within point no. 1.2 as mentioned above.

29. The noticee further submitted that the works contract services for Rs.8,86,76,228/- provided in relation to Rural Police Station, Guest House, Jail, Raksha Shakti University and Laboratory from 01.04,2011 to 31.03.2015 is taxable service which is clearly not legitimate and therefore service tax should not be demanded upon the same services and they requested to drop the same demand. They have attached copy of work order & RA bills with their reply.

30. The noticee further submitted that the service tax liability of Rs.3,88,028/- towards services provided in relation to construction of police housing quarters on or after 01.07.2012 is already discharged with interest & penalty before issuance of SCN. The respective challan are attached by the noticee with the reply.

In response to Point No. 5 of Para 27 of SCN demanding penalty on 'service tax', the noticee submitted that as this is the case where noticee is ignorant about taxability of works contract service provided to M/s. GSPHCL and therefore, looking to the provision of service tax

laws and definition of works contract services provided under (zzzza) of sub section 165 of section 65 of Finance Act,1994 up to 30.06,2012.service tax would not be leviable discussed in Para 1.2 of this submission and hence, there is no service tax, penalty could not be imposed.

32. The noticee has further submitted that, without prejudice what has been discussed above, if it is assumed that there is service tax liability on the said amount then and also, penalty under section 78 cannot be imposed as noticee was under bonafide belief that service tax would not be leviable under government projects. The noticee further submitted that they were under bonafide belief that their case was not only established by their statement or it is limited to their case but it is in their knowledge that the same kind of service tax inquiry was also conducted/conducting with the different assesseees who have carried out similar type of work.

33. The noticee further have reliance on below mentioned judgments.

1. High court of Allahabad in the case of H M Singh & Co. vs, Commissioner of Central Excise, Customs & Service tax [2014]49 taxmann.com 417 (HC) held that:

" 8. The only issue which is raised in the present appeal is in regard to the imposition of a penalty on the appellant. The contention of the appellant is that there was no case of fraud, collusion, willful misstatement or suppression of facts within the meaning of section 78 or of a contravention with an intent to evade payment of service tax. Moreover, it has been submitted that under the first proviso to section 78, the amount of penalty is liable to be reduced to 25% of the service tax determined if the service tax together with interest is paid within thirty days from the communication of the order of the Central Excise Officer determining the service tax. In the present case, it has been submitted that the appellant had established its bona fides by not even waiting for an order of adjudication but had deposited the amount of service tax with interest on 9 June 2011, 7 September, 2011, 21 September, 2011 and 11 October, 2011. Finally, it has been submitted that nearly two-hundred notices had been issued by the Division and Commissionerate at Allahabad which indicates that there was mass unawareness among the service providers in the area which was noted in an order of the Joint Commissioner (Adjudication), Central Excise, Allahabad dated 16 June, 2011"

Hon'ble Supreme Court in Anand Nishikawa Co. Ltd. V. CCE [2005] 2 STT 226 wherein it was held as follows.

"... It is Settled-law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the noticee to find willful Suppression. Therefore, in view of our findings made hereinabove that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer proceed to recover duties in the manner indicated in proviso to Section 11A of the Act ..."



34. They requested to drop the penalty on the service tax amount looking to the above decision of Hon'ble High Court & Hon'ble Supreme Court.

PERSONAL HEARING :

35. Personal Hearing in this case was held on 20.07.2016 wherein Shri Kunal V Desai appeared on behalf of the noticee and submitted that the provision of Circular No. 116/10/2019-ST dtd. 15.09.2009 is not applicable on them. He submitted that he would furnish a detailed submission in the matter during next hearing. Thereafter a hearing was held on 08.01.2019 wherein Shri Kunal Desai, Chartered Accountant, appeared on behalf of the noticee and submitted a written submission dated 08.01.2019. He promised to submit a self certified free translation in English for Gujarati language documents and reiterated the contents of all the written submission and requested to drop the SCN.

36. Due to the change of adjudicating authority, further personal hearing was granted to them on 19.02.2020, 28.02.2020, 23.03.2020, 22.07.2020 and 30.09.2020. Vide their e-mail communication dated October, 02, 2020, they stated that they do not want personal hearing in this case. Further, due to change of one another adjudicating authority, one more personal hearing opportunity was given on 29.12.2020, however, the noticee did not appear for the same.

