

<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 &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-57/OA/2018

आदेश की तारीख/Date of Order : - 18.02.2021  
जारी करने की तारीख/Date of Issue :- 23.02.2021

DIN No:20210264WT000000F804

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / *Marut Tripathi*  
संयुक्त आयुक्त / *Joint Commissioner*

**मूल आदेश संख्या / Order-In-Original No. 47/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।

(79) उक्त अपील की प्रति।

(80) 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 चाहिए)।

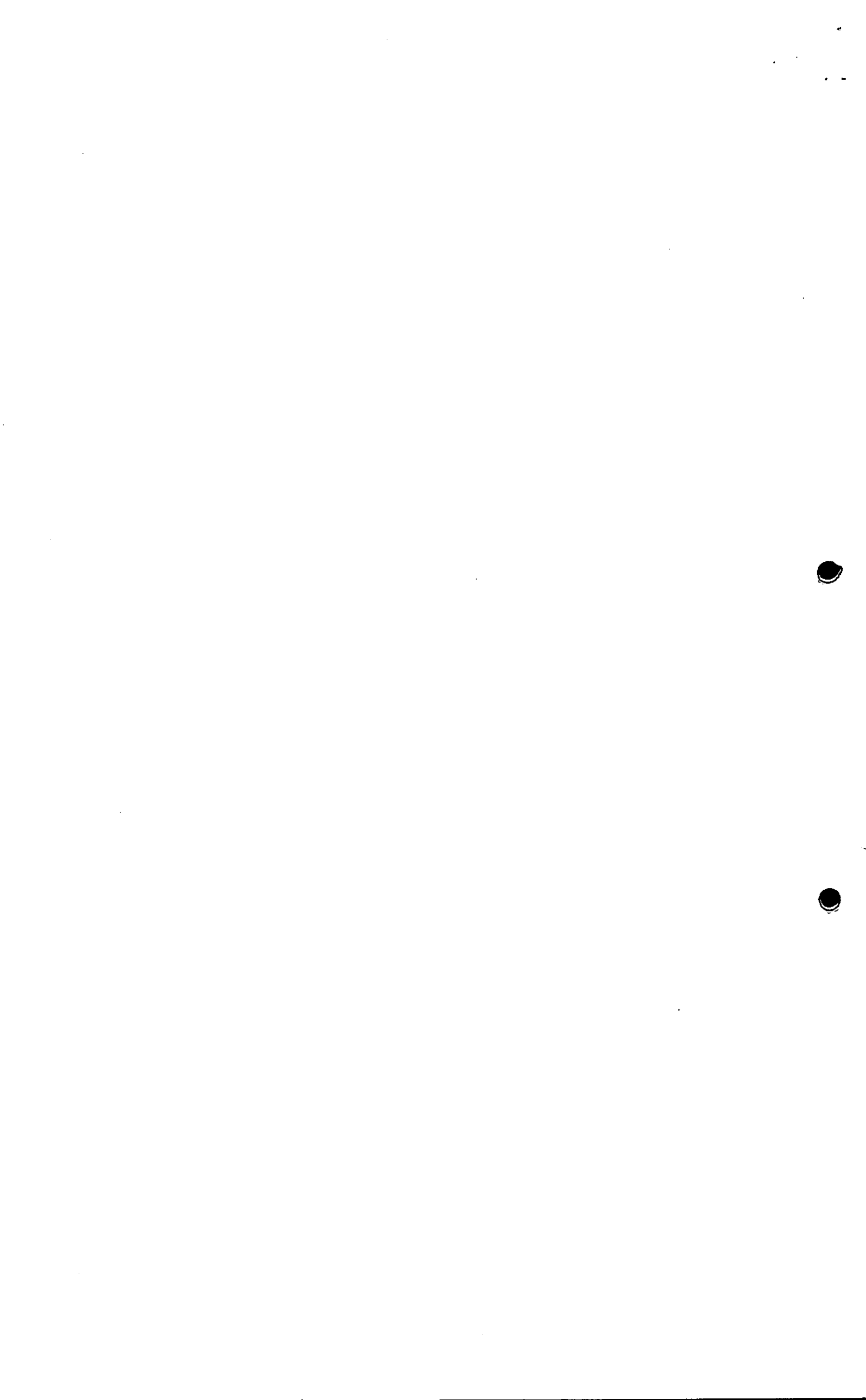
The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(79) Copy of accompanied Appeal.

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

कारण बताओ सूचना/ The Show Cause Notice No. STC/15-57/OA/2018 dated 23.10.2018 issued to M/s. Nidhi Infracon Ltd, SF 10, 2<sup>nd</sup> Floor, JBR Arcade, Opp: Satyam Complex, Science City Road, Sola, Ahmedabad 380 060 and Shri Kiritkumar Raghuram Phalakar, Director of M/s. Nidhi Infracon Ltd, SF 10, 2<sup>nd</sup> Floor, JBR Arcade, Opp: Satyam Complex, Science City Road, Sola, Ahmedabad 380 060.





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DOCUMENTS

BRIEF FACTS OF THE CASE:

M/s. Nidhi Infracon Ltd., SF 10, 2nd Floor, JBR Arcade, Opp. Satyam Complex, Science City Road, Sola, Ahmedabad-380060 (hereinafter referred to as "said assessee") was providing taxable output services falling under the taxable category of "Manpower recruitment/ supply agency service, Construction services other than residential complex, including commercial/industrial buildings or civil structures, Transport of goods by road/ goods transport agency service, Works contract service". The said assessee had registered with erstwhile Service Tax Commissionerate, Ahmedabad, Division-I, Range- III and were holding Service Tax Registration No. AADCK4339ASD001 taken on 03/07/2012 and later amended on 26/02/2016.

