DIN- 20200964WT0000GV1240

आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599	फैक्स/ FAX : 079-2754 4463	E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-52/OA/2019

आदेश की तारीख़ / Date of Order : 10.09.2020

जारी करने की तारीख़ / Date of Issue : 11.09.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–21/2020-21

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

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

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए(। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैंचार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलगन की जाएंगीम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide Show Cause Notice no. **VI/1(b)/CTA/Tech-31/SCN/Chartered Speed/19-20** dated 15.10.2019 issued to M/s Chartered Speed Limited (Formerly known as M/s Chartered Speed Pvt. Ltd), Near Sanathal Circle, Sarkhej-Bavla Highway, Sanathal, Ahmedabad.

BRIEF FACTS OF THE CASE

The facts of the case, in brief, are that M/s. Chartered Speed Limited [Formerly known as M/s Chartered Speed Pvt Ltd], Near Sanathal Circle, Sarkhej-Bavla Highway, Sanathal, Ahmedabad [*for brevity, hereinafter referred as the said assessee*]were engaged in providing taxable services such as; Rent-a-Cab services, Goods Transport Agency Services etc. for which they were holding Service Tax Registration No AADCC0802EST001.

2. The officers of Central Tax Audit, Ahmedabad had conducted audit of the records maintained by the said assesseefor the period from April 2014 to June 2017.As per the Final Audit Report No 2086/2019-2010 dated 19.07.2019 issued by the Deputy Commissioner, Circle VI, Audit Commissionerate, Ahmedabad, the following objections were raised.

3. During the course of audit, on scrutiny of the ST3 returns filed by the said assessee, it was noticed that they were paying service tax on rent-a-cab services provided by them on 40% of gross amount. Notification No 26/2012-ST dated 20.6.2012, as amended, provides the benefit of payment of service tax on 40% value subject to the condition that Cenvatcredit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service providerunder the provisions of the CENVAT Credit Rules, 2004.

4. It was noticed that the said assessee had availed Cenvat credit of duty paid on buses and other inputs used for providing rent-a-cab services and utilized the entire credit for discharging their service tax liability. Accordingly, the benefit of Notification No 26/2012-ST dated 20.6.2012, as amended, cannot be extended to them. It thus appeared that the said assessee was required to pay service tax on the gross amount received by them, and not on 40% value, as they had availed the Cenvat credit on inputs as mentioned above.

5. A query memo was issued to the said assessee on 30.7.2018 proposing to deny the abatement under Not. No 26/2012-ST dated 20.6.2012, as amended and to demand service tax at the full rate on the gross amount received by them for such services. The assessee have reversed Cenvat credit amounting to Rs 1,89,11,714/-, out of the total Cenvat credit of Rs 2,56,98,531/- availed by them, as tabulated below:

Challan Number	Date	Amount paid (Rs)
CIN 05102471810201850015	18-10-2018	49,50,000/-
CIN 05102471810201800068	18-10-2018	50,000/-
CIN 05102472910201850039	29-10-2018	25,00,000/-
CIN 05102471211201850007	12-11-2018	25,00,000/-
CIN 05102471211201850034	29-11-2018	5,00,000/-

CIN 05102471512201850010	15-12-2018	10,00,000/-
CIN 05102471202201950015	12-02-2019	10,00,000/-
CIN 05102471601201950033	16-01-2019	10,00,000/-
CIN 05102471505201950013	15-05-2019	20,00,000/-
CIN 05102472805201900056	28-05-2019	2,00,000/-
CIN 0510247310520190015	31-05-2019	20,00,000/-
CIN 05102473105201900114	31-05-2019	12,11,714/-
Total		1,89,11,714/-

6. The said assessee had cited the rulings in the case of *Sanjay Engineering Industries reported at 2016 (43) STR 354(Raj), Precot Mills Ltd.at 2006 (201) ELT 356(T) and Hello Minerals Water P Ltd at 2004 (174) ELT 422(All)* to state that since they had agreed to reverse the Cenvat credit availed by them, they should get the benefit of abatement as provided under Not. No 26/2012-ST dated 20.6.2012, as amended.

7 It appeared that the said assessee had not reversed the entire Cenvat credit availed by them. Out of the total Cenvat credit availed by them to the tune of Rs 2,56,98,531/- they have only reversed a partial Cenvat credit of Rs 1,89,11,714/- as tabulated above. The analogy of the judgements cited by them is that if the Cenvat credit is reversed by them, then they have complied with the provisions of the law and the abatement should be available to them.However, in this particular case, the Cenvat credit had not been reversed in full and therefore, abatement under Not. No 26/2012-ST dated 20.6.2012, as amended, should not be available to them and accordingly, the rulings cited by the assessee appeared to be of no use to them.

8. It thus appeared that during the period from 2014-2015 to 2017-2018 (upto June, 2017), the said assessee had provided rent-a-cab services by paying service tax only on 40% value while simultaneously availing the Cenvat credit, and therefore they are liable to pay service tax at the full rate amounting to Rs 23,17,65,488/- as tabulated below:

Period	Value	Rate of ST in %	Service tax payable on full rate	Service tax Paid	Service tax liable to pay
2014-2015	621472304	12.36	76813977	30725590	46088387
2015-2016	585972033	12.36/14/14.5	82485133	33025205	49459928
2016-2017	1188311515	14.5/15	177895723	71158287	106737436
2017-2018 (upto June)	327552645	15	49132897	19653160	29479737
TOTAL	2723308497		386327730	154562242	231765488

9. From the foregoing facts and discussions, it appears that the said assessee have contravened the following provisions of:

- Not. No 26/2012-ST dated 20.6.2012, as amended, as they have wrongly claimed the abatement for payment of service tax by availing Cenvat credit on inputs;

- Section 68 of the Finance Act, 1994 [*hereinafter referred as the said Act*] read with Rule 6 of the Service Tax Rules, 1994 [*hereinafter referred as the said Rules*] as they have failed to pay service tax at the rate specified in Section 66B in such manner and within such period as may be prescribed;

- Section 70 of the said Act read with Rule 7 of the said Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed.

10 It appeared that the said assessee had not disclosed in their ST3 returns that they had availed Cenvat credit of duty paid on buses and other inputs for providing rent-a-cab services. It further appeared that they knew that the abatement provided under Not. No 26/2012-ST dated 20.6.2012, as amended for payment of service tax only on 40% of the value was subject to the condition that they do not avail Cenvat credit on inputs, input services and capital goods. It was only during the course of the audit of their records that these facts came to the notice of the department. Therefore, it appeared that they had wrongly availed the benefit of abatement under Not. No 26/2012-ST dated 20.6.2012, as amended by way of suppression of material facts. Accordingly, service tax amounting to Rs 23,17,65,488/- is required to be recovered on the gross amount received by them by invoking the extended period of time, under the proviso to Section 73(1) of the said Act along with interest under the provisions of Section 75 of the Act. As the assessee has suppressed the materials facts of availing Cenvat credit on inputs for providing rent-a-cab services and paying service tax at only 40% of the value, they have also rendered themselves liable to penalty under the provisions of Section 78(1) of the said Act. Since they had already reversed partial Cenvat credit amounting to Rs 1,89,11,714/- as tabulated above, the same is required to be adjusted and appropriated towards the recovery.

11. During the audit, it was also noticed that in addition to providing taxable services, the assessee had also provided other services and received consideration on which no service tax was paid. It was stated by them that the services were exempted under the provisions of Section 66D of the Act and Not. No 25/2012-ST dated 20.6.2012, as amended. It was noticed from their ST3 returns that they had not shown the value of exempted services and had not reversed any amounts under Rule 6(3) or 6(3A), as the case may be, of the Cenvat Rules pertaining to exempted services. The exemption claimed by the assessee is tabulated as under:

Period	Description of service	Service receiver	Amount received (Rs)	Relevant clause of Section 66D/ Entry Sr. No. in Notification No.25/2012-ST
2014-2015	Freight AMTS Midi, Collection bus	Ahmedabad Municipal Transport Service, Passenger service	391898132	Section 66D (o)(i), S No 22 to Notfn No 25/2012-ST
2015-2016	Freight AMTS Midi, Freight AMTS Regular Bus, Taxi Freight, School, Income from buses (AGS) Collection bus	AMTS, Apple Global School, Udgam School and Passenger service	896599132	Section 66D (o)(i), Sr No 9 and 22 to Notfn No 25/2012-ST
2016-2017	Freight AMTS Midi, Freight AMTS Regular Bus, Taxi Freight, School, Zebar International School, Collection Bus Cargo and Parcel income	AMTS, Apple Global School, Udgam School, Zebar International School, Passenger service	518298577	Section 66D (o)(i), Sr No 9, 21 and 22 to Notfn No 25/2012-ST
2017-2018	Freight AMTS Midi, Freight AMTS Regular Bus, Taxi Freight, School, Zebar International School, Collection Bus Cargo and Parcel income	AMTS, Apple Global School, Udgam School, Zebar International School, Passenger service	70676096	Section 66D (o) (i), Sr No 9, 21 and 22 to Notfn No 25/2012-ST
		Total	1877471937	

12 It was observed that the said assessee had availed the Cenvat credit on inputs. It was stated that input services were common for both taxable and exempted services and they agreed to reverse an amount on proportionate basis, as envisaged under the provisions of Rule 6(3A) of the Cenvat Rules.

13. The relevant text to Rule 6 of the Cenvat Rules is reproduced below:

"RULE 6. [Obligation of a manufacturer or producer of final products and a [provider of output service]].— (1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be:

(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.

[(3) (a) A manufacturer who manufactures two classes of goods, namely :-

(i) non-exempted goods removed;

(ii) exempted goods removed;

Or

(b) a provider of output service who provides two classes of services, namely:-

(i) non-exempted services;

(ii) exempted services,

shall follow any one of the following options applicable to him, namely :-

[(i) pay an amount equal to six per cent. of value of the exempted goods and seven per cent. of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or]

(ii) pay an amount as determined under sub-rule (3A) :

Explanation 1. - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year".

14. It appears that the said assessee hadnot exercised any option to pay an amount as determined under Rule 6(3A) of the Cenvat Rules. Accordingly, it appears that the assessee is liable to pay an amount equal to 7% of the value of exempted services, as envisaged under Rule 6(3)(i) of the Cenvat Rules.

15. It was further noticed that the assessee had provided Goods Transport Agency services (GTA) and paid service tax on 30% of the value, by claiming the benefit of Not. No 26/2012-ST dated 20.6.2012, as amended. Not. No 26/2012-ST dated 20.6.2012, as amended, provides the benefit of payment of service tax on 30% value subject to the condition that Cenvatcredit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service providerunder the provisions of the CENVAT Credit Rules, 2004. It is already stated that the assessee have taken Cenvat credit on inputs and input services.

16. Further, as per definition of 'exempted services' given under Rule 2(e)(3) of the Cenvat Rules, exempted services means a taxable service whose part of value is exempted on the condition that no credit of input and input services used for providing such taxable service shall be taken. It appears that 70% of the value is exempted in case of GTA services and therefore, the value of GTA services is also required to be taken into account for the purpose of determining the amount to be paid under the provisions of Rule 6(3) of the Cenvat Rules.

17. It has been further observed that the assessee is selling goods on payment of VAT/Sales Tax. Such activity is covered under Section 66D(e) of the Act. Hence, the value of traded goods is also required to be taken for the purpose of determining the amount to be paid

under Rule 6(3) of the Cenvat Rules. As per Explanation-I to Rule 6 of the Cenvat Rules, for the purpose of Rule 6(3) of the Cenvat Rules, the value of trading of goods shall be difference between sale price and cost of goods sold or ten percent of the cost of goods sold, whichever is higher. In this case, it has been noticed that 10% of sale value was higher than the difference between sale price and cost of goods sold and therefore, 10% of sale value is taken for the purpose of Rule 6(3) of the Cenvat Rules for the period prior to 01.04.2016. After 01.04.2016, Rule 6(3)(i) of the Cenvat Rules read as under:

> *"(i) pay an amount equal to six percent of value of the exempted goods and seven percent of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period".*

18. As per their ST-3 returns, the sum total of opening balance of credit of inputs and input services and credit taken on inputs and input services for the period from April 2016 onwards is tabulated as under :

MONTH	Opening Balance	CREDIT TAKEN			TOTAL AMOUNT
		INPUTS	INPUT/ SERVICES	KKC	FOR REVERSAL
Apr-16	0	268335	134484	0	402819
May-16	0	176803	147298	0	324101
Jun-16	0	365232	124272	3277	492781
Jul-16	0	217048	262256	9259	488563
Aug-16	1197054	706948	311036	11666	2226704
Sep-16	1197054	443323	153998	5519	1799894
Oct-16	1347024	490949	294891	10321	2143185
Nov-16		959364	237905	8361	1205630
Dec-16		1679900	158246	5640	1843786
Jan-17		2089377	377934	13394	2480705
Feb-17		2027107	86893	3049	2117049
Mar-17		400271	2395621	65268	2861160
TOTAL					**18386377**
Apr-17	0	127044	29584	995	157623
May-17		69525	330878	11690	412093
Jun-17		121198	910980	32353	1064531
					1634247

19. Based on the above, the amounts payable under Rule 6(3) of the Cenvat Rules has been ascertained as under:

Period	Value of Exempted services	Value of Traded goods (taken as 10% of total sale value)	Value of GTA services	Total value	Rate	Amount to be paid	Amount to be paid as per Not.No.23/2016-CE	Net amount to be paid under Rule 6 (3)
2014-15	391898132	16679487	0	408577619	6%	24514657	0	24514657
2015-16	896599132	19949767	0	916548899	7%	64158423	0	64158423
2016-17	518298577	26072963	8291014	552662554	7%	38686379	18386377	18386377
2017-18	70676096	572115	2554222	73802433	7%	5166170	1634247	1634247
Total	1877471937	63274332	10845236	1951591505		132525629	20020624	108693704

20. The said assessee vide their letter dated 5.11.2018 paid an amount of Rs 2,88,286/- under Challan CIN No. 05102473105201900114 dated 31.5.2019. However, on scrutiny of the worksheet determining the amount of reversal made by the assessee, it was noticed that the assessee have not taken into account the value of GTA services provided by them. Further, as against the total Cenvat credit of Rs 1,14,25,568/- availed on input services, the assessee has only taken a Cenvat credit of Rs 3,43,803/- for the purpose of reversal. Accordingly, the assessee have not fully discharged their liability under the provisions of Rule 6(3A) of the Cenvat Rules. Accordingly, it appears that the assessee is liable to pay an amount as calculated in the table above for the period from April 2014 to June 2017. The amount to be paid has been worked out to Rs 10,86,93,704/- as tabulated above.