37. I find that sufficient opportunities were given to the noticee to explain their stand and to produce evidence with regard to the exemption they claimed for rendering the services in question. But they opted not attend the personal hearing. Therefore, I am taking up the matter for adjudication.

DISCUSSION AND FINDINGS :

38. I have carefully gone through the subject show cause notice, submissions made by the noticee in their written replies as well as during the course of Personal Hearing held before my predecessor and documents / evidences available on record.

39. I find that the moot issues to be decided in the present proceedings are:

i) Whether the Income of Rs. 15,80,28,991/- received by the noticee from M/s Gujarat State Police Housing Corporation Limited during the Year from 2010-11 to 2014-15 should be considered as Taxable Income for the purpose of levy of Service Tax under the category of "Work Contract Service" falling under Section 65(105)(zzzza) of the Finance Act, 1994 up to 30.06.2012 and to be counted as "Service" in terms of Section 65B(44) read with Section 65D of the Finance Act, 1944 with effect from 01.07.2012 onwards;

ii) Whether the Service Tax amounting to Rs.57,67,136/- (inclusive of Edu. cess + HSEC) (Rupees Fifty Seven Lakhs Sixty Seven Thousand One Hundred Thirty Six only) on the aforementioned Taxable Income of Rs. 15,80,28,991/- received during the Year from 2010-11

to 2014-15 demanded and proposed to recover from them under proviso to Section 73(1) read with Section 68 of the Finance Act, 1994, by invoking extended period of five years is justified.

40. From the show cause notice I find that M/s Sorath Builder, have provided construction services under works contract service to the following Government Bodies:

- a. Road and Building Department, Government of Gujarat.
- b. Navsari Agricultural University.
- c. Gujarat State Land Development Corporation Limited.
- d. Gujarat State Police Housing Corporation Limited.
- e. Narmada Water Resources.
- f. Western Railways.

41. M/s Sorath Builder, had not paid any service tax for providing taxable service under the works contract service in respect of the above mentioned clients.

42. I also find that the said noticee had not filed the ST-3 returns for the year 2014-15 which were due to be filed by 25.10.2014 and 25.4.2015 (half yearly returns).

43. I find, based on reconciliation of the figures of taxable income reflected in the Books of Accounts & 26 AS, the service tax liability, in respect of services provided to Gujarat State Police Housing Corporation Limited, works out to be Rs. 57,67,136/- for the period from 2010-11 to 2014-15, under the category of works contract service, as detailed in the table below

Year	Contract Income	Exempted Income	Net Taxable Income	Effective Rate of Service Tax	Cum Duty Ser Tax Liability (a)	Liability as per Partial Reverse Charge Mechanism (b)	Total Service Tax payable (a+b)
2010-11	74369310	0	74369310	4.120	2942773	N.A.	2942773
2011-12	64403789	0	64403789	4.120	2548440	N.A.	2548440
2012-13(April To Jun)	0	0	0	0	0	N.A.	N.A.
2012-13 (Jul to Mar)	15509689	0	15509689	4.944	0	201805	201805
2013-14	0	0	0	4.944	0	0	0
2014-15	3746203	0	3746203	4.944	0	74118	74118
Total	158028991	0	158028991		5491213	275923	5767136

44. From the investigation made, I find that M/s Sorath Builders has provided services under "Work Contract Services", which is defined as taxable service under sub-clause



(zzzza) of clause (105) of Section 65 of the Finance Act, 1994. From reading of the scope of service as mentioned in definition of "Work Contract Service", it transpires that M/s Sorath Builders, from the beginning, failed to assess their Service Tax liability towards rendering of service, failed to pay the required Service Tax and also failed to file correct Service Tax Returns for the taxable income received by them.

45. I also find that non-assessment of tax liability at their own, non - payment of Service Tax and filing of incorrect Service Tax Returns was found to be intentional one on the part of M/s Sorath Builders. Thus, it can be said that M/s.Sorath Builders was fully aware of their legal obligations on non-payment of Service Tax, which they did not fulfill with the mala fide intention of evading payment of Service Tax.