ACTION TAKEN ON THE INTELLIGENCE/DOCUMENTS SUBMITTED:-

2. On the basis of information, inquiry was initiated by the Preventive Wing of Service Tax, Ahmedabad and Summons dated 14.12.2016 was issued calling for the documents for the financial year 2012-13, to 2016-17 (Up to Sept. 2016). The said assessee has submitted the details like Balance Sheet for the period 2012-13 to 2015-16 along with the schedules, Trial Balance for the period 2015-16 & 2016-17 (up to Sept. 2016), ledgers for the members deposit/ advances for the period 2012-13 to 2015-16, copy of the sale deed of the flats. However, documents regarding service received by them for the period 2012-13 to 2016-17 ( up to Sept.2016) were not submitted by the said assessee and assured to submit the same within a week along with the reconciliation statement. The assessee vide letter dtd- 09.01.2017 has submitted some documents like Transportation expenses for the period 2012-13, 2013-14, 2014-15, 2015-16, ledgers for the consultancy expenses for the period 2014-15 & 2015-16; expense ledgers of the manpower for the period 2012-13 to 2015-16. Subsequently, letter/summons dated 23.01.2017 & 29.03.2017 were issued to them asking for the remaining documents and details for the period 2016-17 (up to Sept.2016) and recording of the statement of the authorized person.

SCRUTINY OF THE DOCUMENTS :

3. On scrutiny of the financial records, documents provided by M/s. Nidhi Infracon Ltd and data available at ACES it was noticed that :

I. The said assessee is a registered public limited company and registered with Service Tax department having Service Tax Registration No. AADCK4339ASD001 taken on 03/07/2012 and later amended on 26/02/2016.

II. The said assessee is engaged in providing/ receiving service of "Manpower recruitment/ supply agency service, Construction services other than residential



complex, including commercial/industrial buildings or civil structures, Transport of goods by road/ goods transport agency service, Works contract service".

III. The said assessee has not filed ST-3 return for the period 2012-13, April 2013 to September 2013, October 2014 to March 2015, 2015-16 & April 2016 to September 2016 as on date of initiation of investigation. The said assessee has not discharged the service tax liability for these periods.

**STATEMENT:-**

4. A Summons was issued to the said assessee on 29.03.2014 to give statement. Statement of Smt. Anal A Ramani, Account Manager & Authorized person of M/ s. Nidhi Infracon Ltd has been recorded under section 14 of the Central Excise Act, 1944 on 18.04.2017, wherein she interalia stated that M/ s. Nidhi Infracon Ltd was formed as Nidhi Infracon Private Ltd in 2010 and later in 2015 the company was renamed as Nidhi Infracon Limited; that M/ s. Nidhi Infracon Limited is providing Construction of Residential complex and commercial complex service for their prospective buyers and for this they were collecting Advances/Booking amount from their customers for construction of flats/shop; that she submitted details of service tax liability vide letter dated 17.04.2017; and she attached a reconciliation statement showing Service Tax liability that accordingly she confirmed the following Service Tax liability.

Year	Details	Service Tax liability/Rs.
2013-14 to 2016-17 (Upto September)	On Construction service (advances including ST)	4427426
2013-14 to 2016-17 (upto September)	On Construction Service (ST collected separately)	4944001
Total ST Liability under construction service	....	9371427
UNDER RCM		
2013-14 to 2016-17 (upto September)	Manpower Service	5246543
2013-14 to 2016-17 (upto September)	GTA Service	283521
2013-14 to 2016-17 (upto September)	Legal Service	12237
Total Service Tax liability under RCM		5542301
	Grand Total:	1,49,13,728/-

5. Further, statement of Shri Kiritkumar Raghuram Thakker, Director of M/s Nidhi Infracon Ltd was also recorded before the Superintendent, Service Tax, Ahmedabad on 14.12.2016 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 wherein he admitted that Nidhi Infracon



Ltd were providing Construction of Residential Complex and Commercial Complex services and they were collecting Advances/Booking amount from their customers for construction of flats/shop. He also stated that they pay Service Tax under construction of residential complex Service, include land value in their taxable value and calculate Service Tax on the advance received from the customers after taking abatement. He stated that due to financial crunch, the Service Tax payment was not made and hence the ST-3 was not filed. He assured that he will pay the Service Tax liability immediately along with interest.

6. It was revealed that in some cases they have separately collected service tax amount and in some cases the advances are inclusive of service tax; that the scheme named Raghuvir Estate was already completed in April 2010 so, there is no liability in this case; that the scheme, Kuber Heights a residential scheme, they have closed the same due to some technical problem of construction, they have returned the advances to members; that they have agreed to pay if any further liability pointed out by department in due course and also provide related documents if required.

**OUTCOME OF STATEMENT:-**

7. From above statement it appeared that:
- I. The said assessee is a registered Public Ltd company and registered with Service Tax department holding Service Tax Registration No. AADCK4339ASD001 taken on 03/07/2012 and later amended on 26/02/2016.
  - II. The said assessee is engaged in providing/receiving service of "Manpower recruitment/supply agency service, Construction services other than residential complex, including commercial/industrial buildings or civil structures, Transport of goods by road/ goods transport agency service, Works contract service".
  - III. The said assessee has not filed ST-3 return for the period 2012-13, April 2013 to September 2013, October 2014 to March 2015, 2015-16 & April 2016 to September 2016 as on date of initiation of investigation. The said assessee has not discharged the service tax liability for these periods.