21. From the foregoing facts and discussions, it appears that the said assessee have contravened the provisions of Not. No 26/2012-ST dated 20.6.2012, as amended, as they have wrongly claimed the benefit of the notification by availing Cenvat credit on inputs relating to GTA services and by not reversing/paying the proportionate amount.

22. It appears that the assessee has not disclosed in their ST-3 returns that they had availed Cenvat credit of duty paid on input services relating to exempted services. It further appears that they knew that the services provided by them were exempted and they had to reverse an amount equal to 6%/7% of the value of exempted services or reverse a proportionate amount under the provisions of Rule 6(3) and 6(3A) of the Cenvat Rules, respectively. It was only during the course of the audit of their records that these facts came to the notice of the department. Therefore, it appears that have wrongly availed the benefit of Not.No 26/2012-ST dated 20.6.2012, as amended, by way of suppression of material facts. Accordingly, service tax amounting to Rs 10,86,93,704/- has to be recovered on the gross amount received by them by invoking the extended period of time, under the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules along with interest under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. As the assessee has suppressed the materials facts of availing Cenvat credit on inputs for services which were exempt, they have rendered themselves liable to penalty under the provisions of Section 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules. As the Cenvat credit of Rs 2,88,286/- has been reversed by the assessee as tabulated above, this reversal of Cenvat credit is to be adjusted and appropriated towards the recovery.

23. During the course of further scrutiny of records, it was noticed that the assessee has undertaken the activity of Bus body building, based on the Letter of Acceptance dated 31.5.2016 by M/s GSRTC, Naroda and a Letter of Award cum Purchase Order dated 01.09.2016 by Surat Municipal Corporation, Surat. As per the Letter of Agreement, M/s.GSRTC and Surat Municipal Corporation will provide the chassis for buses and the assessee would have to build the body on the chassis.

24. As per Sr. No 5 of Chapter Note to Chapter 87, it is provided that "For the purposes of this Chapter, building a body or fabrication or mounting or fitting of structures or equipment on the chassis falling under heading 8706 shall amount to 'manufacture' of a motor vehicle. As per Section 2(f) of the Central Excise Act, 1944, manufacture includes any process which is specified in relation to goods in the Section or Chapter Note of the First Schedule to Central Excise Tariff Act, 1985 as amounting to manufacture and the word `manufacturer' is defined as any person undertaking said activity. Since, the assessee has undertaken the activity of Bus body building on chassis, which amounts to `manufacture', they fall under the category of a manufacturer of Motor Vehicles under Chapter 87. It is further seen that motor cars and other motor vehicles principally designed for transport of persons exceeding 13 persons are classified under Chapter heading No 87.03 of the Central Excise Tariff Act and levied to duty. It appeared that the assessee had not obtained a Central Excise registration for manufacture of motor vehicle and also not paid the duty of excise on the bus body building activity.

25. On being pointed out, the assessee vide their letter dated 29.10.2018 and 05.11.2018 stated that they were availing the benefit of Notification No 12/2012-CE dated 17-3-2012 (Sr No 276). They further submitted that they had not taken any Cenvat credit on capital goods/inputs used for the body building work. In respect of common input services, they agreed to consider the value of bus building work for proportionate reversal.

26. Sr No 276 to Notification No 12/2012-CE dated 17.3.2012, as amended, provides full exemption to Motor Vehicles as under:

276	87	(i) Motor vehicles principally designed for the transport of more than six persons, excluding the driver, including station wagons; and (ii) Motor vehicles for the transport of goods (other than those specially designed for the transport of compressed or liquefied gases), falling under heading 8704; and (iii) three wheeled motor vehicles	Nil	27

Condition No 27

27	If manufactured out of chassis falling under heading 8706 on which duty of excise has been paid and no credit of duty paid on such chassis and other inputs used in the manufacture of such vehicle has been taken under rule 3 or rule 13 of the CENVAT Credit Rules, 2004: Provided that this exemption is not applicable to a manufacturer of said vehicles-(a) who is manufacturing such vehicle on a chassis supplied by a chassis manufacturer, the ownership of which remains vested in the chassis manufacturer or the sale of the vehicle so manufactured is made by such chassis manufacturer on his account; and (b) who is manufacturing chassis and using such chassis for further manufacture of such vehicle.

27. Serial number 288 under Notification No 12/2012-CE dated 17.3.2012 provides for partial exemption to Motor Vehicles, as under:

288	8702,8703, 8704, or 8716	(1) Motor vehicles manufactured by a manufacturer, other than the manufacturer of the chassis- (i) for the transport of more than six persons but not more than twelve persons, excluding the driver, including station wagons;	24%	30
		(ii) for the transport of more than twelve persons, excluding the driver;	12.5%	
		(iii) for the transport of not more than six persons, excluding the driver, including station wagons;	24%	
		(iv) for the transport of goods, other than petrol driven;	12.5%	
		(v) for the transport of goods, other than mentioned against (iv)	24%	
		(2) Vehicles of heading 8716 manufactured by a manufacturer, other than the manufacturer of the chassis. Explanation.-For the purposes of entries (1) and (2), the value of vehicle shall be the value of the vehicle excluding the value of the chassis used in such vehicle	12.5%	30

Condition No 30

30.	If no credit of duty paid on the chassis falling under heading 8706 has been taken under rule 3 or rule 13 of the CENVAT Credit Rules, 2004

28. It appears that Sr No 276 to Not. No 12/2012-CE exempts motor vehicles principally designed for transport of more than six persons from Central Excise duty subject to the condition that they are manufactured out of duty paid chassis and no Cenvat credit is availed. However, as per proviso to Condition 27 to the Not. No 12/2012-CE, the said entry does not provide exemption to motor vehicle manufactured on the chassis supplied by Chassis Manufacturer. As per Entry No 288 to Not. No 12/2012-CE, in respect of Motor Vehicles, having carrying capacity of more than 12 persons manufactured by a manufacturer, other than chassis manufacturer, concessional rate of duty of 12.5% *adv* was prescribed and the value for payment of duty was prescribed as the value of vehicle, excluding value of chassis, subject to non availment of Cenvat credit of duty paid on chassis.

29 On concurrently reading both the entries, it appears that the Motor vehicles manufactured by a manufacturer, who is undertaking only the activity of body building on chassis supplied to him and not manufacturing chassis, fall outside the purview of Sr No 276. It, therefore, appears that the appropriate entry is Sr No 288. Further, as per Explanation to Sr No 288, duty rate of 12.5% is prescribed on value of body building activity. In the subject case, the assessee has undertaken Bus Body building on chassis supplied to him and raised bill/invoice only for Bus body building work, charging VAT. Therefore, it appears that the assessee is liable to pay Central Excise duty @ 12.5% on the value of Bus Body Building activity undertaken by them. On the basis of the documents provided by the assessee, they have made Bus Body sales to the tune of Rs 13,57,75,353/-. The duty of excise leviable on this amount works out to Rs 1,69,71,919/-.As per Appendix III of Central Excise Tariff Act, 1985, National Calamity Contingent duty ('NCCD') @ 1% *adv* was imposed on all goods falling under Chapter 8703 and therefore, the assessee is liable to pay NCCD amounting to Rs. 13,57,753/-. As per the Eleventh Schedule to the Finance Act, 2016, Infrastructure Cess @ 4% was levied on all goods falling under Chapter 87.03 through clause 162 of the Finance Bill, 2016 effective from 1.3.2016. Therefore, the assess is also liable to pay infrastructure cess amounting to Rs. 54,31,014/-. The total duty payable works out to Rs. 2,37,60,686/- (Details as per Annexure B to this notice).

30 From the above, it appears that the said assessee has undertaken the activity of bus body building on chassis supplied by the buyers. This activity amounts to manufacture as per the provisions of Section 2(f) of the Act read with Sr No 5 of the Chapter Note to Chapter 87 of the Central Excise Tariff Act, 1985. The activity falls under the purview of Sr No 288 to Not. No 12/2012-CE dated 17.3.2012 and therefore, is dutiable.

31. The assessee has cited the case law of *Hi-Tech Auto Craft* reported at *2008(231) ELT 512 (T)* in their favour which is similar to the present issue. The Appellate Tribunal has allowed the appeal in favour of the assessee. It is seen that an appeal has been filed against the Appellate Tribunal's above Order with the Supreme Court reported at *2010 (254) ELT A 13(SC).*

32. From the foregoing facts and discussions, it appears that the said assessee have contravened the provisions of:

- Rules 4(1) read with Rule 8(1) of the Central Excise Rules, 2002('Excise Rules') as they have failed to pay the excise duty on removal and within the prescribed time frame;
- Rule 5 of the Excise Rules as they have failed to determine the appropriate rate of duty on the clearance of their excisable goods;

- Rule 6 of the Excise Rules as they have failed to assess their duty liability properly on the clearance of their excisable goods; and
- Rule 12 of the Excise Rules as they have failed to file excise returns for the clearances of their excisable goods.
- Rule 9 of the Excise Rules as they have failed to obtain a registration before the manufacture of their excisable goods;
- Rule 10 of the Excise Rules as they have failed to maintain daily stock account of their excisable goods;
- Rule 11 of the Excise Rules as they have failed to issue proper invoice for the clearance of their excisable goods

33. It appears that the said assessee had not disclosed to the revenue that they had cleared excisable goods and they have also not paid central excise duty on them. This could not have been detected unless their records were audited. It, therefore, appears that they have suppressed the material facts of bus bodybuilding activity which amounts to manufacture as discussed above and also failed to pay the duty of excise leviable on them, with an intent to evade payment of duty. Accordingly, the provisions of Section 11A(4) of the Act would be applicable for invoking the extended period of 'five years' in this case. It appears that the assessee had not paid the excise duty as discussed above and therefore, interest is to be charged and recovered from them under the provisions of Section 11AA of the Act. It appears that by their act of not taking a registration, not filing returns and not paying the duty of excise, they have suppressed the material facts with an intention to evade the payment of excise duty, as discussed above and hence the assessee would also be liable for penal action under the provisions of Section 11AC(1)(c) of the Excise Act read with the provisions of Rule 25 of the Excise Rules.

34. Further, during the course of audit, on reconciliation of the value of services as shown in their Balance Sheet vis-à-vis their ST3 returns, difference in value was noticed for the period from 2014-15, 2016-17 and 2017-18 (Q1). Service tax leviable on such differential value was worked out to Rs 92,79,586/-. On pointing out, the assessee had provided copies of some invoices showing a liability of Rs 48,61,138/- against which, they have paid a service tax of Rs 47,52,045/-. It, therefore, appeared that the assessee had not discharged the balance service tax amounting to Rs 45,27,541/- on such differential value. The details of differential value not shown in their ST3 returns, service tax leviable, service tax paid and remaining service tax to be paid are tabulated below:

Period	Differential value not shown in ST3	S.Tax liability at Full rate	S.Tax liability as per invoices	S.Tax paid	Balance to be paid
2014-2015	21618880	2672094	1448639	1448639	1223455
2016-2017	31401024	4710154	3412499	3303406	1406748
April 17 to June 17	12648921	1897338	0	0	1897338
	TOTAL	9279586	4861138	4752045	4527541

35. The relevant text to Section 65B(44) of the Act defining 'service' reads as under:

"'service' means any activity carried out by a person for another for consideration, and includes a declared service"

36. 'Taxable Service' defined under Section 65B(51) of the Act reads as under:-

"taxable service" means any service on which service tax is leviable under section 66B"

37. It appears from the above that there is an '*activity*' of rent-a-cab services and other services carried out by the said assessee. This activity has been carried out by the said assessee for their customers. There is a consideration received by the said assessee from their customers. It, therefore, appeared that the activity carried out by the said assessee falls within the meaning of 'service' as defined under the provisions of Section 65B(44) of the Act.

38. It is seen that the activities do not find mention in any of the provisions of Section 66D of the Act. It, therefore, appears that they do not fall under the negative list and therefore, are taxable services. Further, there is no exemption provided to the services under Not. No 25/2012-ST dated 20.6.2012, as amended or any other notification issued under the Act. Accordingly, it appears that the services provided by the said assessee are taxable and service tax is to be paid on the differential amount as tabulated above. The activity appears to be taxable as defined under Section 65B(51) of the Act.

39. From the foregoing facts and discussions, it appears that the said assessee have contravened the provisions of: -

- Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 ('Rules') as they have failed to pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed;
- Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed.

40. It appears that the said assessee had not disclosed to the revenue that they had provided services to their customers on which an income was earned by them. They have not informed that they were providing a taxable service falling within the definition of 'service' as envisaged under the provisions of Section 65B(44) of the Act. They have shown the entire consideration as income in their financial records but have not shown the same consideration as receipt in their ST3 returns before the audit objection was detected.

41. It, therefore, appears that they have suppressed the material facts of receiving a consideration on the services provided to them to their customers in their ST3 returns with an intent to evade the payment of service tax within the ambit of Section 65B(44) of the Act. Accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' in this case.

42. It is observed from the aforesaid chart that there is a difference in showing receipts of income for the period from 2014-15 to 2017-18 (Q1). The assessee had paid service tax of Rs 47,52,045/- and the remaining service tax leviable and not paid by the assessee amounting to Rs 45,27,541/- is liable to be demanded and recovered from the assessee, under the proviso to Section 73(1) of the Act by invoking the extended period of time of five years as there is a case of suppression of facts with an intent to evade the payment of service tax. It appears that the assessee had not paid the service tax as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act. It appears that by the act of not disclosing the amount of consideration received on account of the services provided by the said assessee, they have suppressed the material facts with an intention to evade the payment of service tax, as discussed above and hence they would also be liable for penal action under the provisions of Sections 78(1) of the Act.

43. It is also noticed from the above table that they had delayed the balance payment of Service Tax amounting to Rs 47,52,045/-. The details of the delayed payments are mentioned in Annexure-C to the show-cause-notice.

44. Section 68(2) of the Finance Act read with Rule 6 of the Service Tax Rules, 1994 ('Service Tax Rules') says that the service provider shall pay service tax on the taxable services received by them within the prescribed time. It appears that the assessee have delayed the payment of service tax amounting to Rs 47,52,045/- covering the years from 2014-15 to 2017-18 (Q1). It appears that the assessee had contravened the provisions of Section 68 of the Finance Act read with Rule 6 of the Service Tax Rules as they failed to pay the service tax within the prescribed time.

45. It appears that by delaying the payment of service tax, the assessee is liable to pay interest amounting of Rs. 2,79,406/- under the provisions of Section 75 of the Finance Act.