46. As per the provision of section 65(105) (zzzza) of the Finance Act, 1994, the term "Work Contract services" defined is reproduced below:

(A) Prior to 01.07.2012, taxable service in respect of works contract was defined under section 65(105) (zzzza) which is reproduced below

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

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

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

(iv) such contract is for the purpose of carrying out,—

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(g) 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

(h) construction of a new residential complex or a part thereof; or

(i) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(j) turnkey projects including engineering, procurement and construction or

(k) commissioning (EPC) projects;

47. I find that upto to 30.06.2012, the services rendered or received by the noticee appeared classifiable under category of "Work Contract Service" as defined under

Section 65(105)(zzzza) of the Finance Act, 1994 and hence they were liable for payment of

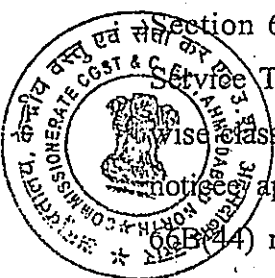
Service Tax as a provider receiver of services. From 1.7.2012, since there is no service

wise classification due to introduction of Negative List and since the activities carried out by the

noticee appeared to fall under the purview of definition of "Service" in terms of Section

65(105) read with Section 66D of the Finance Act, 1994 and since the activities were not

covered under negative list nor under any Exemption Notification, noticee appeared liable to



(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;]

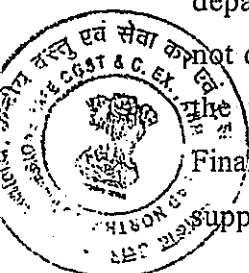
52. I find that the present case is distinguishable with the case of Khurana Engineering Ltd reported in 2011(21) STR115 (Trib-Ahm), favouring the appellant. In the said case, the appellant had constructed residential quarters for Income Tax Department on a tender floated by CPWD and Hon'ble Tribunal found that the demand was not sustainable as the construction was for 'personal use'. In the present case construction of Police Quarters for State Police has been completed through GSPHCL, which is a State Owned Limited company. State Government has not directly engaged the contractor (Noticee) like Khurana Engg. Ltd case where quarters for Income Tax were built through CPWD who in turn engaged Khurana Engg. Ltd. Therefore, there is no direct dealing with the noticee with the State Government in the present case.

53. I also observe that the Hon'ble Tribunal in the case of M/s Khurana Vs CCE Ahmedabad reported at 2011 (21) STR 115 (Tri-Ahmd), held that *residential complex constructed by the appellant is meant for use by the Income Tax department to provide the same on rent to the employees and therefore, it is clearly covered by the explanation given for "Personal use" in the definition. In the said case the CPWD had engaged the appellant for construction of residential complex for giving it on rent to the employees of Income Tax department. It is basically the case of one department taking the help of another department to get the work done basically because of specialization of that department in preparing documents and get the work executed. Hon'ble Tribunal also held that service provided by the appellant is to be treated as service provided to Govt. of India directly.*

54. Hon'ble Tribunal had set-aside the impugned order in this case in favour of M/s Khurana Engineering Ltd. The facts of the present case is different as there is no Government agency like CPWD is involved. In short, the State Government nor the Government agency has not assigned the task to the noticee.

- The noticee has not submitted any proof with respect to the services provided to M/s GSPHCL are for the personal use.
- No proper documents in relation to nature of the contract and services were provided by the noticee.
- The free translation has not yet been provided
- I also find that there is lack of co-operation on the part of the noticee.

55. In view of the above, I hold that M/s. Sorath Builders have suppressed the material information and value of taxable services were concealed by the noticee from the department deliberately and consciously to evade payment of service tax purposefully by not declaring the amount received against the services rendered. Therefore, service tax to the tune of Rs.57,67,136/- is required from them under proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years time as the noticee has suppressed/not declared the nature and value of the taxable services. A total amount of



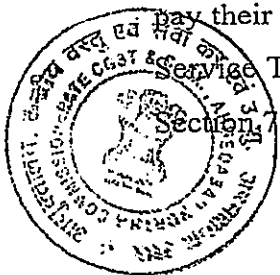
Service Tax Rs. 57,67,136/- on "Work Contract Service" required to be recovered from M/s Sorath Builder by applying the extended period of five years time.