**LEGAL PROVISIONS:**

8. **CONSTRUCTION SERVICES OTHER THAN RESIDENTIAL COMPLEX, INCLUDING COMMERCIAL/INDUSTRIAL BUILDINGS OR CIVIL STRUCTURES:-**

"Commercial or Industrial Construction" means

- (a) Construction of a new building or a civil structure or a part thereof; or
- (b) Construction of pipeline or conduit; or
- (c) Completion and finishing services such as glazing, plastering, painting,



floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) Repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is

(i) Used, or to be used, primarily for; or

(ii) Occupied, or to be occupied, primarily with; or

(iii) Engaged, or to be engaged, primarily in,

9. commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams; (Section 65(25b) of the Finance Act, 1994)  
**"Taxable Service"** means any service provided or to be provided to any person, by any other person, in relation to commercial or industrial construction (Section 65 (105) (zzq) of the Finance Act, 1994)

10. After introduction of negative list with effect from 01.07.2012 "service" means any activity carried out by a person for another for consideration, and includes a declared service & does not fall under negative list of services under Section 66D of the Finance Act.

11. **CONSTRUCTION OF RESIDENTIAL COMPLEX SERVICE**

(i) "Construction of Complex" means

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

(b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or

(c) Repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;

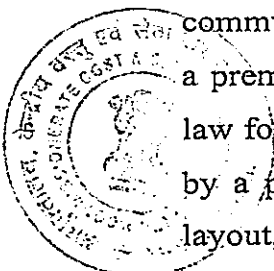
(Section 65(30a) of the Finance Act, 1994)

(ii) "**Residential Complex**" means any complex comprising of-

(i) A building or buildings, having more than twelve residential units;

(ii) A common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as



residence by such person.

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this clause,

(a) -personal use includes permitting the complex for use as residence by another person on rent or without consideration;

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

(Section 65(9 la) of the Finance Act, 1994)

12. "Taxable Service" means any service provided or to be provided to any person, by any other person, in relation to construction of complex;

Explanation.- For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorized by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;] (Section 65 (105) (zzzh) of the Finance Act, 1994).

13. After introduction of negative list with effect from 01.07.2012 "service" means any activity carried out by a person for another for consideration, and includes a declared service & does not fall under negative list of services under Section 66D of the Finance Act.

**MANPOWER RECRUITMENT OR SUPPLY AGENCY'S SERVICES:-**

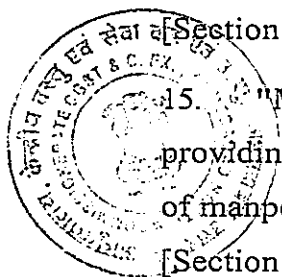
14. "Taxable Service" means any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;

[Explanation.-For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate]

[Section 65 (105) (k) of Finance Act, 1994 as amended]

15. "Manpower Recruitment or Supply Agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, [to any other person];]

[Section 65(68) of Finance Act, 1994 as amended]



16. After introduction of negative list with effect from 01.07.2012 "service" means any activity carried out by a person for another for consideration, and includes a declared service & does not fall under negative list of services under Section 66D of the Finance Act.

**GOODS TRANSPORT AGENCY SERVICE:**

17. "Goods" has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930 (3 of 1930).

(Section 65(50) of Finance Act, 1994 as amended)

"Goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

(Section 65(50a) of Finance Act, 1994 as amended)

"Goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

(Section 65(50b) of Finance Act, 1994 as amended)

"Taxable Service" means any service provided or to be provided to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage.

(Section 65(105) (zzp) of Finance Act, 1994 as amended).

**OUTCOME OF INVESTIGATION:**

18. On scrutiny of the relevant documents/ details submitted by the said assessee, M/s. Nidhi Infracon Ltd. and in view of discussions in the foregoing Para's and the evidences brought on records during the investigation it appeared that:

I. The said assessee is a Registered Public Ltd Company and registered with Service Tax department having Service Tax Registration No. AADCK4339ASD001 taken on 03/07/2012 and later amended on 26/02/2016 and is engaged in providing/receiving service of construction service, Manpower recruitment/ supply agency service, Transport of goods by road/ goods transport agency service.

II. As per Ledger and balance sheet provided by M/ s. Nidhi Infracon Ltd, it is evident that the said assessee is registered as service provider and service recipient. As service provider they are engaged in providing construction service for both commercial as well as residential complex and as a service recipient they have received Manpower service, GTA Service & Legal Service under which they are liable to pay, the service tax under Reverse charge mechanism as per notification no.

30/2012 dated 20.6.2012 as amended. The said assessee has taken registration on 03.07.2012 but they filed late ST-3 returns.

III. For the period 2013-14 to 2016-17(up to Sept.2016), the said assessee has not





filed ST-3 returns regularly and also not discharged service tax liability properly. However, they have made part payment against their Service tax liability for the period Oct-2014 to March-2015. On scrutiny of Balance sheet, P&L account, and ledgers for the advances from the member, it appeared that the said assessee has provided taxable services viz. "Construction Service for Commercial as well as residential complex" and received the advances from the customers for providing these taxable services. Further, from the ledgers provided and the reconciliation statement submitted by the assessee, it was noticed that they have charged the service tax separately for some advances received from the customers and for some advances they have collected the service tax inclusive in the advance value.

IV. The assessee has received Manpower service and Goods Transport agency service for providing output service against which they are liable to pay the service tax under Reverse charge mechanism as per notification no. 30/2012 dated 20.6.012 as amended. The assessee has also submitted the details/invoices of the expenditure incurred by them for providing the output service.

V. The assessee vide his letter dated 20.4.2017 has stated that the details of Cenvat and copies of Cenvatable invoices would be provided by them within 07 days however, no complete details/invoices had been provided by the assessee.

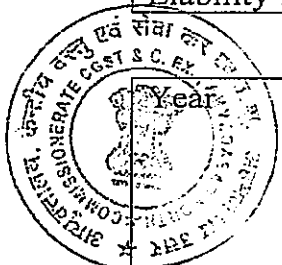
VI. The said assessee has not discharged their service tax liability properly for the period from 2013-14 to Sept.2016 resulting into Net Service Tax liability of amount Rs. 1,49,13,728/- (for period 2013-14 to 2016-17 (Sept-2016)). The detailed calculation sheet for the liability, prepared on the basis of data like relevant ledgers, P & L, Balance Sheet, provided by the assessee as per Annexure A to the Show Cause Notice. Summary of the service Tax liability arrived at on the basis of investigation is as detailed below:-

Service Tax Calculation Sheet (2012-13 to 2016-17 (upto Sept-2016) Construction Services.