46. On scrutiny of the Annual Report of the assessee, it was noticed that the said assessee had made payments to their Directors towards rent charges as under :

Period	Name of Director	Amount paid	Ref
2014-2015	Pankaj Gandhi	3000000	Annex C Note 23 of Form 3CA
	Alka Gandhi	1036800	
2015-2016	Pankaj Gandhi	3000000	Note 35 Of Annual Report 2016-2017
	Alka Gandhi	1157760	
2016-2017	Pankaj Gandhi	3000000	
	Alka Gandhi	1036800	

47. As per the definition of 'service' in clause (44) of Section 65B of the Finance Act, 1994, service means any activity carried out by a person for another for consideration, and includes a declared service. The phrase 'declared service' is also defined in the said Section as any activity carried out by a person for another person for consideration and declared as such under section 66E of the Act. Renting of immovable property is a 'declared Service' as per Section 66E (a) of Finance Act, 1994. In the instant case, the Directors have rented out their premise to the said assessee, which is a commercial establishment. Thus, it appears that the activity of renting of immovable property by the Directors to the assessee would be covered within the ambit of 'service' and 'declared service'.

48. Notification No 30/2012-ST dated 20.6.2012, as amended, describes the person liable to pay service tax and the extent to which it is to be paid. The relevant text of the Notification is reproduced below:

"I. The taxable services,—
A) .....
(iva) provided or agreed to be provided by a director of a company to the said company
The extent of service tax payable thereon is tabulated below:

"TABLE

Sl No	*Description of a service*	*Percentage of service tax payable by the person providing service*	*Percentage of service tax payable by the person receiving the service*
5A	*in respect of services provided or agreed to be provided by a director of a company to the said company*	*Nil*	*100%*

49. The person liable to pay service tax has also been stipulated under the provisions of Rule 2(d) of the Service Tax Rules, 1994 ('Rules'), which reads as under:

"2(d) "person liable for paying service tax", -
(EE) in relation to service provided or agreed to be provided by a director of a company or the body corporate to the said company or the body corporate to the said company or body corporate, the recipient of such service"

50. It is seen that the said assessee is a private limited company and therefore well within the ambit of Rule 2(d)(EE) of the Rules. Accordingly, it appears that the assessee would be liable to pay the entire service tax as recipient for the services of 'Renting of Immovable Property' received from their Directors

51. The service tax payable on this point has been worked out to Rs 17,07,343/-, as tabulated below:

(Rs in actuals)

Period	Name of Director Shri/Ms.	Amount paid	Service Tax to be payable
2014-2015	Pankaj Gandhi	3000000	370800
	Alka Gandhi	1036800	128148
2015-2016	Pankaj Gandhi	3000000	435000
	Alka Gandhi	1157760	167875
2016-2017	Pankaj Gandhi	3000000	450000
	Alka Gandhi	1036800	155520
		TOTAL	1707343/-

52. It appears from the above that the assessee have contravened the provisions of:

- Section 68 of the Finance Act, 1994 ('Act') read with Rule 6 of the Rules as they have failed to pay the service tax of Rs 17,07,343/-;
- Section 70 of the Act read with Rule 7 of the Rules as they have failed to self-assess their service tax liability on the services received by them from their Director.

53. It appears that the assessee have not disclosed that they had received the services of renting of immovable property from their Directors. They have not informed that they were receiving a declared service of renting of immovable property falling within the ambit of clause (a) to Section 66E of the Act, from their Director.

54. It, therefore, appears that they have suppressed the material facts with an intent to evade payment of service tax of receiving a declared service provided to them by their Director and accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' for recovery of service tax not paid amounting to Rs 17,07,343/-. It appears that the assessee has not paid the service tax as discussed above and therefore, interest is to be charged and recovered from the assessee, under the provisions of Section 75 of the Act. It appears that by the act of not disclosing the receipt of services from their

Directorsand non-payment of service tax as a recipient of the services, the assessee has suppressed the material facts with an intention to evade the payment of service tax, and it, therefore, appears that the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act.

55. From the facts and evidences as described hereinabove, it appeared that the said assessee had knowingly availed the abatement under Not. No 26/2012-ST dated 20.6.2012 wrongly as they had availed the Cenvat credit which was not allowed. It also appeared that they have also not reversed appropriate amounts in relation to the provision of exempted services. It further appeared that they had not paid the duty of excise on the manufacturing activity of bus body building activity. It again appeared that they have not short paid service tax, not paid interest on delayed payment of services and also not discharged service tax on services received from their Directors.

56. These facts of nonpayment of service tax/duty of excise would have remained unnoticed if the audit officers did not raise these issues. These acts of the assessee tantamount to suppression and willful mis-statement of facts with intent to evade the payment of service tax. Therefore, the proviso to Section 73(1) of the Act is to be invoked for the demand and recovery of service tax and the provisions of Section 11A(4) of the Excise Act for the recovery of the duty of excise, from the assessee. Moreover, in the present regime of liberalization, self-assessment and filing of returns online, no documents whatsoever are submitted by the assessee to the department and therefore, the department would only come to know about such non-payment of service tax/duty of excise during audit checks. In the case of *Mahavir Plastics Vs CCE, Mumbai reported at 2010 (255) ELT 241 (T)*, it has been held that if facts are gathered by department in subsequent investigation, extended period can be invoked. In the case *of Lalit Enterprises Vs CST, Chennai reported at 2009 (23) STT 275*, it was held that extended period is invokable when department came to know of service charges received by appellant on verification of his accounts.

57. As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre-consultation with the adjudicating authority has been made mandatory before issuance of a show-cause-notice involving an amount of over Rs 50 lakhs. Based on these instructions, a communication was made to the said assessee fixing the date for pre-consultation discussion on 26.09.2019. Mr.Abhishek Chopra, Authorized person appeared for the pre-consultation.The judgment of *CESTAT at 2016 (43) STR 354(Raj)* was cited in their support. A copy of Not. No 13/2016-CE(NT) was also provided. It appears that the entire Cenvat credit has to be reversed in order to get the benefit as claimed by them. However, in the present case, they have not reversed the

entire Cenvat credit as discussed above and therefore, the ruling cannot be made applicable to this case.

58. Therefore, a show-cause-notice No. F.No. VI/1(b)/Tech-31/SCN/Chartered Speed/2019-20 dated 15.10.2019 was issued to the said assessee by the Principal Commissioner of Central Tax, Audit Commissionerate, Ahmedabad calling upon them to show Cause to the Commissioner of Central Tax, Ahmedabad-North Commissionerate, Ahmedabad as to why:

(i) the benefit of abatement under Notification No 26/2012-ST dated 20.6.2012, as amended should not be denied for rent-a-cab services and why service tax should not be charged at the full rate;

(ii) service tax amounting to Rs 23,17,65,488/- short paid on rent-a-cab services, should not be demanded and recovered from them, under the proviso to Section 73(1) of the Finance Act, and as they have already reversed an amount of Rs 1,89,11,714/-, why the said amount should not be appropriated against their total service tax liability;

(iii) interest should not be charged and recovered from them, under Section 75 of Finance Act on the proposed demand at (ii) above;

(iv) penalty should not be imposed upon them, under the provisions of Section 78(1) of Finance Act on the service tax demand at (ii) above;

(v) service tax amounting to Rs 10,86,93,740/- as tabulated n Para-19 *supra*should not be demanded and recovered from them under the proviso to Section 73(1) of Finance Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules, and as they have already paid an amount of Rs 2,88,286/-, why the said amount should not be appropriated towards their total liability;

(vi) Interest should not be charged and recovered from them, under the provisions of Section 75 of Finance Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules on the proposed recovery at (v) above;

(vii) penalty should not be imposed upon them, under the provisions of Section 78(1) of the Finance Act read with the provisions of Rule 15(3) of the Cenvat Rules on the proposed recovery at (v) above;

(viii) the activity of Bus Body building undertaken by the assessee, should not be considered as manufacture of Motor Vehicle, classifiable under Chapter heading 87.03 of the Central Excise Tariff Act, 1985;

(ix) duty of excise amounting to Rs 1,69,71,919/-, as detailed in Annexure-B to the notice, leviable on the bus body building activity amounting to manufacture, should not be demanded and recovered from them, under the provisions of Section 11A(4) of the Excise Act;

(x) National Calamity Contingency Duty amounting to Rs 13,57,753/- as detailed in Annexure-B to the notice, should not be demanded and recovered from them under the provisions of Section 11A(4) of the Excise Act read with Section 136(1) of the Finance Act, 2001;

(xi) Infrastructure Cess amounting to Rs 54,31,014/- as detailed in Annexure-B to the notice, should not be demanded and recovered from them under the provisions of Section 11A(4) of the Act read with Section 162 of the Finance Bill, 2016;

(xii) interest should not be charged and recovered from them under the provisions of Section 11AA of the Excise Act on the proposed demands at (ix), (x) and (xi) above;

(xiii) penalty should not be imposed upon them, under the provisions of Section 11AC(1)(c) of the Excise Act on the proposed demands at (ix), (x) and (xi) above;

(xiv) penalty should not be imposed upon them, under the provisions of Rule 25 of the Excise Rules on the proposed demands at (ix), (x) and (xi) above;

(xv) service tax amounting to Rs 45,27,541/- short paid on the differential income not shown in their ST3 returns, should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act;

(xvi) interest should not be charged and recovered from them, under the provisions of Section 75 of the Finance Act on the proposed demand at (xv) above;

(xvii) penalty should not be imposed upon them, under the provisions of Section 78(1) of the Finance Act on the proposed demand at (xv) above;

(xviii) interest amounting to Rs 2,79,406/- as discussed in Para 45 above and tabulated in Annexure-C to the notice, should not be charged and recovered from them under the provisions of Section 75 of the Finance Act for the delayed payment of Rs 47,52,045/-;

(xix) service tax amounting to Rs 17,07,343/- leviable on the services provided to them by their Directors, should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act;

(xx) interest should not be charged and recovered from them under the provisions of Section 75 of Finance Act on the proposed demand at (xix) above; and

(xxi) penaltyshould not be imposed upon them under the provisions of Section 78(1) of the Finance Act on the proposed demand at (xix) above.

59. The said assessee was earlier registered under the jurisdiction of the Commissioner of Service Tax, Ahmedabad. Consequent to the issue of Not. No. 12/2017 to 14/2017-Central Excise (NT), all dated 09.06.2017, appointing the officers of various ranks as Central Excise officers re-allocating the jurisdiction of the Central Excise Officers and Trade Notice No 001/2017 dated 16.6.2017 issued by the Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, the assessee is now registered under the jurisdiction of Principal Commissioner/Commissioner, Central Tax, Ahmedabad-North Commissionerate. Further, the provisions of the repealed Central Excise Act, 1944 and amendment of the Finance Act, 1994 have been saved under Section 174(2) of the Central Goods and Services Tax Act, 2017 and therefore, the provisions of the repealed/amended Acts and Rules made thereunder were enforced for the purpose of demand of duty, interest and imposition of penalty under the said notice.

DEFENCE REPLY

60. The said assessee, vide their letter dated nil, received on 04.03.2020, have filed their defence reply. Before entering into their submission w.r.t. the subject SCN, they have stated the facts that they were engaged in providing both taxable and exempted services of the following nature: -

(i) Rent-a-cab service under Notification 26/2012-ST dated 20.6.2012, discharging service tax on 40% of gross amount by availing benefit of abatement;

(ii) Hiring of vehicles service to Ahmedabad Municipal Transport Service and to schools which is exempted under Sr. No. 9, 21, 22 of Notification 25/2012-ST dated 20.6.2012;

(iii) GTA service provided and paid service tax on 30% of value by availment of benefit of abatement under Notification 26/2012-ST dated 20.6.2012;

(iv) Sale of Goods mainly Bus body building to Surat Municipal Corporation on payment of VAT/Sales Tax; and

(v) Bus body building work on the chassis received from Surat Municipal Corporation on availment of benefit under Notification 12/2012-CE dated 17.3.2012.

61. They stated that pursuant to the audit carried out by the officers of Central Tax Audit for the period from April, 2014 to June, 2017, various letters were issued by the department seeking clarification from them on different aspects, i.e. wrongful availment of Notification 26/2012-ST dated 20.6.2012 for provision of rent-a-cab service by availing credit of tax paid on input/input service/capital goods; proportionate reversal of credit in terms of Rule 6(3)/Rule 6(3A) of Cenvat Credit Rules, 2004 for provision of exempted service; availing abatement and trading of goods; for payment of excise duty; NCCD and Infrastructure Cess as the activity of bus body building amounts to manufacture; and re-conciliation of service tax payment issue was also raised, etc.copies of which were also submitted along with their corresponding replies. With reference to the abatement under Notification No. 26/2012-ST dated 20.6.2012 for provision of rent-a-cab service, they stated that out of the total credit of Rs. Rs.2,56,98,531/- inadvertently availed by them, they had partially reversed the credit of Rs.1,89,11,714/- during Audit, while they paid the remaining amount of Rs. 67,86,817/- along with interest before filing the defence reply and enclosed copies of challans thereof. They stated that they have also reversed credit of capital goods claimed in respect of GTA service, and enclosed copies of challans thereof, and that they have not claimed CENVAT Credit of any inputs or input services used in provision of GTA service. Further, they stated that two types of services were provided to AMTS wherein one part is where bus is given on hire basis to AMTS which is exempted under Entry No.22 of Notification No.25/2012-ST dated 20.6.2012, while in the other case, they are operating and maintaining the buses of AMTS. Since buses are not owned by the assessee and hence the benefit in terms of Entry No. 22 was not been taken by themand they are paying service tax on such service on full rate.With regard to the exempted services provided to AMTS, they vide letter dated 05.11.2018 had submitted the working of reversal of credit, wherein, they had reversed the CENVAT credit of capital goods, inputs and input services; that they had agreed and reversed the common input services and claimed CENVAT Credit of only those services which exclusively used for providing taxable services i.e. O&M contract on which the company has paid full service tax. They have also claimed to have filed timely returns during the disputed period, and wherever delay occurred in filing of returns, late fee has been paid. Subsequently, they have filed their defence reply on each item of demand as discussed in the following paras.