56. I also find that the value of Taxable Service in respect of aforesaid services rendered by them was not subjected to assessment. They have willfully made mis-statement and not paid Service Tax. Thus, M/s Sorath Builder has failed to self-assess the Service Tax payable on the Taxable Value of income received correctly. They have failed to file ST-3 Returns correctly as required under the Finance Act, 1994, and also failed to pay the Service Tax at the applicable rate on the Taxable Value which clearly shows that M/s Sorath Builder has deliberately and willfully evaded payment of Service Tax on Taxable Income received, as discussed above.

57. The noticee has stated that in their case, no service tax is payable by them as it comes under exemption. I find that no specific exemption is available to them as per the exemption notification nor it is figuring in the negative list. Further, I find that they have relied various case laws in their defence. On going through the said case laws, I find that the present case is distinguishable with those cases in so far as in the present case, construction of Police Quarters for State Police has been completed through GSPHCL, which is a State Owned Limited company. State Government has not directly engaged the contractor (Noticee). Therefore, I find that the noticee is not directly with the State Government as such they are not eligible for exemption in the present case.

58. In view of the foregoing paras, it is obvious that the aforementioned omission and commission was well intended through which they have willfully avoided the payment of Service Tax. As non-payment of Service Tax was intended willful and the same was suppressed from the department and therefore the provisions of proviso to Section 73(1) are required to be invoked and the said Service Tax not paid by them is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994, as amended by invoking extended period of five years time. Thus, M/s Sorath Builder, has contravened provisions of the Finance Act, 1994 and the rules made there under with sole intention to evade payment of Service Tax and therefore the amount of Service Tax Rs. 57,67,136/- on "Work Contract Service" is required to be recovered along with Interest under Section 75 of the Finance Act, 1994 by invoking extended period of five years time, as per the proviso to Section 73(1) of the Finance Act, 1994.

59. As per Section 75 *ibid*, "Every person liable to pay the 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 Service Tax and the same is required to be recovered from them along with interest under Section 75 of the Finance Act, 1994.



60. M/s.Sorath Builder are liable to penalty in terms of Section 77(2) of the Finance Act, 1994 in as much as they have failed to assess their actual Service Tax liability and also failed to file their correct ST-3 Returns from time to time, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

61. Moreover, the noticee has not taken into account the incomes received and expenses incurred by them for rendering taxable services for the purpose of payment of service tax and thereby, Service Tax liabilities were not properly discharged by them. The non-filing of correct ST-3 Returns and thereby non-declaration of correct taxable value of service in ST-3 Returns and not paying the due amount of Service Tax was in utter disregard to the requirements of law and is tantamount to breach of trust deposited on them. Such outright act in defiance of law have rendered them liable for stringent penal action as provided under the provisions of Section 78 of the Finance Act, 1994 for making suppression and concealment or non furnishing of value of Taxable Service with intent to evade payment of Service Tax.

62. As already discussed above, M/s Sorath Builders is liable to penalty under Section 78 of the Finance Act, 1994 in as much as they have willfully and intentionally suppressed the figures of taxable income and did not assess their Service Tax liability and not paid the required Service Tax on the same. They have obtained Service Tax Registration, however not paid any Service Tax and also failed to file correct Service Tax Returns. In fact, during the course of statement of Shri Dineshkumar Laxamanbhai Patel, Partner of M/s. Sorath Builders recorded on 21.09.2015 has stated that they have not paid any service tax for providing taxable service under the works contract services in respect of services provided to various Government bodies. This act of willful omission and commission becomes more serious and intended one, when Shri Dineshkumar L. Patel, who happened to be Partner of M/s Sorath Builders. In spite of obtaining Service Tax Registration and non-payment of Service Tax was well intended one. Apparently, they were aware of provisions of the Finance Act, 1994 and rules framed there under and non-compliances of provisions of the Finance Act, 1994 was intended one. The act of non-payment of Service Tax was outcome of sole intention to evade payment of Service Tax.

63. All the above mentioned 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 of M/s Sorath Builders, has been committed by way of suppression of facts with sole intention to evade payment of Service Tax and therefore, the said Service Tax not paid by them is required to be demanded and recovered 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 time. All these acts of contravention of the provisions of Section 67, 68, 69 & 70 of the Finance Act, 1994, as amended, read with Rules 4, 6 and 7, of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 77 & 78 of the Finance Act, 1994, as amended from

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