Period	Taxable Value	Service Tax liability
2012-13	0	0
2013-14 to 2016-17 (upto Sept.2016)(Advance including of Service Tax)	192728979	4427426
2013-14 to 2016-17 (upto Sept.2016)(Advances exclusive of Service Tax)	121705601	4944001
Liability for Construction		93,71,427

MANPOWER SERVICE UNDER RCM

Year	Manpower Expenses	Service Tax Payable	Total Taxable Income as per ST-3 Return	Service Tax payable As per ST-3 in Man-	Net Liability of Manpower	Rate of Service Tax



				power				
2013-14	258663	23978	0	0	23978	12.36		
2014-15	4414497	409224	4319373	533875	0	12.36		
2015-16 (April – May)	778282	96196	0	0	96196	12.36		
2015-16 (June- 14.11.2015)	4104415	574618	0	0	57418	14		
2015-16 (15.11.2015- 31.03.2016)	2443928 2	354369 6	0	0	3543696	14.5		
2016-17 (April-May)	1145537	166102	0	0	166102	14.5		
2016-17 (June-Sept)	1148719 7	172308 0	0	0	1723080	15		
TOTAL	4665784 8	653967 2	4319373	533875	6310449		6130449	
Unaccounted challans in GAR-7 Paid before Initiation of Inquiry								883906
Net to be Paid								5246543

Service Tax Liability for the GTA service Under RCM is as under:-

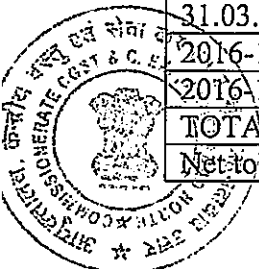
Service Tax liability for GTA under RCM

Years	GTA as per ledgers	Service Tax payable	Total Taxable Value as per ST-3 Return	Service Tax Payable as per ST-3 in GTA	Net liability for GTA	Rate of Service Tax
2013-14	1158236	35789	0	0	35789	12.36
2014-15	4010857	123935	1886034	58278	65657	12.36
2015-16 (April-May)	951998	35300	0	0	35300	12.36
2015-16 (June-14.11.2015)	2850167	119707	0	0	119707	14
2015-16(15.11.2015-31.03.2016)	1618635	70411	0	0	70411	14.5
2016-17(April-May)	234410	10197	0	0	10197	14.5
2016-17(June-Sept)	266334	11985	0	0	11985	15
Total	11101010	407645	1886034	58278	349367	
Unaccounted Challans in GAR-7 Paid before initiation of Inquiry					65846	
Net to be Paid					283521	

For Legal Service under RCM is as under:-

Service Tax liability for legal service under RCM

Years	Legal expenses as per ledgers	Service Tax payable	Net Liability for Legal Service	Rate of Service Tax
2012-13	0	0	0	12.36
2013-14	13010	1608	1608	12.36
2014-15	64295	7947	7947	12.36
2015-16(April-May)	21700	2682	2682	12.36
2015-16 (June-14.11.2015)	0	0	0	14
2015-16 (15.11.2015 – 31.03.2016)	0	0	0	14.5
2016-17 (April-May)	0	0	0	14.5
2016-17(June-Sept)	0	0	0	15
TOTAL	99005	12237	12237	
Net to be paid			12237	



VII. In view of the above, it appeared that the said assessee has not assessed the tax due on the taxable services namely "Construction Service, Manpower recruitment/ supply agency service, Transport of goods by road/ goods transport agency service and legal services provided & received by them and not paid service tax of total amounting to Rs. 1,49,13,728/- during the period 2013-14 to 2016-17 (Up to Sept.2016) including service tax liability under RCM.

VIII. The assessee had launched a new scheme of residential complex as well as Commercial construction under the name "Kuber Heights" and collected a total amount of Rs. 2,90,35,752/- under the head of "Advances from the customers" for the period 2015-16. However the said scheme was cancelled/ discontinued and the assessee had returned all the advances to the related customers. As the primary part of the service has not been established as there is no service for the consideration therefore it seems that there is no question of service tax liability but as the assessee has retained the money with them for the time they are liable to pay the interest on that amount which they have retained and then returned to the concerned customers. As the assessee has provided the ledgers for the same and on the basis of the reconciliation Rs.1,69,924/- has come out as an interest liability which the assessee is liable to pay. The detailed calculation sheet for the liability is attached as per Annexure B to the Show Cause Notice.

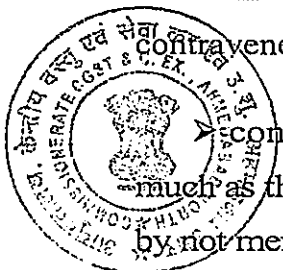
#### INVOCATION OF EXTENDED PERIOD

19. In view of discussion in the foregoing paras, it clearly appeared that all the above acts of contravention, omissions and commissions on the part of the said assessee, they have willfully suppressed the facts, nature and value of service provided by them by not filing ST-3 returns with an intent to evade the payment of Service Tax for the services provided by them, rendering themselves liable for penalty under provisions of Section 78 of the Finance Act, 1994. Therefore, the said service tax not paid is required to be demanded and recovered along with interest from them under the proviso to Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

#### CONTRAVENTION OF PROVISION

20. In view of the foregoing paras, it appeared that the said assessee has contravened the provisions of the Act and Rules made there under as below:

contravened the provisions of Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable services provided by not mentioning the correct value in ST 3 returns.