62.1. **<u>Demand of Rs.23,17,65,488/-under Section 73(1) of the Act</u>:-** SCN alleges that during the disputed period from 2014-15 to 2017-18 (upto June), the saidassessee has availed cenvat credit of duty paid on buses and other input services for providing rent-a-cab services and utilized the entire credit for payment of service tax on rent-a-cab service,

hencethebenefit of Notification No. 26/2012-ST dated 20.6.2012 as amended is not available to them. The demand of service tax on the gross value was demanded on the ground that they had reversed only partial amount of Cenvat credit of Rs. 1,89,11,714/- out of the total amount of Rs. 2,56,98,531/-involved on such exempted goods and services. It is also alleged that they had not declared relevant facts in their ST-3 returns. In this regard, they have stated that out of the total credit of Rs.2,56,98,531/- wrongly availed by them, they had partially reversed the credit of Rs.1,89,11,714/- during Audit, while they paid the remaining amount of Rs. 67,86,817/- along with interest before filing the defence reply and enclosed copies of relevant challans; that since they had reversed the entire credit along with applicable interest, it amounts to non-availment of credit and hence the demand for service tax on gross value is not tenable.

62.2. They stated that the Hon'ble Ahmedabad Tribunal in the case of *Khyati Tours and Travels vs. CCE, Ahmedabad reported at 2011 (24) STR 456* had decided a similar issue involving similar facts. The facts of the case, in brief, are that the appellants were engaged in the business of providing service namely "Rent-a-cab". On scrutiny of ST-3 return filed by the appellants for the period October, 2006 to March, 2007, it was observed that the appellants have discharged their service tax liabilities after availing abatement of 60% provided under Notification No. 1/2006-S.T., dated 1-3-2006 and simultaneously availed and utilized cenvat credit. Since the appellants have availed cenvatcredit along with the benefit of abatement, they failed to fulfil the conditions laid down and wrongly assessed the service tax liability for the period from October, 2006 to March, 2007. The Hon'ble Tribunal held that the reversal of credit availed along with the interest has effected as such no credit has been availed and thus the benefit of the Notification No. 1/2006 cannot be denied to the assessee. The relevant portion of the Judgement has been reproduced herein below:

> *"4. It is seen that the appellant had reversed the wrongly availed Modvat credit along with interest, the same will have the effect as if no credit was availed by the appellants. The law on the above point is very clear and stands settled by various decisions of judicial as also the quasi-judicial authorities. For the sake of convenience we may refer to the order passed by Commissioner (Appeals) in the case of Om Shanti Travels, Ahmedabad being Order-in-Appeal No. 197/2010(STC)/MM/ Commr(A)/Ahd dated 9-8-2010, wherein after summarizing the entire case law, the benefit stands extended to the assessee. We reproduce the relevant paragraphs from the said order :-*
>
> > *"8. The appellant cited the case of M/s. Hello Minerals Water Private Limited v. UOI reported in 2004 (174) E.L.T. 422 (Allahabad). I have gone through this judgment. In Para 18 of this judgment it has been held by the High Court that if the exemption is subject to non-availment of Modvat credit on inputs, the subsequent reversal of Modvat credit amounts to non-taking of credit on inputs and the benefit of exemption notification number 15/94-C.E., is to be granted, even when reversal of credit on inputs was done at Tribunal stage.*
> >
> > *8.1 The above judgment of the High Court is based on five member bench decision of the Tribunal in the case of Franco Italian Company Private Limited v. C.C.E., 2000 (120) E.L.T. 792. This judgment in turn based on the Supreme*

Court judgment in the case of Chandrapur Magnet Wire Private Limited v. C.C.E., Nagpur, 1996 (81) E.L.T. 3.

8.2 I have gone through the Hon'ble Supreme Court of India's judgment in the above mentioned case, and I find that it has been laid down/held that debit entry in Modvat credit account indicates as if no credit was taken on such inputs. This judgment has been followed in a number of Tribunal judgments. The latest has been a case of the Commissionerate of Service Tax itself in the case of CST, Ahmedabad v. M/s. Amola Holdings Private Limited. This judgment was given in order No. A/1148/WZB/AHD/09 dated 1-6-2009. This judgment also stands accepted by the Commissionerate and hence I follow the same and hold that reversal or debit of Modvat credit in this case of 9595 rupees amounts to non-availnment of Modvat credit and accordingly, the appellant is eligible to the benefit under Notification No. 1/2006."

5. Inasmuch as the appellants have admittedly reversed the credit along with interest, we find that benefit of the notification in question would be available to them. Accordingly, we set-aside the impugned order and allow the appeal with consequential relief to the appellants. Stay petition also get disposed off."

62.3. They also stated that the Hon'ble Ahmedabad Tribunal in case of *Indra Construction Vs Commissioner of C. Ex. & ST., Vadodara reported in 2018 (8) TMI 1176 – CESTAT, Ahmedabad*, relied on the case of *Punjan Builders Versus Commissioner, Central Excise & Service Tax, Vadodara-II - 2015 (12) TMI 490 - CESTAT Ahmedabad*, wherein, it is held that that reversal of CENVAT Credit case is squarely covered by the case of *Chandrapur Magnet Wires (P) Ltd. Versus Collector of C.Ex., NAGPUR - 1995 (12) TMI 72 - Supreme Court.* The benefit of abatement cannot be denied based on the above-case laws.Ratio of the judgment of Hon'ble Supreme Court in *Chandrapur Magnet* (supra) is that taking credit and reversing it amounts to not taking the credit. In *Chandrapur Magnet Wires Vs. CCE, Nagpur – 1996 (81) ELT 3 (SC) = 1996 (2) SCC 159*, the assessee took MODVAT credit on entire quantity of copper wire bar received in the factory. Whenever they cleared enamelled winding wire at NIL rate of duty, they reversed the MODVAT credit on the quantity of inputs used in the manufacture of exempted enamelled winding wire. The Central Excise department took a view that initial taking of credit was in violation of the condition of the Notification and the subsequent reversal of Modvat credit cannot amount to fulfilment of the conditions of the aforesaid exemption notification. Therefore, exemption is not available to the said winding wires under Sl. No. 1(i) of the Notification. However, the Hon'ble Supreme Court held that reversing Modvatcredit would be equivalent to the assessee not availing of Modvatcredit on inputs used in the manufacture of exempted final product, and hence exemption availed by them was correct in law and that the condition in the Notification was not violated.

62.4. The also stated that Hon'ble Allahabad Tribunal in case of *Rudra Infra Developers Vs Commissioner of C.Ex. & ST., Kanpur, 2019 (1) TMI 567 - CESTAT ALLAHABAD* held that the effect of reversal of the CENVAT credit leads to a situation as if no credit was ever availed by the assessee so as to fulfil the condition of the Notification in question.Hon'ble Delhi Tribunal in case of *Ambassador Holiday India Pvt. Ltd. Vs. Commrof*

C. EX., Delhi-I, 2019 (21) G.S.T.L. 460 (Tri. - Del.) held that Assessee having reversed CENVAT credit with interest on input services used for providing Tour Operator Service, he is entitled to abatement benefit under Notification No. 1/2006-S.T. as such reversal amounted to non-availment of credit. Again, Hon'ble Mumbai Tribunal in the case of *B G Shirke Technology P Ltd. Vs. CCE, Pune – III 2012-TIOL-511-CESTAT-MUM* has held that reversal of the CENVAT credit availed by the assessee, along with interest, same shall be interpreted as if assessee has not availed input service credit after introduction of Notification No. 1/2006. It is further submitted that the facts of the present case are similar to the facts of the *B G Shirke Technology P Ltd* (supra). The same view was taken by the Hon'ble Apex Court in the case of *CCE vs. AshimaDyecot Ltd. 2009 (240) ELT A41 (SC).*Similarly, in umpteen number of cases it has been heldthat reversal of credit along with interest amounts to non-availment of credit; e.g. *Central Warehousing Corporation vs. Commissioner of Service Tax, Raigad – 2014-TIOL-2182-CESTAT-MUM; Commissioner of C. Ex., Jaipur-I vs. Sanjay Engineering Industries – 2016 (43) S.T.R. 354 (Raj.); Beekay Engineering Corporation vs. Commissioner of C. Ex., Raipur – 2017 (52) S.T.R. 500 (Tri.-Del.),* etc. They held that since they have reversed/paid the entire amount of credit along with applicable interest, demand of Rs.23,17,65,488/- on the above ground does not survive.

63.1. <u>Demand of Rs. 10,86,93,740/- under Section 73(1) of the Act read with Rule 14(1)(ii) OF CCR, 2004</u>:- The SCN alleges that the said assessee had provided both taxable and exempted service, yet they had not reversed any amounts under Rule 6(3)/6(3A) of Cenvat Credit Rules pertaining to exempted service.The demand was worked out on the basis of the following three issues: -

(i) They had provided services to Ahmedabad Municipal Transport Service, Apple Global School, Udgam School, Passenger Service which is exempted from payment of service tax under Section 66D(o)(i), Sr. No.9,21 and 22 to Notification No.25/2012-ST. Amount received during the period from 2014-15 to 2017-18 (June 2017) is Rs.187,74,71,837/-.

(ii) They had also provided GTA service and paid service tax on 30% of the value. by claiming benefit of Notification No.26/2012-ST dated 20.6.2012 with a condition to not avail credit on inputs, capital goods and input service used for providing taxable service. However, they have taken CENVAT credit of inputs and input service. In terms of Rule 2(e)(3) of the CCR, exempted service means a taxable service whose part of value is exempted. Hence, GTA service is also required to be taken into account for the purpose of determining amount under Rule 6(3) of CCR; and

(iii) They were also selling goods on payment of VAT/Sales Tax and such activity is covered under Section 66D(e) of the Finance Act, 1994. Hence, the value of traded goods to be taken for the purpose of determining the amount to be paid under Rule 6(3) of CCR.

63.2. The assessee stated that the demand of Rs.10,86,93,740/-was proposed for no proportionate reversal of credit by them in terms of Rule 6 of CCR, 2004. It is alleged in the SCN that the total amount of CENVAT Credit of Input Services claimed is Rs.1,14,25,568/- out of which the input of service considered for reversal is Rs.3,43,803/-; that it is also alleged that the quantum of GTA turnover is not taken into account while calculating the quantum of reversal of common input services; that the allegations are not sustainable as the total quantum of input service availed during the period of audit is Rs.1,14,25,568/- out of which Rs.1,10,81762/-mainly include insurance on buses, repairing and maintenance services, CNG testing services etc. which pertains exclusively for taxable services i.e. O and M contract and on which the company has paid full service tax; that the common input services are amounting to Rs.3,43,803/- which are used for providing both taxable and exempted services which consist of consulting, banking, internet, telephone, marketing, credit rating, local repairing services etc.; and that they had availed the cenvat credit to the extent the said input services pertains to output services on which Service tax has been paid at full rate and therefore same is legally correct.

63.3. They submitted that the demand of 5%/6% on the consolidated value of trading goods, GTA service provided availing the benefit of Notification 26/2012-ST and Rent services provided to AMTS, Schools availing benefit of Notification 25/2012-ST is erroneous and legally not sustainable. They stated that Rule 6(3) of the CENVAT Credit Rules, 2004 gives three options to the person who is not maintaining a separate account. Rule 6(3) of the Cenvat Credit Rules, 2004 reads as under:

> *"Rule 6(3) - Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow any one of the following options, as applicable to him, namely :-*
>
> *(i) pay an amount equal to six per cent of value of the exempted goods and seven percent of value of the exempted services; or*
> *(ii) pay an amount as determined under sub-rule (3A); or*
> *(iv) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment."*

63.4. Rule 6 of the CCR provides option to the assesseeto reverse the credit. Rule 6(3)(i) of CCR provides to reverse the credit equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period.Likewise, Rule 6(3)(ii) of the CENVAT Credit Rules, 2004, gives an option to proportionately reverse the credit availed on inputs and input services used for manufacture of exempted goods in terms of the formulae provided under Rule 6 (3A). The said assessee stated that they have not claimed any credit of input services related to exempted services provided by them; and that they have claimed the credit for professional fees, bank charges, telecom services etc. which are common input services received by them both towards taxable and exempted activity performed by them.Accordingly, they calculated the reversal amount on their own for the period F.Y. 14-15 to April 17 in terms of Rule 6(3A) by applying the following formula:

Credit attributable to common input services used for exempted goods & exempted services (i.e., trading activity)	=	$\frac{A}{B}$	*x*	*CENVAT credit of service tax taken in respect of common input services*

A = Total value of exempted goods manufactured and exempted services (includes trading) provided.
B = Total Turnover [i.e., Value of dutiable goods + exempted goods + taxable services provided + exempted services (includes trading)]

** For the purpose of above formula:*
- Value of Goods means = Section 4 value
- Value of Service means = Gross amount charged
- Value of Trading means = [Sale price – Cost of Goods Sold] or [10% of Cost of Goods Sold], whichever is higher.

63.5. They also submitted that the credit reversed as per Rule 6(3A) of CCR along with the details of reversal was already submitted along with their reply dated 05.11.2018, a copy of which has been enclosed. Accordingly, the total amount required to be reversed by the assessee under Rule 6(3A) of CENVAT Credit Rules, 2004 for the period 2014-15 to 2017-18 (June 17) was worked out to Rs.2,88,286/- which they have already paideven prior to issuance of SCN vide letter dated 05.11.2018 vide challan no. 0502473105201900114 dated 31.05.2019.