➤ Section 68(1) of the Finance Act 1994 provide that '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 which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case the said assessee has not paid service tax total amounting to Rs. 1,49,13,728/- and thereby violated the provisions of Section 68(1) read with Rule 6 of the Service Tax Rules, 1994.

➤ As per section 70 of the 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 (T-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider has not assessed the tax due, properly, on the services provided by him, as discussed above, and failed to file ST-3 Returns in time thereby violated the proviso of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

➤ It is provided under section 73(1) of the Act that "Where any service tax has not been levied or paid or has been short-levied or short paid or erroneously refunded, the <sup>4</sup>[Central Excise Officer] may, within <sup>5</sup>'thirty months' from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice"

**Provided** that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of -

(a) fraud; or

(b) collusion; or

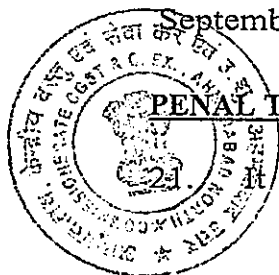
(c) willful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words<sup>1</sup>"thirty months", the words "five years" had been substituted. In the instant case, the said assessee has not declared correct taxable value in ST 3 returns and not filed the returns for the period April 2013 to September 2013, October 2014 to March 2015, 2015-16 & April 2016 to September 2016 .

**PENAL TY PROVISIONS:**

It further appeared that on account of all the above narrated acts of



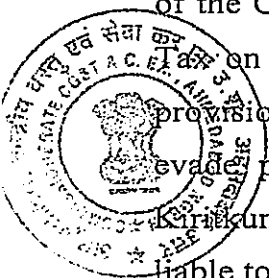
commission and omissions on the part of the said assessee, they have rendered themselves liable to penalty under the following provisions of the Finance Act, 1994, Service Tax Rules, as amended:

I. Section 77(2) of the Finance Act, 1994, in as much as they failed to self assess the tax due properly on the services provided/received and failed to file the ST-3 return.

II. Section 78 of the Finance Act, 1994, for not payment of Service tax by supersession of facts / taxable value from the department with an intend to evade the payment of Service Tax.

**22. PENAL ACTION AGAINST SHRI Kiritkumar Raghuram Thakkar, Director of M/s. Nidhi Infracon Limited:**

In view of the facts discussed above and material evidences available on records, it further appeared that Shri Kiritkumar Raghuram Thakkar, Director of M/s. Nidhi Infracon Ltd, was the person who handles day to day affairs related to Service Tax and was aware of service tax liability and is fully responsible for discharging proper service tax of the said company. Thus, he is the overall in-charge of all the affairs related to Service tax of M/s. Nidhi Infracon Ltd. Further, he is the person who appeared to have conceived the entire plan regarding the evasion and not depositing the Service Tax to the tune of Rs. 1,49,13,728/-, in respect of taxable services provided by them during the period from 2013-14 to 2016-17 (Up to Sept. 2016). He was aware of the income received from the services provided by the company but while filing service tax returns he chose to suppress the taxable value in ST-3 with the intent to evade service tax. He has also failed to assess/declare the correct taxable value by not filing periodical ST-3 Returns for the period 2012-13, 2013-14(1s Half), 2014-15(24 Half), 2015-16 & 2016-17(1s Half). Thus, he appeared to have deliberately suppressed the correct nature and value of the taxable services provided/received by them from the jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to any evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder. He fails to pay the Service Tax amount to the credit of the Central Government, he knowingly evaded the payment of Service Tax, as discussed in length in foregoing paras. Thus, he, being Director of the Company, appeared to have masterminded/abated in the evasion of Service Tax on the taxable services as discussed hereinabove. He has, thus, violated the provisions of the Finance Act, 1994 and rules framed thereunder with intent to evade payment of huge amount of Service Tax. In view of the above, Shri Kiritkumar Raghuram Thakkar, Director of M/s. Nidhi Infracon Ltd, appeared to be liable to penal action under Section 78A of the Finance Act, 1994 for the emissions



& commissions committed by him.

**INTEREST PROVISIONS:**

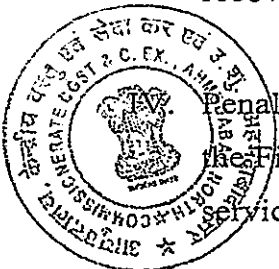
23. Further, as per Section 75 of the Finance Act 1994, every person liable to pay the tax in accordance with Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the said assessee 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 said assessee along with interest under Section 75 of the Finance Act, 1994.

**DEMAND PARA:**

24. Therefore, M/ s. Nidhi Infracon Ltd, SF 10, 2nd Floor, JBR Arcade, Opp. Satyam Complex, Science City Road, Sola, Ahmedabad380060 was called upon to show cause to the Additional/ Joint Commissioner of CGST & Central Excise, Ahmedabad-North as to why:-

- I. the non-payment/Short payment of Service Tax amount of Rs. 1,49,13,728/- (Rupees one Crore Fourty Nine Lakhs Thirteen Thousand Seven Hundred Twenty Eight only) {Rs. 93,71,427 /- for output service, Rs. 55,42,301/- for RCM) calculated on the basis of financial documents, for the taxable service Construction services and Service Tax liability under RCM for service received, calculated on the basis of expenditure incurred to receive the services like Manpower Agencies, Transport of Goods by road/Goods Transport Agency Service, legal service for the period 2013-14 to 2016-17 (upto Sept-2016), which is not falling under negative list of services under Section 66D of the Finance Act, should not be demanded and recovered from them under the proviso to Section 73(1) read with Section 68 of the Finance Act, 1994 as amended by invoking extended period of five years;
- II. the amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) deposited voluntarily by GAR-7 Challans no. 00381 dtd- 30.12.2016, after initiation of investigation should not be appropriated against their Service Tax liability of Rs. 1,49,13,728/-;
- III. Interest, as applicable, in respect of amount demanded above should not be recovered from them under Section 75 of the Finance Act, 1994

Penalty should not be imposed upon them under Section 77(2) of Chapter V of the Finance Act, 1994 for failure to self-assess the tax due properly on the services provided



- V. Late Fee for non filing of ST-3 Returns for the relevant period during stipulated time should not be demanded and recovered from him under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.
- VI. Penalty under section 78 of the Finance Act 1994 as amended should not be imposed upon them for non-payment of service tax by suppressing the facts from the department with intent to evade the payment of service Tax.
- VII. Interest liability of Rs.1,69,924/- should not be imposed upon them under Section 75 as amended of Chapter V of the Finance Act, 1994 for failure to return the advances in the stipulated time to the customers which they have collected under the head of clearances from the customers for their project named "Kuber Heights" which was not initiated due to some reasons.