63.6. The said assessee has relied upon the order passed by Hon'ble Gujarat High Court in case of *Principal CommissionerVs M/s Alembic Ltd.,2019-TIOL-1495-HC-AHM-ST*under which High Court had confirmed the order passed by Ahmedabad Tribunal, wherein, the assessee had availed common input/input service for provision of exempted and taxable service. Revenue authorities issued separate SCNs, demanding 6%/8%/10% amount of sale of

immovable property after obtaining completion certificate where no Service Tax was paid by the appellant, on the ground that they had availed CENVAT Credit and provided taxable as well as exempt services (sale of immovable property), and they had not maintained separate accounts. The Hon'ble High court on the aspect of Rule 6 held that "*Even after 13.4.2016, since the respondent had availed only proportionate credit, the respondent was not legally required to pay 8%/10% amount under rule 6(3) of the Rules, since it can be said to have maintained separate accounts as required under rule 6(2) of the Rules.*" They also stated that Mumbai Tribunal in case of *Mercedes Benz India (P) Limited Vs. CCE – 2015–TIOL–1550–CESTAT–MUM,*where,the case of the department was that the assessee cannot reverse CENVAT credit on common input services under Rule 6(3A) on the ground that the said option is available only when the condition and procedure specified in sub-rule (3A) is complied with. In this case, the Hon'ble Tribunal held that :-

> *5.1 We have observed that in Rule 6(3) prevalent at the relevant time, two options have been provided:-*
>
> *(i) Payment of 5% on value of exempted services.*
> *(ii) Payment of an amount equal to the CENVAT Credit amount attributed to input services used in or in relation to manufacture of exempted goods or provision of exempted services as provided under sub rule (3A) (b).*
>
> *It is observed that the appellant has availed the option provided under sub rule (3)(ii) of Rule 6 and paid an amount as per sub rule (3A) along with interest and intimated the same to the jurisdictional superintendent in writing vide letter dated 14/3/2012. From the perusal of the said letter, we observed that the appellant categorically stated in the said letter that payment of CENVAT Credit which they have made along with interest is in accordance with Rule 6(3A) of CENVAT Credit Rules. With this act of the appellant, it is clear that the appellant opted for the option as provided under Rule 6(3)(ii) of the CENVAT Credit Rules, 2012, in accordance to which, the appellant are supposed to an amount equivalent to CENVAT Credit on input services attributed to the exempted service in terms of Rule 6(3A). In the present case, the appellant has availed CENVAT Credit in respect of common input services, which has been used in relation to the manufacture of the final product as well as for trading of bought out cars. Therefore they are supposed to pay an amount equivalent to CENVAT Credit which is attributed to the input service used for exempted service i.e. sale of car. In our view, three options have been provided under rule 6(3) and it is up to the assessee that which option has to be availed. Revenue could not insist the appellant to avail a particular option. In the present case the appellant have admittedly availed option as provided under Rule 6(3)(ii) and paid an amount as required under sub rule (3A) of Rule 6. As regards the compliance of the procedure and conditions as laid down for availing option as provided under sub rule (3)(ii), we find that foremost condition is that the appellant is required to pay an amount as per the formula provided under sub rule (3A) on monthly basis. However, we find that as per the provision, payment on monthly basis is provisional basis, therefore it is not mandatory that whole amount or part of the amount as required to be paid on every month. The appellant though belatedly calculated the amount required to be paid in terms provided under Rule (3A) of Rule 6, therefore to fulfil the condition, assessee should pay the said amount, which has been complied by the appellant.*
>
> *5.2 As regard the delay in payment, if any, the appellant have discharged the interest liability on such delay. Regarding the compliance as provided under*

Clause (a) of Sub Rule (3A) of Rule 6 the appellant while exercising this option is required to intimate in writing to the Jurisdictional Superintendent, Central Excise, the following particulars namely:

(i) Name, address and registration No. of the manufacturer of goods or provider of output service;
(ii) Date from which the option under this clause is exercised or proposed to be exercised;
(iii) Description of dutiable goods or taxable services;
(iv) Description of exempted goods or exempted services;
(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition.

As per the submission of the appellant and perusal of their letter along with enclosed details, it is found that more or less all these particulars were intimated to the Jurisdictional Superintendent. The appellant has been filing their returns regularly on monthly basis to the department. On perusal of the copies of the such return submitted along with appeal papers, it is observed that the particulars, as required under clause (a) of sub rule (3A) of Rule 6 has been produced to the range superintendent. Therefore all the particulars which are required to be intimated to the Jurisdictional superintendent while exercising option stand produced. Though these particulars have not been submitted specifically under a particular letter, but since these particulars otherwise by way of return and some of the information under their letters has admittedly been submitted, we are of the view, as regard this compliance of Rule 6(3A), it stood made.

63.7. They further citedMumbai Tribunal's in case of case of *Tata Technologies Ltd Vs. CCE – 2016 – TIOL–272–CESTAT–MUM*, wherein the appellants were asked to pay 8% of the value of exempted services on the ground that they had not maintained separate accounts as required by Rule 6(2) of the Cenvat Credit Rules, 2004. The Hon'ble Tribunal held that condition of filing declaration under Rule 6(3A) of CCR, 2004 is only directory and not mandatory. Most of the requirements under Rule 6(3A) like, name, address and registration no. of the assessee, description of taxable services and exempted services, cenvat credit of inputs and input services lying in balance as on the date of exercising option, are already available in the records of the Revenue. It is also held that due to minor procedural lapses, substantial benefit cannot be denied. They have also cited the judgment of Supreme Court in *Chandrapur Magnet Wire Pvt. Ltd. - 1996 (81) E.L.T. 3.* (supra) wherein it was held that reversing Modvat credit would be equivalent to the assessee not availing of Modvat credit on inputs used in the manufacture of exempted final product and claimed that their reversal of credit along with interest amounts to non-availment of credit and hence the demand is not sustainable.

64.1. **Demand of Rs. 1,69,71,353/- under Section 11A(4) of Central Excise Act, 1944; Demand of Rs. 13,57,753/- towards NCCD and Demand of Rs. 54,31,014/- towards Infrastructure Cess:-** The SCN states that the said assessee had undertaken the activity of bus body building on chassis provided by M/s. GSRTC and Surat Municipal Corporation, which amounts to manufacture as per Section 2(f) of the CEA, 1944 read with Sr. No.5 of Chapter Note 87 of the CETA, 1985; that the motor vehicles principally designed for transport of person

exceeding 13 persons are classified under Chapter heading No. 87.03 and levied to duty; that Entry No. 276 and Entry No.288 of Notification No. 12/2012-CE dated 20.6.2012 reveal that the motor vehicles manufactured by manufacturer, who is undertaking only the activity of body building on chassis supplied to him and not manufacturing chassis, fall outside the purview of Sr No. 276, hence, the appropriate entry is Sr. No.288 which prescribes duty rate of 12.5% on value of body building activity. The duty of excise leviable on this issue was worked out to Rs.1,69,71,919/-. As per Appendix III of Central Excise Tariff Act, 1985, NCCD @1% adv. was imposed on all goods falling under Chapter 8703 and therefore, SCN states that they are also liable to pay NCCD amounting to Rs.13,57,753/-, besides Infrastructure Cess amounting to Rs.54,31,014/-.

64.2. The said assessee submitted that they have undertaken bus body building activity for SMC and for GSRTC vide Letter of acceptance dated 01.09.2016 and 31.05.2016 respectively, and such body building work is done on the chassis supplied by SMC and GSTRC; that the said SMC and GSTRC are not manufacturer of chassis, but they purchased the chassis from manufacturers namely Ashok Leyland; and that sample copies of invoice for purchase of bus by SMC from Ashok Leyland Ltd. were already submitted vide their earlier letter dated 05.11.2018 submitted to Audit. The stated that they were availing the benefit of Not. No. 12/2012-CE dated 17.03.2012 wherein Sr. no. 276 provides NIL rate of duty as follows: -

Sl. No	*HSN Code*	*Description of Excisable goods*	*Rate*	*Condition*
276	*87*	*(i) Motor vehicles principally designed for the transport of more than six persons, excluding the driver, including station wagons; and (ii) Motor vehicles for the transport of goods (other than those specially designed for the transport of compressed or liquefied gases), falling under heading 8704; and (iii) three wheeled motor vehicles*	*NIL*	*27*

Condition no. 27: - If manufactured out of chassis falling under heading 8706 on which duty of excise has been paid and no credit of duty paid on such chassis and other inputs used in the manufacture of such vehicle has been taken under rule 3 or rule 13 of the CENVAT Credit Rules, 2004:

Provided that this exemption is not applicable to a manufacturer of said vehicles-
(a) who is manufacturing such vehicle on a chassis supplied by a chassis manufacturer, the ownership of which remains vested in the chassis manufacturer or the sale of the vehicle so manufactured is made by such chassis manufacturer on his account; and

(b) Who is manufacturing chassis and using such chassis for further manufacture of such vehicle."

64.3. They claimed to have complied with all the conditions which are mentioned as summarised below for ease of reference: -

(i) They have not taken any CENVAT credit for duty paid on such chassis and other inputs
(ii) They are not doing bus body building for manufacturer of chassis, in fact they are doing it for SMC who are service provider.
(iii) The ownership of chassis remains with SMC and not with chassismanufacturer and to support our contention copy of invoice is already submitted

64.4. They further stated that the issue was settled by Hon'ble CESTAT in case of *Hi-Tech Auto Craft* v. *Commissioner- 2008 (231) E.L.T. 512*wherein it was held that the assessee was entitled to the benefit of exemption under Serial No. 212 of Notification No. 6/2002-C.E., in respect of body built on duty paid chassis since Revenue failed to explain how entry 212 *ibid* was inapplicable to the case of the assessee where the condition that the vehicles ought to have been manufactured out of chassis on which duty had been paid and no CENVAT credit of duty on chassis and on other input had been taken, had been fully satisfied by the assessee and also where the proviso to condition No. 52 as applicable to Serial No. 212 *ibid* did not debar the assessee from such exemption

"6. We have carefully gone through the records of the case. M/s. KSRTC purchased duty paid chassis and sent the same to the appellants. The appellant did not take any credit of the duty paid on the chassis. The appellant only built the body on the chassis received and cleared them in terms of Serial No. 212 of the notification. The entries in Serial No. 212 are reproduced below:

Sl. No.	*Chapter Heading*	*Description of goods*	*Rate of Duty*	*Condition No. 52*
212	*87*	*i) Motor Vehicles principally designed for the transport of more than six persons, excluding the driver, including station wagons;* *(ii) Motor Vehicles for the transport of goods (other than those specifically designed for the transport of compressed or liquefied gases), falling under heading No. 87.04; and* *(iii) three wheeled motor vehicles*	*Nil*	*If manufactured out of chassis falling under heading No. 87.06 on which duty of excise has been paid and no credit of duty paid on such chassis and other inputs used in the manufacture of such vehicle has been taken under Rule 3 or Rule 11 of the CENVAT Credit Rules, 2002 ;* *Provided that this exemption is not applicable to a manufacturer of said vehicles -* *(a) who is manufacturing such vehicle on a chassis supplied by a chassis manufacturer, the*

				ownership of which remains vested in the chassis manufacturer or the sale of the vehicle so manufactured is made by such chassis manufacturer on his account; and *(b) who is manufacturing chassis and using such chassis for further manufacture of such vehicle.*

8. The Revenue was not in a position to explain as to how the Entry No.. 212 would not be applicable in the case of the appellants. It is not disputed that the vehicles in this case are covered under Chapter Heading 87 and the description given in entry serial No. 212. The conditions are that the vehicle should be manufactured out of chassis on which duty has been paid and no CENVAT credit of duty on chassis and other input had been taken. The appellant satisfies the above condition. He is also not debarred by the provisos in the condition no. 52 which is applicable to serial no. 212. In these circumstances, we are of the considered view that the appellant is entitled for the benefit of the exemption under serial no. 212. Hence, we set aside the impugned order and allow the appeals with consequential relief.

Sr No. 334 of Notification No. 12/2012-CE

334	*Any Chapter*	*All goods manufactured in a factory and used within the same factory for building a body or fabrication or mounting or fitting of structure or equipment on a chassis falling under heading 8706 of a motor vehicle of Chapter 87*	Nil	40

***Condition No. 40:** - If, duty of excise on the chassis leviable under the First Schedule or special duty of excise leviable under the Second Schedule or the additional duty leviable under section 3 of the Customs Tariff Act, 1975(51 of 1975), as the case may be, has been paid.*

64.5. They submitted that the said entry covers all goods manufactured in a factory and used within the same factory for building or fabrication or mounting or fitting of structure or equipment on a chassis falling under Heading 8706 of a motor vehicle of Chapter 87 is exempt from duty subject to the condition that the chassis, on which the fabrication, mounting, fitting is done, is duty paid; that the entry covers intermediate goods which are used in manufacture of body building; that both the entries for exemption or concessional entry are for manufacturing of motor vehicle, e.g. entry No. 276 provides NIL rate of duty if cenvat credit of both chassis and other inputs used for body building is not availed, whereas entry No. 288 provides for concessional rate of 12.5% with restriction of cenvatcredit of chassis only, however the cenvatcredit of other inputs used for body building is allowed; that the SCN wrongly states that they are not covered by entry no. 276, and in fact, they are covered by both the exemption as they have not claimed any cenvatcredit of chassis and other inputs used for body building; and that therefore they are eligible for the benefit of entry no 276 and as such

demand of excise duty, NCCD and Cess are not sustainable. They also mentioned that copies of invoices for various purchases were already submitted to the Audit.

65. **Demand of Rs. 45,27,541/- towards Service Tax and Rs. 2,79,406/- towards interest arising out of reconciliation of figures:** - The SCN states that a short-payment of service tax of Rs. 45,27,541/- was detected on reconciliation of the service value shown in their balance sheet vis-à-vis the value declared in ST-3 returns for the period from 2014-15 to June, 2017 which is liable to be recovered along with interest on delayed payment. In their defence reply, the said assessee stated that they have already furnished their submission on this point vide letter dated 29.05.2019 that the difference relates to amount of services provided by themwhich were not disclosed in ST-3; that the applicable service tax on such value was already paid and copy of challans submitted vide their letter dated 29.05.2019; and that the said invoices were also not declared in service tax returns, but tax was validly paid via challans considering the abatement applicable under Notification No. 26/2012, dated 20.06.2012. The year wise details of such differences along with clarification were also given; i.e. in FY 2014-15, the difference is Rs.2,16,18,880/- which relates to invoices issued to Ahmedabad Janmarg Ltd. (BRTS) where the invoice value was Rs.2,21,09,021/-for which they paid service tax amounting to Rs.14,48,639/-; that in FY 2016-17 The difference of Rs.3,14,01,024/- which relates to few invoices relating to Ahmedabad Janmarg Ltd., AMTS and SMC which were not shown in ST-3, however service tax has already been paid amounting to Rs.34,33,129/-; and that during the period April-17 to June-2017 the difference is Rs.1,26,48,921/-where also they discharged service tax liability and submitted challans as above. They stated that since service tax liability has already been discharged on the differential value, they are eligible for the benefit of Not. No. 26/2012 dated 20.06.2012, and hence the demand requires to be dropped.

66.1. **Demand of service tax on Rs. 17,07,343/- being the value of services provided by the Directors to the said assessee :** - The SCN states that the said assessee has made payment to their Directors towards rent charges which is liable to service tax liability under Section 66E(a) of Finance Act, 1994; that in terms of Notification No. 30/2012-ST dated 20.6.2012 read with Rule 2(d)(EE) of Service Tax Rules, they would be liable to pay the entire service tax as recipient for the services of 'Renting of Immovable Property' received from their Directors; and that the Government vide Not. No.45/2012-ST dated 07.08.2012 has amended the Not.No.30/2012 ST dated 20.06.2012 and inserted new entry no. 5A which is mentioned below:

> *"in respect of services provided or agreed to be provided by a director of a company to the said company" the company is liable to pay 100% of tax."*

66.2. They stated that the services were provided to the said assessee not in their capacity of directors but as owners of the property, and hence demand on this ground is liable to be dropped.

67. The said assessee further stated that penalty and interest are not leviable in their case; that the demand is beyond the normal period of limitation and hence not maintainable; that they were holding registration and were regularly filing ER-1 returns and ST-3 returns and the department was aware about their aforesaid transactions and the business practices; that the SCN merely makes a bald allegation of suppression, and has not brought on record any evidence to show that they have suppressed any facts from the department and that too with an intention to evade payment of duty; and that the SCN is liable to be dropped on this count alone. They also placed reliance upon the decision of the Hon'ble Tribunal in case of *Ispat Industries Ltd Vs. CCE – 2006 (199) ELT 509 (T)* wherein it was held that when the entire facts were placed before the jurisdictional Central Excise officer, and the issue involved is bonafide interpretation of provision of law, extended period cannot be invoked merely because company did not interpret such provisions in the way department sought to interpret the same, and such a demand was barred by limitation. Similar ratio was established in case of *NIRC Ltd. Vs. CCE – 2007 (209) ELT 22 (T).*They stated that there cannot be any intention to evade payment of duty in the present case since there was no evasion of duty as mentioned supra; that even if there is a suppression of facts, the extended period of limitation cannot be invoked in the absence of intention to evade of duty on their part; that mere suppression is not sufficient to invoke the extended period of limitation and there should be intention to evade payment of duty coupled with suppression of facts in order to invoke the extended period of limitation; that every omission to disclose certain facts is not sufficient to invoke larger period of limitation on the ground of suppression of fact; that only those omissions to disclose the fact which amounts to wilful suppression with an intention to evade payment of duty will enable the department to invoke larger period. In this regard, the they placed reliance on the decision of the Hon'ble Supreme Court in the case of *Pahwa Chemicals Vs. CCE – 2005 (189) ELT 257 (SC),* wherein it was held that mere failure to declare does not amount to mis-declaration or will-full suppression. They also submitted that the ingredients for imposition of penalty under Rule 15(2) of CENVAT Credit Rules, 2004 as well as Section 11AC of the Central Excise Act, 1944 are also not present in the instant case.

PERSONAL HEARING

68. A personal hearing was offered to the said assessee on 08.04.2020 which could not be held due to the lockdown conditions prevailed during this period. Therefore, another hearing was offered on 29.06.2020 which was attended on their behalf by Shri. Pranav Shridhar, Chartered Accountant. He reiterated the submissions made earlier vide their defence

reply dated nil which was filed on 04.03.2020. He also filed an additional submission dated 24.06.2020 with the details of payment/reversal of cenvat credit by them and also furnished various case laws which state that payment/reversal of wrongly taken cenvat credit would amount to non-availment of cenvat credit. He therefore requested to allow substantial benefits available under the law. On the remaining issues involved in the SCN, Shri Pranav Shridhar, CA had nothing more to say than what is stated in their earlier defence reply. He, therefore, requested to drop the demand and vacate the SCN for justice. Details of their additional submission filed during the PH are discussed in the following paras.

69. As regards the demand of Rs. 23,17,65,488/-, the assessee submitted that the they have reversed the entire credit availed by them i.e., Rs.2,56,98,531/- as alleged in para 7 of SCN, the details of reversal by way of payment through challan along with copy of such challans is enclosed in Annexure-8 of theirdefence reply dated 04.03.2020. The submitted that reversal of Cenvat credit amounts to non-availment of credit and accordingly, benefit under notification ibid, is not deniable. In this regard, they placed reliance upon following decisions to claim that the demand is erroneous on account of their reversal/payment of entire credit wrongly availed: -

(i) Commissioner Vs. Precot Meridian Ltd. — 2015 (325) E.L.T. 234 (S.C.)
(ii) Hello Minerals (P) Ltd. Vs. UOI [2004 (174) E.L.T. 422 (All.)]
(iii) CCE Vs. AshimaDyecot Ltd. [2008 (232) E.L.T. 580 (Guj.) = 2008 (12) S.T.R. 701 (Guj.)]
(iv) Chandrapur Magnet Wires Pvt. Ltd. Vs. CCE, Nagpur [1996 (81) E.L.T. 3 (S.C.)]
(v) Franco Italian Co. Pvt. Ltd. Vs. Commissioner — 2000 (120) E.L.T. 792 (Tribunal-LB)
(vi) Omkar Textile Mills Pvt. Ltd. Vs. Commissioner — 2014 (311) E.L.T. 587 (Tribunal)

70.1. As regards the demand of Rs. 10,86,93,740/-under Para 19 of the SCN, the assessee submitted they had provided both taxable and exempted service, but not reversed any credit in respect of exempted services as per Rule 6(3)/6(3A) of CCR; and that the SCN allegedthat they had availed total credit of input services for Rs.1,14,25,568/- out of which they had considered only Rs.3,43,803/- for the purpose of reversal and that the quantum of GTA turnover was not taken into account while calculating the quantum of reversal of common input services. They stated that the total input service credit availed during the period of audit was Rs.1,14,25,568/- out of Rs.1,10,81,765/- mainly included insurance on buses, repairing and maintenance services, CNG testing services etc. which pertains exclusively for taxable services i.e. O and M contract, on which they have paid full service tax; and that copies of sales invoices for such services and illustrative copy of various input services on which they claimed such credit were already submitted as Annexure-10 to their earlier submission. Accordingly, they have furnished the classification-wise break-up of total input service credit of Rs. 1,14,25,568/- as tabulated below: -

Year	Insurance	CNG, repair &maintenance	Security service	Common input services	Total
2014-15	10,62,510	16,04,972	68,152	47,520	27,83,154
2015-16	10,41,668	25,12,329	1,89,911	65,653	38,09,561
2016-17	20,49,862	23,90,388	1,61,973	2,30,630	48,32,853
Total	41,54,040	65,07,689	4,20,036	3,43,803	1,14,25,568

70.2. As regards insurance service, they stated that duringthe audit period, they had claimed the cenvat credit of insurance services amounting to Rs. 41,54,040/-; that they had provided Operation and Maintenance Services (O & M) to Surat Municipal Corporation, AMTS and BRTS for which they had taken the insurance policy for such buses and claimed Cenvat Credit of such input service; that they were paying service tax at full rate for the above mentioned period and therefore said input services are eligible as credit; and that they had claimed the input services related to insurance of buses for those buses on which noticee is paying service tax at full rate without any abatement. Similarly, regarding CNG, Repairs and maintenance service, they stated that during the audit period, they had claimed cenvattotaling Rs. 65,07,689/-; that they operate AMTS and BRTS buses which run on CNG and for such buses they were taking services of CNG testing from time to time, and hence credit was availed on such CNG testing service; that they also took repairs and maintenance service for SMC, BRTS and AMTS buses; that the total cenvat credit of Rs. 65,07,689/- included such CNG, repairs and maintenance services; and that since they had paid full rate of service tax on such O and M buses services, they are eligible for claiming cenvat credit of such input services. As regards the security services mentioned in the above chart, they stated that they had deployed security guards at various depots for the buses owned by SMC, BRTS and AMTS to ensure security for such buses; that the security agencies had charged service tax on such services totaling Rs. 4,20,036/- which they had claimed as cenvat credit; and that these services were used exclusively for buses which are under O and M Contract on which they had paid full service tax.

70.3. Regarding the common input services, they stated that they have claimed cenvat credit on professional fees, bank charges, telecom services, etc.for a total amount of Rs. 3,43,803/-; that since these services were utilized for providing both taxable as well as exempted services, they had wrongly availed credit of service tax involved on these services which they had agreed to reverse as required under Rule 6(3)/(3A) of CCR, 2004; and that the total amount required to reverse by them for the audit period was worked out to Rs.2,88,286/- which they had already paidvide challan no. 05024731052019001l4 dated 31.05.2019and informed vide letter dated 05.11.2018. They also informed that while calculating the reversal of common input services they considered all the sales except the turnover on which service tax is paid at full rate; thatPara 16 of SCNalso stated that the abatement value of 70% on GTA services was an exempted services and therefore same is required to be considered for reversal

of common input services; that they have considered the total value of GTA services for reversal of common input services, and infact they considered the entire turnover except the turnover of service on which they had paid full rate of service tax for the purpose of reversal of common input services and submitted details of such proportion of exempted sale as Annexure-A; and that the common input services are amounting to Rs.3,43,803/- which are used for providing both taxable and exempted services including consulting, banking, internet, telephone, marketing, credit rating, local repairing services etc. Thus, they claimed to have availed cenvat credit to the extent the said input services pertains to output services on which service tax has been paid at full rate and therefore same is legally correct; that since they have reversed the common input services attributable to their exempted services and therefore exemption availed by them was correct in law and that the condition in the notification was not violated, hence the demand does not survive.

70.4. As regards the demand of Rs. 45,27,541/- calculated on reconciliation of the value declared in their books of account vis-à-vis ST-3 returns, they stated that although the value was not disclosed in ST-3, they had already paid applicable tax on such services and copy of challan was already submitted vide submission dated 29.05.2019; that they paid tax on such taxable value after considering abatement available for rent a cab service however while computing demand in SCN, the benefit of abatement was not considered and demand is computed on full taxable value; that the benefit of abatement is available to them since they reversed the cenvat credit availed in respect of rent a cab service and therefore the tax liability on taxable value which is not disclosed in ST-3 shall be computed after considering the abatement, and hence the demand cannot be sustained. Regarding other issues involved in the SCN, the assessee mentioned that they have already given detailed submission dated 04.03.2020 and hence they have nothing to add in the matter.

71. Thereafter, another personal hearing was offered to the said assessee on 28.07.2020 wherein Shri Abhishek Chopra, CA appeared on their behalf and handed over a letter dated 28.07.2020 stating that they have already submitted their replies vide letters dated 04.03.2020 and 24.06.2020 and have nothing to add, hence they do not want to file any further reply to the SCN.

72. Subsequently,the said assessee submitted a letter dated 03.09.2020 referring to their aforesaid previous replies and personal hearings, besides informing that they have made payment of interest amounting to Rs. 1,91,05,533/- towards the delay in reversal of cenvat credit of Rs. 2,56,98,631/-. They enclosed DRC-03 No. DC2409200021081 dated 03.09.2020 evidencing payment of Rs. 1,91,05,533/- along with a copy of certificate issued by M/s. Gandhi Gandhi& Co., Chartered Accountants certifying the said interest amount has been correctly paid in terms of section 75 of the Finance Act, 1994 towards reversal of cenvat credit amounting to

Rs. 2,56,98,631/-. They further requested to pass the order based on submissions already made without granting any additional personal hearing.

DISCUSSION AND FINDINGS

73. Having gone through the records of the case and the written and oral submissions made by the said assessee, I find that the show-cause-notice involves multiple issues for determination, hence I would discuss each of them separately.

74.1. The first issue involves allegations of wrong availment of Notification No. 26/2012-ST dated 20.6.2012with consequential demand of service tax. The said assessee was providing taxable services, i.e. rent-a-cab services during the period from 2014-15 to 2017-18 (upto June) and was availing the benefit of abatement provided under Notification No. 26/2012-ST dated 20.6.2012by paying service tax on 40% of the gross amount received by them towards providing such taxable service. The notification provides such abatement only on a condition that cenvat credit on inputs, capital goods and input services used for providing the taxable services should not have been taken by the service provider under the provisions of CCR, 2004. However, it is alleged that the said assessee had availed cenvat credit of duty paid on buses and other input services used for providing such taxable services and utilized such credit for discharging their service tax liability. It is stated that the total cenvat credit so availed was Rs. 2,56,98,531/-, out of which the assessee reversed partial amount of Rs. 1,89,11,714/-. The SCN mentions that the assessee had cited the rulings in the case of *Sanjay Engineering Industries reported at 2016 (43) STR 354(Raj), Precot Mills Ltd at 2006 (201) ELT 356(T)* and *Hello Minerals Water P Ltd at 2004 (174) ELT 422(All)* to claim that since they had agreed to reverse the cenvat credit availed by them, they should get the benefit of abatement as provided under Not. No 26/2012-ST dated 20.6.2012*supra*. It is, however, stated that since the assessee has reversed only partial amount of Cenvat credit and not the full credit availed by them in this regard, the analogy of the judgements cited by them would not be applicable and hence they are liable to pay service tax on the gross value. It is stated that the total value of service provided during the period from FY 2014-15 to June, 2017 was Rs. 272,33,08,497/-, and after wrongly availing 40% abatement they paid service tax of Rs. 15,45,62,242/- as against Rs. 38,63,27,730/- leviable on the full value (without abatement). Therefore, the SCN seeks recovery of differential amount of service tax of Rs. 23,17,65,488/- under section 73(1) of the Act, without allowing the abatement.

74.2. I find that the assessee has not disputed the facts regarding simultaneous availment of the abatement and cenvat credit in violation of the notification. Their only defence is that once they reverse the entire amount of cenvat credit availed, abatement provided under the notification should be restored to them, as if they have not availed such cenvat credit. To support their argument, they have cited several judgments. Before entering into these

judgments, I have examined the facts regarding the payments/reversals made by the assessee before and after issuance of the subject SCN. As already mentioned above, the SCN states that out of the total cenvat credit of Rs. 2,56,98,531/- simultaneously availed by the assessee, they had already reversed partial amount of Rs. 1,89,11,714/- before issuance of SCN. Thus the balance amount was not reversed by them tillissuance of SCN was Rs. 67,86,817/-. I find from Page-9 of the defence reply and Annexure-8 of the paper-book that the assessee has made total reversal/payment of Rs. 2,65,60,398/- which is more than the total credit involvedon this issue.Considering these payments having correctly made by the assessee, I would now examine the case law cited by them in their support.