25. Shri Kiritkumar Raghuram Thakkar, Director of M/s.Nidhi Infracon Ltd, registered at registered at SF 10, 2<sup>nd</sup> Floor, BJR Arcade, Opp: Satyam Complex, Science City Road, Sola, Ahmedabad 380 060 was called upon to show cause to the Additional/Joint Commissioner of CGST & Central Excise, Ahmedabad North as to why personal penalty should not be imposed upon him under the provisions of Section 78A of the Finance Act, 1994 for the omissions & commissions committed by him.

DEFENCE REPLY:

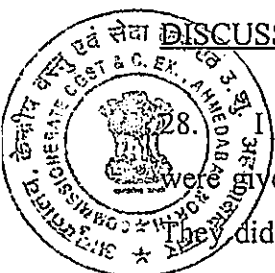
26. M/s. Nidhi Infracon Ltd has not filed any defence reply in response to the show cause notice even though considerable time has been lapsed. Therefore, it is presumed that the assessee has no defence to submit against the charges leveled in the show cause notice.

PERSONAL HEARING:

27. As no reply has been received from the assessee in reply to the show cause notice, personal hearings were fixed on 22.07.2020, 22.09.2020, 07.12.2020 and 03.02.2021. However, neither they appeared for the personal hearing nor any request for postponement was received. The assessee was given for more than three opportunities for personal hearing, but they did not avail the opportunities. As the issue is pending for more than two years and already considerable time has been elapsed, I can not keep the matter pending for long time. Therefore, I have no option except to decide the issue on ex-parte basis.

DISCUSSION AND FINDINGS:

28. I have carefully gone through the records of the case. I find that enough opportunities were given to the assessee for their appearance for personal hearing, including virtual hearing. They did not avail the same. Also, even after more than two years, they have not cared to file reply to the show cause notice, which prove that they have nothing to submit in their defence on



the charges leveled in the show cause notice.

29. I find this is a case of non-payment of Service Tax by M/s.Nidhi Infracon Ltd in respect of Services rendered/received by them in respect of the following services.

Sr.No.	Name of Service	Amount of Service Tax not paid/Rs.
01	Construction Service	93,71,427.00
02	Manpower Service under RCM	52,46,543.00
03	GTA	2,83,521.00
04	Legal Service under RCM	12,237.00
	Total	1,49,13,728.00

30. I find that during the course of recording the statement of Smt. Anal A Ramani, Account Manager &: Authorized person of M/ s. Nidhi Infracon Ltd recorded under section 14 of the Central Excise Act, 1944 on 18.04.2017, it has been categorically stated that M/ s. Nidhi Infracon Ltd was formed as Nidhi Infracon Pvt Ltd in 2010 and later in 2015 the company was renamed as Nidhi Infracon Ltd; that M/ s. Nidhi Infracon Ltd is providing Construction of Residential complex and commercial complex service for their prospective buyers and for this they were collecting Advances/Booking amount from their customers for construction of flats/shop. She admitted service tax liability amounting to Rs.1,49,13,728.00 payable to the Government.

31. Statement of Shri Kiritkumar Raghuram Thakker, Director of M/s.Nidhi Infracon Ltd was also recorded before the Superintendent, Service Tax, Ahmedabad on 14.12.2016 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 wherein he admitted that Nidhi Infracon Ltd were providing Construction of Residential Complex and Commercial Complex services and they were collecting Advances/Booking amount from their customers for construction of flats/shop. He also admitted the Service Tax liability.

32. It was revealed that in some cases they have separately collected service tax amount and in some cases advances are inclusive of service tax; that the scheme named Raghuvir Estate was already completed in April 2010 and there is no liability in this case; that the scheme Kuber Heights a residential scheme, they have closed the same due to some technical problem of construction, they have returned the advances to members; that they have agreed to pay if any further liability pointed out by department in due course and also provide related documents if required.

Based on the investigation, it has come to light that-

- The said assessee is a registered Public Ltd company and registered with Service Tax department holding Service Tax Registration No.AADCK4339ASD001 taken on 03/07/2012 and later amended on 26/02/2016.
- The said assessee is engaged in providing/receiving service of "Manpower recruitment/ supply agency service, Construction services





other than residential complex, including commercial/industrial buildings or civil structures, Transport of goods by road/ goods transport agency service, Works contract service"

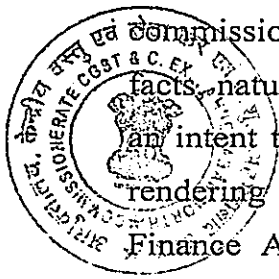
- The said assessee has not filed ST-3 return for the period 2012-13, April 2013 to September 2013, October 2014 to March 2015, 2015-16 & April 2016 to September 2016 as on date of initiation of investigation. The said assessee has not discharged the service tax liability for these periods.

33. From the above facts, it is evident that the said assessee has not assessed their Service Tax due on the taxable services of "Construction Service, Manpower recruitment/ supply agency service, Transport of goods by road/ goods transport agency service provided & received by them and not deposited the service tax of total amounting to Rs. 1,49,13,728/- during the period 2013-14 to 2016-17 (Up to Sept.2016).