74.3. I find from the SCN that the assessee had cited the rulings in re *Sanjay Engineering Industries reported at 2016 (43) STR 354(Raj), Precot Mills Ltd at 2006 (201) ELT 356(T) and Hello Minerals Water P Ltd at 2004 (174) ELT 422(All)* to claim that subsequent reversal of cenvat credit wrongly availed by them would make them eligible for abatement, as if they had not availed such cenvat credit. The SCN also states that the analogy of these judgements cited by them is that if the cenvat credit is reversed by them, then they should be considered to have complied with the provisions of the law and the abatement should be available to them. I have examined these judgements and I am convinced that the ratio of the same is fully applicable in the present case. In fact, I find that the SCN also supports the applicability of these judgments, but only says that the same would apply only when the entire credit involved was reversed, which was not the caseat the time of issuing the SCN. Hon'ble High Courts have accepted the principle that reversal of Modvat credit even after clearance of goods as amounts to non-taking of credit on the inputs. In fact, the decision in re *Hello Minerals Water P Ltd(supra)* was cited by Hon'ble Gujarat High Court in the case of *AshimaDyecot Ltd. Vs. CCE* reported in *2008 (12) STR 701 (Guj)* to decide the case in favour of the assessee, and the said case of *AshimaDyecot Ltd.* has been maintained by the Hon'ble Supreme Court as reported in *2009 (24) ELT A41 (SC).*

74.4. I have also examined the cases relied by the assessee in their defence reply. In the case of *Khyati Tours and Travels vs. CCE, Ahmedabad (supra)*, Hon'ble Tribunal has observed that reversal of wrongly availed credit has the effect as if no credit was availed. I quote below the relevant part of this decision: -

> *"4. It is seen that the appellant had reversed the wrongly availed Modvat credit along with interest, the same will have the effect as if no credit was availed by the appellants. The law on the above point is very clear and stands settled by various decisions of judicial as also the quasi-judicial authorities. For the sake of convenience we may refer to the order passed by Commissioner (Appeals) in the case of Om Shanti Travels, Ahmedabad being Order-in-Appeal No. 197/2010(STC)/MM/ Commr(A)/Ahd dated 9-8-2010, wherein after summarizing the entire case law, the benefit stands extended to the assessee. We reproduce the relevant paragraphs from the said order :-*

"8. The appellant cited the case of M/s. Hello Minerals Water Private Limited v. UOI reported in 2004 (174) E.L.T. 422 (Allahabad). I have gone through this judgment. In Para 18 of this judgment it has been held by the High Court that if the exemption is subject to non-availment of Modvat credit on inputs, the subsequent reversal of Modvat credit amounts to non-taking of credit on inputs and the benefit of exemption notification number 15/94-C.E., is to be granted, even when reversal of credit on inputs was done at Tribunal stage.

8.1 The above judgment of the High Court is based on five member bench decision of the Tribunal in the case of Franco Italian Company Private Limited v. C.C.E., 2000 (120) E.L.T. 792. This judgment in turn based on the Supreme Court judgment in the case of Chandrapur Magnet Wire Private Limited v. C.C.E., Nagpur, 1996 (81) E.L.T. 3.

8.2 I have gone through the Hon'ble Supreme Court of India's judgment in the above mentioned case, and I find that it has been laid down/held that debit entry in Modvat credit account indicates as if no credit was taken on such inputs. This judgment has been followed in a number of Tribunal judgments. The latest has been a case of the Commissionerate of Service Tax itself in the case of CST, Ahmedabad v. M/s. Amola Holdings Private Limited. This judgment was given in order No. A/1148/WZB/AHD/09 dated 1-6-2009. This judgment also stands accepted by the Commissionerate and hence I follow the same and hold that reversal or debit of Modvat credit in this case of 9595 rupees amounts to non-availnment of Modvat credit and accordingly, the appellant is eligible to the benefit under Notification No. 1/2006."

5. Inasmuch as the appellants have admittedly reversed the credit along with interest, we find that benefit of the notification in question would be available to them. Accordingly, we set-aside the impugned order and allow the appeal with consequential relief to the appellants. Stay petition also get disposed off."

74.5. I have also gone through the other judgments cited by the assessee in support of their defence which included the decision of Ahmedabad Bench of Hon'ble Tribunal in *Indra Construction Vs Commissioner of C. Ex. & ST, Punjan Builders Vs Commissioner* (supra) and find that the issue has been finally settled by various appellate authorities including Hon'ble Supreme Court in *Chandrapur Magnet Wires (P) Ltd. Versus Collector of C.Ex., Nagpur(supra)* by considering initial availment of credit and subsequent reversal thereof as equivalent to non-availment of such credit. In the present case, the only issue is that the assessee had only reversed partial amount of Cenvat credit before issuance of SCN. In this regard, I find that the Hon'ble High Court of Gujarat in the case of *CCE, Ahmedabad-II v. Maize Products reported in 2009 (234) E.L.T. 431 (Guj.)* has held that the order of the Tribunal directing re-determination of credit taken on common inputs after the assessee undertook before the Tribunal to reverse the credit taken on such inputs used in non-dutiable goods in as per the statutory requirement. Thus the reversal of the credit at the Tribunal stage i.e. much after the clearances of the exempted goods from the factory, was held to be in order.This fact has also been explained by Hon'ble Tribunal in *Dr. Writer's Food Products Pvt. Ltd. Vs Commissioner of C.Ex. Pune-II* reported in *2009 (247) ELT 391 (Tri)* as under: -

"6. We also find that the Hon'ble High Court of Gujarat in the case of CCE, Ahmedabad-II v. Maize Products reported in 2009 (234) E.L.T. 431 (Guj.) has held

that the order of the Tribunal directing re-determination of credit taken on common inputs after the assessee undertook before the Tribunal to reverse the credit taken on such inputs used in non-dutiable goods in as per the statutory requirement. Thus the reversal of the credit at the Tribunal stage i.e. much after the clearances of the exempted goods from the factory, was held to be in order."

74.6. I find that the aforesaid principle of law has been settled by various appellate authorities in a plethora of judgments. The several judgments relied upon by the assessee in their additional submission filed during the personal hearing also substantiate this principle of law. In the case of *Commissioner of C.Ex. Vs. Precot Meridian Ltd.* cited at *2015 (325) ELT 234 (SC),* Hon'ble Apex Court has set to rest this issue by holding as under: -

> *"3. We note that five-Member Bench of the Tribunal in the case of 'Franco Italian Co. Pvt. Ltd. v. Commissioner' [2000 (120) E.L.T. 792 (T.-LB)] had taken the view that even if the MODVAT credit was utilised but, thereafter, refunded, it would amount to not utilising the said MODVAT credit. Same view has been taken by the High Court of Allahabad in 'Hello Minerals Water (P) Ltd. v. Union of India' [2004 (174) E.L.T. 422 (All.)].*
> *4. On a specific query put by the Court, we were informed that as far as the aforesaid two judgments are concerned, they were accepted by the Department and no appeal was filed thereagainst. In the impugned judgment, the Tribunal has decided the issue in favour of the assessee relying upon the aforesaid two decisions."*

74.7. As already mentioned above, the said assessee has stated in their defence reply that they have reversed or paid the entire amount of cenvat credit simultaneously availed by them, and submitted such payment particulars vide Annexure-8 of the paper-book. It is a settled principle of law that substantial benefits available under the law cannot be denied to the assessee merely citing technicalities. Therefore, I find no reason to deny substantial benefits of abatement provided under Notification No. 26/2012-ST dated 20.06.2012 to the said assessee. Accordingly, I hold that the proposal to deny abatement and the demand of service tax on gross value cannot be justified, as they have already paid/reversed the entire amount of cenvat credit availed. Meanwhile, I find from the chart placed at Annexure-8 of the defence reply which states that the assessee has reversed/paid total amount of Rs. 2,65,60,398/- as against the total simultaneous availment of Rs. 2,56,98,531/-. The said annexure carried a mention that Rs. 2,65,60,398/- was inclusive of total reversal of cenvat credit along with interest. Considering the duration of the audit period involved, it appeared that the additional amount of Rs. 8,61,867/- would not absolve their complete interest liability. However, vide their subsequent letter dated 03.09.2020, they have submitted a DRC-03 challan No. DC2409200021081 dated 03.09.2020 evidencing payment of Rs. 1,91,05,533/- towards the interest on delayed reversal of cenvat creditamounting to Rs. 2,56,98,531/-, along with a certificate issued by Chartered Accountants certifying that said interest amount has been correctly paid in terms of section 75 of the Finance Act, 1994 towards reversal of the said amount of cenvat credit. Thus, the said assessee has voluntarily reversed the entire amount of cenvat credit of Rs. 2,56,98,531/- along with applicable interest amounting to Rs. 1,99,67,400/- [Rs. 8,61,867/- paid as per defence reply dated 04.03.2020 and Rs. 1,91,05,533/- paid on 03.09.2020]. Therefore, by following the

ratio of the aforesaid case laws, I find no justification to demand service tax on their gross receipts. Accordingly, I confirm the aforesaid reversal of cenvat credit and payment of interest amounts and drop the demand of service tax on gross receipts as proposed in the SCN.

75.1 Second part of the SCN covers a combined demand of Rs. 10,86,93,740/- involved on three different issues, each of which are discussed in the following paras.

75.2. The first point raised by the Audit is that the said assessee, apart from providing the aforesaid rent-a-cab taxable services, was also providing exempted services to AMTS, Apple Global School, Udgam School, Zeber International School, etc. which are exempted from payment of service tax under Section 66D(o)(i) of the Act, Sr. No.9, 21 and 22 to Notification No.25/2012-ST, etc.Total amount received towards such exempted services during the period from 2014-15 to 2017-18 (June 2017) is Rs.187,74,71,837/-.The SCN states that the said assessee had availed Cenvat credit on inputs and input services which were common for both taxable as well as exempted services, yet they have not reversed such ineligible credit under Rule 6(3)/6(3A), and hence proposed to levy service tax on the aforesaid total value.

75.3. The second point is that the assessee has also provided GTA service and paid service tax on 30% of the gross value by claiming benefit of abatement under Notification No. 26/2012-ST dated 20.06.2012 which provides a condition that cenvat credit shall not be available on inputs, capital goods and input services used for providing taxable services. It is alleged that the assessee had availed cenvat credit on inputs and input services, hence proposed to levy service tax on the 70% abated value.

75.4. The third point is that the assessee was also selling goods on payment of VAT/Sales Tax and such activity is covered under section 66D(e) of the Act, and the value of such traded goods is required to be considered for the purpose of determining the amount to be paid under Rule 6(3) of the CCR, 2004.

75.5. Based on the above three points, total value was worked out to Rs. 195,15,91,505/- in terms of Rule 6(3) as shown in Para 19 of the SCN and total demand of Rs. 10,86,93,704/- has been made. Meanwhile, the SCN states that the assessee vide letter dated 05.11.2018 has intimated about payment of Rs. 2,88,286/- towards reversal of proportionate cenvat credit involved on the above issues; that the scrutiny of worksheet submitted by the assessee revealed that they had not considered the value of GTA services for the purpose of reversal; and that out of the total Cenvat credit of Rs. 1,14,25,568/- availed on input services, the assessee had considered Cenvat credit of only Rs. 3,43,803/-. Therefore, it appeared that the assessee had not properly discharged their liability under Rule 6(3)/6(3A), hence raised the above demand.

75.6. I find from the SCN that the said assessee had already submitted a letter dated 05.11.2018to the audit officers, which also forms part of their defence reply, wherein they had admitted wrong availment of Not. No. 26/2012-ST dated 20.06.2012, and also furnished details of reversal of Cenvat credit wrongly taken on capital goods and inputs used for exempted servicesamounting to Rs. 1,71,17,927/- and Rs. 24,69,117/-, respectively totaling Rs. 1,95,87,044/- [*Annexure-1 to their letter dated 05.11.2018 available at Page 72 of the paper-book*]. The SCN does not dispute these reversals made by the assessee. In fact, Para 12 of the SCN states that the assessee had availed cenvat credit of inputs and input services which they had agreed to reverse proportionately under Rule 6(3A) of CCR, 2004. Out of these, they have already reversed the credit involved on capital goods and inputs as stated above. Thus I find that what is remaining was only the reversal of proportionate credit involved in the input services used for exempted services. Even in this case, the assessee had admittedly paid Rs. 2,88,286/- towards reversal of such wrongly availed credit on input services. The only dispute raised in the SCN is that the said payment was wrong, as it did not include the value of GTA service besides expressing doubts of considering only Rs. 3,43,803/- as against the total credit of Rs. 1,14,25,568/- availed on input services. After accepting reversal of Rs. 1.95 Crores against inputs and capital goods and also accepting reversal/payment of Rs. 2.88 Lakhs against input services, I am of the view that the statement made in Para 14 of the SCN that the assessee had not exercised their option to pay an amount under Rule 6(3A) of CCR, 2004 hence liable to pay 7% of the value of exempted services as per Rule 6(3)(i) *ibid*, is factually incorrect. Therefore, I do not find reason to demand service tax on the gross value received by the assessee, and what remains to be examined is only the short-payment short-reversal of proportionate amount of cenvat credit, if any, involved on input services utilized for providing exempted services.

75.7. As already stated above, the aforesaid letter dated 05.11.2018 of the assessee forms part of the defence reply as Annexure-7 of the paper-book. The said letter shows the calculation of the manner and method of working out proportionate amount of cenvat credit involved on the exempted services and the reversal/payment thereof which is very well in terms of the formula prescribed under Rule 6(3A) of CCR, 2004 [*Annexure-3 to their letter dated 05.11.2018 available at Page 80 of the paper-book*]. Annexures to the said calculation sheet shows that the total value of traded goods and the gross value of GTA services already form part of the total value considered in the formula. Accordingly, the assessee had worked out and paid Rs. 2,88,286/- as discussed in Para 20 of the SCN.In their defence reply, the said assessee has stated that they had not availed any cenvat credit on input services used exclusively for providing exempted services; that the total quantum of cenvat credit on input service availed during the period of audit is Rs. 1,14,25,568/-, out of which Rs. 1,10,81,762/- mainly involved in insurance on buses, repairing and maintenance services, CNG testing services, etc. which are

input services used exclusively for taxable services, i.e. O and M contract service on which they had paid full service tax; that the remaining 3,43,803/- was the common input services used for both exempted and taxable output services; and such common input services consist of consulting, banking, internet, telephone, marketing, credit rating, local repairing services, etc. In order to support their argument, the assessee has submitted copies of several invoices for insurances on buses, repairing and maintenance of buses, along with copies of their contracts for BRTS Bus Maintenance Service, etc. These facts were already brought to the notice of the audit officers by the said assessee vide letter dated 05.11.2018, but no allegations of any irregularity on their claims has been mentioned in the SCN. Having gone through the quantum of service tax involved on these invoices, I am convinced that these services form major part of the total Cenvat credit.

75.8. Meanwhile, I find that the additional submission dated 24.06.2020 filed by the assessee during the personal hearing substantiates their claims made in the letter dated 05.11.2018 and the defence reply dated 04.03.2020. They have submitted the following chart showing the break-up of the total cenvat credit of Rs. 1,14,25,568/- involved in the input services such as, insurance services, CNG, repair and maintenance service, security service as well as the input service credit involved on both taxable as well as exempted services.