34. I find that the assessee had launched a new scheme of residential complex as well as Commercial construction under the name "Kuber Heights" and collected a total amount of Rs. 2,90,35,752/- under the head of "Advances from the customers" for the period 2015-16. The said scheme was cancelled/ discontinued and the said assessee had returned all the advances to the customers. The primary part of the service has not been established as there is no service for the consideration therefore it seems that there is no question of service tax liability but as the assessee had retained the money with them for the time they are liable to pay the interest on that amount which they have retained and then returned to the concerned customers. As per the ledgers provided by the assessee for the same and on the basis of the reconciliation, an amount of Rs.1,69,924/- has come out as an interest liability which the assessee is liable to pay.

35. I find that the said assessee has deposited an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) voluntarily by GAR-7 Challan No.00381 dated 30.12.2016 after initiation of investigation. The said amount is required to be appropriated and adjusted towards the Service Tax liability of Rs.1,49,13,728/-. As the assessee have paid the amount during the course of investigation, interest and penalty shall be payable by them on the full amount of Service Tax demanded.

36. As discussed above, all the above acts of contravention, omissions and commissions on the part of the said assessee, they have willfully suppressed the facts, nature and value of service provided by them by not filing ST-3 returns with an intent to evade the payment of Service Tax for the services provided by them, rendering themselves liable for penalty under provisions of Section 78 of the Finance Act, 1994. Therefore, the said service tax not paid is required to be



recovered along with interest from them under the proviso to Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

37. In view of the above, I find that the said assessee has contravened the provisions of the Act and Rules made there under as below:

- contravened the provisions of Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable services provided by not mentioning the correct value in ST 3 returns.
- Section 68(1) of the Finance Act 1994 provide that '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 which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case the said assessee has not paid service tax total amounting to Rs. 1,49,13,728/- and thereby violated the provisions of Section 68(1) read with Rule 6 of the Service Tax Rules, 1994.
- As per section 70 of the 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. In this case, it appeared that the said service provider has not assessed the tax due, properly, on the services provided by him, as discussed above, and failed to file ST-3 Returns in time thereby violated the proviso of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.
- Section 73(1) of the Finance Act, 1994 provides that "Where any service tax has not been levied or paid or has been short - levied or short paid or erroneously refunded, the <sup>4</sup>[Central Excise Officer] may, within <sup>5</sup>'thirty months' from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short - levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice"
- **Provided** that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of -

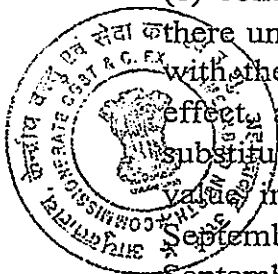
(a) fraud; or

(b) collusion; or

(c) willful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "thirty months", the words "five years" had been substituted. In the instant case, the said assessee has not declared correct taxable value in ST 3 returns and not filed the returns for the period April 2013 to September 2013, October 2014 to March 2015, 2015-16 & April 2016 to September 2016 .

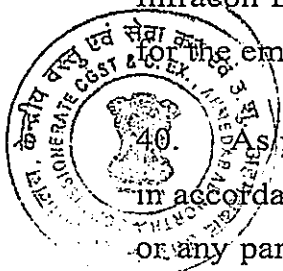


38. I find that the said assessee has failed deposited the Service Tax amount in to the Government they have rendered themselves liable to penalty in terms of the following provisions of the Finance Act, 1994, Service Tax Rules, as amended:

- I. Section 77(2) of the Finance Act, 1994, in as much as they failed to self assess the tax due properly on the services provided/received and failed to file the ST-3 return.
- II. Section 78 of the Finance Act, 1944, for not payment of Service tax by supersession of facts / taxable value from the department with an intend to evade the payment of Service Tax.

39. I also find that Shri Kiritkumar Raghuram Thakkar, Director of M/ s. Nidhi Infracon Ltd, was the person who handles day to day affairs related to Service Tax and was aware of service tax liability and is fully responsible for discharging proper service tax of the said company. Thus, he is the overall in-charge of all the affairs related to Service tax of M/s. Nidhi Infracon Ltd. Further, he is the person who appeared to have conceived the entire plan regarding the evasion and not depositing the Service Tax to the tune of Rs. 1,49,13,728/-, in respect of taxable services provided by them during the period from 2013-14 to 2016-17(Up to Sept.2016). He was aware of the income received from the services provided by the company but while filing service tax returns, he chose to suppress the taxable value in ST-3 with the intent to evade service tax. He has also failed to assess/ declare the correct taxable value by not filing periodical ST-3 Returns for the period 2012-13, 2013-14(1s Half), 2014-15(24 Half), 2015-16 & 2016-17(1s Half). Thus, he has deliberately suppressed the correct nature and value of the taxable services provided/received by them from the jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to any evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder. He fails to pay the Service Tax amount to the credit of the Central Government, he knowingly evaded the payment of Service Tax, as discussed in length in foregoing paras. Thus, he, being Director of the Company, has masterminded/abated in the evasion of Service Tax on the taxable services. Thus, he violated the provisions of the Finance Act, 1994 and rules framed thereunder with intent to evade payment of huge amount of Service Tax. In view of the above, Shri Kiritkumar Raghuram Thakkar, Director of M/s.Nidhi Infracon Ltd, is liable to penal action under Section 78A of the Finance Act, 1994 for the emissions & commissions committed by him.

As per Section 75 of the Finance Act 1994, every person liable to pay the tax in accordance with 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 said



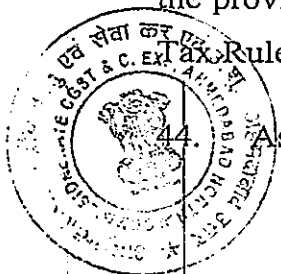
assessee has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the said assessee along with interest under Section 75 of the Finance Act, 1994.

41. 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 assessee was not paying the service tax charged for taxable services rendered/received. 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.

42. 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 , "Transport of Goods by Road Service" , Manpower Service and Legal Service 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 assessee 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.

43. 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 Nidhi Infracon Ltd, had not paid/ short paid service tax total amounting to Rs.1,49,13,728/- (Rupees One Crore Forty Nine Lakhs Thirteen Thousand Seven Hundred and Twenty 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.

44. As per Section 70 of the erstwhile Finance Act, 1994, every person liable to



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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.

45. 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.

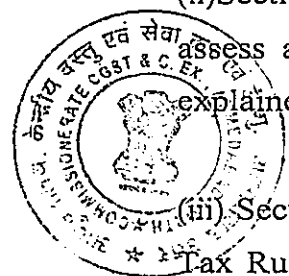
46. In view of the above facts, it is clearly comes out that all these material information and value of taxable services have been concealed from the department deliberately and consciously to evade payment of service tax purposefully by not declaring the amount received against the services rendered. 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.

47. As already discussed, 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 2013-14 to 2016-17 (Up to Sept.2016)

(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 2013-14 to 2016-17 (Up to Sept.2016), 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 2013-14 to 2016-17 (Up to Sept.2016)

48. 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.

49. 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.

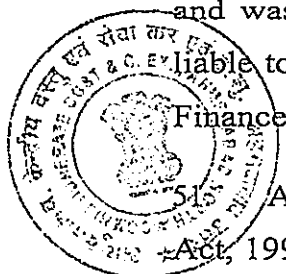
50. On account of all the acts of commission and omissions narrated above on the part of the service provider, they have rendered themselves liable to penalty under the following provisions of the Finance Act, 1994, as amended:

(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 Nidhi Infracon Ltd 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. Shri Shri Kiritkumar Raghuram Thakkar, Director of M/s.Nidhi Infracon Ltd 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.

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



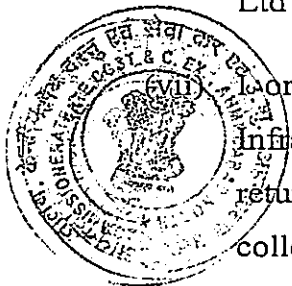
the service provider has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid/short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from 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 amounting to Rs. 1,49,13,728/- (Rupees one Crore Fourty Nine Lakhs Thirteen Thousand Seven Hundred Twenty Eight only) {Rs. 93,71,427 /- for output service, Rs. 55,42,301/- for RCM) under Section 73(1) read with Section 68 of the Finance Act, 1994 as amended and order M/s.Nidhi Infracom Ltd, Ahmedabad to pay up the amount immediately.
- (ii) I appropriate and adjust the amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) deposited voluntarily by GAR-7 Challans no. 00381 dtd- 30.12.2016, by M/s.Nidhi Infracom Ltd, after initiation of investigation against their Service Tax liability of Rs. 1,49,13,728/-;
- (iii) I order M/s.Nidhi Infracom Ltd to pay up the interest, as applicable, on the amount of Service Tax demanded under Section 75 of the Finance Act, 1994.
- (iv) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s.Nidhi Infracom Ltd under Section 77(2) of the Finance Act, 1994.
- (v) I order M/s.Nidhi Infracom Ltd to pay Late Fee for non filing of ST-3 Returns for the period 2013-14 to 2016-17 (Up to Sept.2016) within the stipulated time under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.
- (vi) I impose a penalty of Rs.1,49,13,728/- (Rupees one crore forty nine lakhs thirteen thousand seven hundred and twenty eight only) on M/s.Nidhi Infracom Ltd under section 78 of the Finance Act 1994 as amended

I order that interest liability of Rs.1,69,924/- be recovered from M/s.Nidhi Infracom Ltd, under Section 75 of the Finance Act, 1994 for their failure to return the advances in the stipulated time to the customers which they have collected under the head of clearances from the customers for their project



named "Kuber Heights".

(viii) I further order that In terms of Section 78 (1) of the Finance Act, 1994 if M/s. Nidhi Infracon Ltd, Ahmedabad, pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (iii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Nidhi Infracon Ltd, Ahmedabad shall be twenty-five per cent of the penalty imposed at Sr. No. (vi) above, subject to the condition that such reduced penalty is also paid within the period so specified.

(ix) I impose a penalty of Rs.1,00,000/- (Rupees one lakh only) on Shri Kiritkumar Raghuram Thakkar, Director of M/s.Nidhi Infracon Ltd, Ahmedabad under Section 78A of the Finance Act, 1994.

52. The Show Cause Notice No. STC/15-57/OA/2018 dated 23.10.2018 issued to M/s. Nidhi Infracon Ltd, SF 10, 2<sup>nd</sup> Floor, JBR Arcade, Opp: Satym Complex, Science City Road, Sola, Ahmedabad 380 060 and Shri Kiritkumar Raghuram Thakkar, Director of M/s. Nidhi Infracon Ltd, SF 10, 2<sup>nd</sup> Floor, JBR Arcade, Opp: Satyam Complex, Science City Road, Sola, Ahmedabad 380 060 is disposed-of in the above manner.



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

By Regd Post AD

F. No. STC/15-57/OA/2018

To

Date: 23.02.2021

- (1) M/s. Nidhi Infracon Ltd,  
SF 10, 2<sup>nd</sup> Floor, JBR Arcade, Opp: Satym Complex  
Science City Road, Sola, Ahmedabad 380 060.
- (2) Shri Kiritkumar Raghuram Thakkar,  
Director of M/s.Nidhi Infracon Ltd,  
SF 10, 2<sup>nd</sup> Floor, JBR Arcade, Opp: Satyam Complex,  
Science City Road, Sola,  
Ahmedabad 380 060.

Copy to:

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