Year	Insurance	CNG, repair & maintenance	Security service	Common input services	Total
2014-15	10,62,510	16,04,972	68,152	47,520	27,83,154
2015-16	10,41,668	25,12,329	1,89,911	65,653	38,09,561
2016-17	20,49,862	23,90,388	1,61,973	2,30,630	48,32,853
Total	41,54,040	65,07,689	4,20,036	3,43,803	1,14,25,568

75.9. The chart shows that out of the total credit of Rs. 1,14,25,568/- involved on all input services, only Rs. 3,43,803/- was involved in common input services such as consulting, banking, internet, telephone, marketing, credit rating, local repairing services, etc. and the remaining input services such as insurance on buses, repairing and maintenance services, CNG testing services, security services etc. involving cenvat credit of Rs. 1,10,81,762/- were utilized for providing taxable services on which they had paid appropriate service tax. The SCN does not dispute the applicability of various inputs services mentioned in the chart as having used for providing taxable services on which they paid service tax, although these facts were declared by the assessee earlier vide letter dated 05.11.2018 supra. Therefore, I am unable to find any evidence to doubt the amount of Rs. 3,43,803/- considered by them for calculating proportionate amount of input service credit involved in both taxable and exempted services as per the formula prescribed under Rule 6(3A). Similarly, non-inclusion of the 70% abated value on GTA services or the gross value of trading goods do not arise as these factors were considered in the said formula for working out proportionate cenvat credit which could be seen

from the said Annexure-3 to their letter dated 05.11.2018 available at Page 80 of the paper-book.

75.10. I have also examined the case law cited by the assessee in support of their defence. Accordingly, the judgment of Hon'ble Gujarat High Court in case of *Principal Commissioner Vs M/s Alembic Ltd.,2019-TIOL-1495-HC-AHM-ST*states that proportionate reversal of Cenvat credit can be considered as maintenance of separate records as required under Rule 6(2) of CCR, 2004. As regards fulfillment of the conditions given under Rule 6(3A), MumbaiTribunal has held in the case of *Mercedes Benz India (P) Limited Vs. CCE – 2015–TIOL–1550–CESTAT–MUM* that the correspondence made by the assessee with the department containing more or less similar details would be sufficient in the place of intimation to the department. Again, Hon'ble Tribunal in re *Tata Technologies Ltd Vs. CCE – 2016 – TIOL–272–CESTAT–MUM*, held that condition of filing declaration under Rule 6(3A) of CCR, 2004 is only directory and not mandatory, and since most of the requirements under Rule 6(3A) like, name, address and registration no. of the assessee, description of taxable services and exempted services, cenvat credit of inputs and input services lying in balance as on the date of exercising option, are already available in the records of the Revenue, substantial benefit cannot be denied on the ground of such conditions. I also find that the judgments and citations referred under Para 70 supra on the first issue that subsequent reversal or payment of the cenvat credit would amount to non-availment of such credit for the purpose of benefits given under conditional notifications, are squarely applicable for this point also. For sake of brevity, I am not repeating discussions on the said case law. Thus, I am of the considered view that the payments/reversals made by the said assessee as discussed in the foregoing paras are correct, and hence the demand made in this issue is to be dropped as the same will not stand the scrutiny of the law.

76.1. The third issue involved in the SCN is that the said assessee is engaged in bus body building on the chassis provided by their clients which is an activity amounting to 'manufacture' under Section 2(f) of the Central Excise Act, 1944 and hence they are liable to pay Central Excise duty along with applicable NCCD and Infrastructure Cess at the applicable rates. It is the case of the department that the assessee had undertaken the aetivity of bus body building on the chassis provided by GSRTC and Surat Municipal Corporation and such activity is falling under Sl. No. 288 of the Not. No. 12/2012-CE dated 17.03.2012, hence appropriate duty and cess are leviable. The assessee has disputed the demand and claimed that they are eligible for Nil rate of duty in terms of Sl. No. 276 of the same Not. No. 12/2012-CE dated 17.03.2012 as they have not taken cenvat credit of duty paid on chassis; they are not doing body building for any chassis manufacturer but for SMC who are their service recipients; and the ownership of the chassis lies not with the chassis manufacturer but with SMC. In order to better comprehend the issue, I produce below the contents of Sl. No. 288 of the Not. No. 12/2012-CE dated 17.03.2012 under which duty is demanded by the department: -

Sl. No.	Chapter Heading	Description of excisable goods	Rate	Condition No.
288	8702,8703, 8704 or 8716	(1) Motor vehicles manufactured by a manufacturer, other than the manufacturer of the chassis -		30
		(i) for the transport of more than six persons but not more than twelve persons, excluding the driver, including station wagons;	24%	
		(ii) for the transport of more than twelve persons, excluding the driver;	12.5%	
		(iii) for the transport of not more than six persons, excluding the driver, including station wagons;	24%	
		(iv) for the transport of goods, other than petrol driven;	12.5%	
		(v) for the transport of goods, other than mentioned against (iv)	24%	
		(2) Vehicles of heading 8716 manufactured by a manufacturer, other than the manufacturer of the chassis.	12.5%	
		Explanation.- For the purposes of entries (1) and (2), the value of vehicle shall be the value of the vehicle excluding the value of the chassis used in such vehicle		

Condition No. 30	If no credit of duty paid on the chassis falling under heading 8706 has been taken under rule 3 or rule 13 of the CENVAT Credit Rules, 2004

76.2. Similarly, I will also produce below the contents of Sl. No. 276 of the Not. No. 12/2012-CE dated 17.03.2012 under which the assessee claimed Nil rate of duty: -

Sl. No.	Chapter	Description of excisable goods	Rate	Condition No.
276	87	(i) Motor vehicles principally designed for the transport of more than six persons, excluding the driver, including station wagons; and (ii) Motor vehicles for the transport of goods (other than those specially designed for the transport of compressed or liquefied gases), falling under heading 8704; and (iii) three wheeled motor vehicles	Nil	27

Condition No. 27	If manufactured out of chassis falling under heading 8706 on which duty of excise has been paid and no credit of duty paid on such chassis and other inputs used in the manufacture of such vehicle has been taken under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 : Provided that this exemption is not applicable to a manufacturer of said vehicles - (a) who is manufacturing such vehicle on a chassis supplied by a chassis manufacturer, the ownership of which remains vested in the chassis manufacturer or the sale of the vehicle so manufactured is made by such chassis manufacturer on his account; and (b) who is manufacturing chassis and using such chassis for further manufacture of such vehicle.

76.3. There is no dispute regarding the classification, type and nature of vehicle or non-availment of cenvat credit of duty paid on chassis which are the conditions specified in both the entries. The SCN alleges that the motor vehicles manufactured by a manufacturer, who is undertaking only the activity of body building on chassis, fall outside the purview of exemption given under Sl. No. 276. The assessee has not given their defence on this allegation. I find that the proviso to Condition No. 27 given under the notification disallows exemption to a

manufacturer who is manufacturing such vehicle on a chassis supplied by a chassis manufacturer. Although the assessee has claimed that they have received chassis not from the manufacturer but from GSRTC and SMC, I do not find merit in their claim as the contract documents available on record clearly indicate that the chassis were lifted by the said assessee from the chassis manufacturer. If the chassis was not supplied by the manufacturer of such chassis, then the assessee would have produced proper documents issued by GSRTC or SMC under which such chassis were transferred from them to the assessee for body building purpose, which is not the case. Thus a plain reading of this proviso makes it clear that the exemption given under this entry is not available to independent body builders. I also do not find substance in their argument that the activity of body building is a service which they carry out for GSRTC and SMC, as it is a settled point of law that the activity involved amounts to 'manufacture' as defined under section 2(f) of CEA, 1944 and that duty of excise is leviable thereon along with other applicable taxes and cess. The sales invoices issued by the said assessee to GSRTC and SMC show payment of VAT which further disproves their claim. These invoices are issued only for the bus body built by the said assessee, and do not include the value of chassis or the motor vehicle. It means that the ownership of the chassis or the motor vehicle was not vested with the said assessee while selling the bus body to their buyers. I could not find any documents on record which indicated that the ownership of the chassis was lying with the said assessee or their buyers of bus body. In fact, I find no reason for the chassis manufacturer for not selling the motor vehicle on his own account as it is a usual practice for the vehicle manufacturers to provide after sale free services, guarantee, etc. In other words, I am of the view that the proviso given under condition No. 27 of entry No. 276 is actually applicable to those body builders who purchase chassis on their own account from the chassis manufacturers and sell the same to their subsequent builders after carrying out body building on such chassis, which is not the case here. If the intention was to include third party transaction, as claimed by the assessee, there would not have been a condition or restriction regarding availment of cenvat credit by the body builders. Again, I find that condition No. 27 does not restrict cenvat credit of duty paid on the chassis alone, but also on '*any other inputs*' used in the manufacture of bus body. While there is no doubt regarding non-availment of cenvat credit of duty paid on chassis, I find that the said assessee could not substantiate non-availment of such cenvat credit on 'any other inputs' used in the manufacture of bus body. In fact, the other issues involved in the SCN make it evident that the assessee was not maintaining separate records for the cenvat credit involved on the taxable/dutiable service/goods and exempted goods/services as required under Rule 6(3) of CCR, 2004 and that they had subsequently reversed/paid proportionate cenvat credit involved on only those issues which were raised by the audit party and involved in this SCN. In other words, the question of availment of cenvat credit on bus body building was not raised by the audit party and the assessee has not worked out or reversed any proportionate credit involved on such items. Therefore, there are reasons to believe that they have availed cenvat credit on all inputs which evidently included inputs used for manufacturing bus body. Therefore, I hold that

the exemption provided under Sl. No. 276 of Not. No. 12/2012-CE dated 17.03.2012 is not available to the said assessee, and they are liable to pay the Central Excise duty at the concessional rate of duty specified under Sl. No. 288 of the same notification, along with the applicable NCCD and Infrastructure Cess and applicable interest, as demanded in the SCN.

76.4. I have examined the case law in re *Hi-Tech Auto Craft* v. *Commissioner- 2008 (231) E.L.T. 512*andfind that the facts of the present case are different. In the said case, Hon'ble Tribunal observed that reasons for non-eligibility of exemption was not explained by the department which is not the case here. The facts regarding the status of the assessee as an independent body builder, ownership of chassis vested with the chassis manufacturer, availment of cenvat credit on other inputs, etc. as explained in the aforesaid parasdistinguish this case from the cited case on several counts.

77.1. The next issue involved in the SCN is about short-payment of service tax detected as a result of reconciliation of the value shown in their balance sheet vis-à-vis the value declared in ST-3 returns filed for the audit period. The SCN states that the total difference of value not declared by the assessee in their ST-3 returns is Rs. 6,56,68,825/- with total service tax liability of Rs. 92,79,586/-. On being pointed out, the assessee had submitted some invoices showing total tax liability of Rs. 48,61,138/- against which they paid service tax of Rs. 47,52,045/-. Therefore, the SCN proposed to recover the balance Rs. 45,27,541/-. In this issue, the SCN contains following chart at Para 34: -

Period	Differential value not shown in ST3	S.Tax liability at Full rate	S.Tax liability as per invoices	S.Tax paid	Balance to be paid
2014-2015	21618880	2672094	1448639	1448639	1223455
2016-2017	31401024	4710154	3412499	3303406	1406748
April 17 to June 17	12648921	1897338	0	0	1897338
TOTAL	65668825	9279586	4861138	4752045	4527541

77.2. I find that the assessee has not disputed the differential value and admitted that the value was not declared in their ST-3 returns. However, they claimed that although the value was not shown in ST-3 returns, they have already paid the applicable service tax on the same after availing abatement applicable under Notification No. 26/2012 dated 20.06.2012.They have furnished year-wise details, i.e. inFY 2014-15 the difference is Rs.2,16,18,880/- which relates to invoice issued to Ahmedabad Janmarg Ltd. (BRTS) where the invoice value was Rs.2,21,09,021/-for which they paid service tax amounting to Rs.14,48,639/-; that in FY 2016-17 the difference was Rs.3,14,01,024/- which relates to few invoices relating to Ahmedabad Janmarg Ltd., AMTS and SMC which were not shown in ST-3, however service tax has already been paid amounting to Rs.34,33,129/-; and that during the period April-17 to June-2017 the

difference is Rs.1,26,48,921/-where also they discharged service tax liability and submitted challans as above. However, I am unable to correlate the tax payment particulars claimed by the assessee. For example, they have admitted the differential value of Rs. Rs.2,21,09,021/- and Rs. 3,14,01,024/- for FYs 2014-15 and 2015-16 respectively and claimed to have paid total Rs. 47,52,045/- towards service tax. However, no such tax payment appears to have been made against the admitted differential value of Rs. 1,26,48,921/- for the FY 2017-18. It is not understood as to how their payment of Rs. 47,52,045/-, as shown in the chart, would absolve their liability for FY 2017-18for which they have not made any payment. I find that the assessee has not furnished any proper explanation in this regard. In their letter dated 29.05.2019 addressed to the audit officers, the assessee had furnished copies of invoices and tax payment particulars only for the two FYs 2014-15 and 2015-16, and stated that copies of invoices and tax payment particulars for FY 2016-17 would be submitted within a week's time. However, no such documents appear have been submitted by them as promised. In fact, I find that they have wrongly mentioned in their defence replies dated 04.03.2020 and 24.06.2020 that copies of invoices and tax payment particulars for FY 2017-18 (Q1) had already been furnished under the said earlier letter dated 29.05.2019, and no such payment was made by them nor they furnished any documents as stated above.

77.3. Further, the said assessee has claimed abatement under Not. No. 26/2012 dated 20.06.2012 for working out tax liability on the above differential value and to submit that no further tax amount is payable by them in this regard. In their defence reply dated 04.03.2020, they have stated that the aforesaid total value of Rs. 6,56,68,825/-, which was admittedly not declared in their ST-3 returns, involved on the taxable rent-a-cab service provided by them. In the additional submission filed during the personal hearing, they have stated that since they have already reversed the cenvat credit availed on such rent-a-cab service, they are eligible for abatement under Not. No. 26/2012. Thus, I find that the assessee took shelter of their reversal of total cenvat credit of Rs. 2,56,98,531/-, as discussed in the first issue involved in the SCN, to claim that such reversal would include the credit availed on the aforesaid undeclared invoices. I am unable to accept their claim in view of the fact the audit party had considered the value from ST-3 returns filed by the assessee, which admittedly did not include the aforesaid undeclared value. Moreover, the assessee has not furnished any evidence to substantiate their claim that the cenvat credit reversed by them actually included the credit availed for providing the services the value of which was not declared in the ST-3 return. Therefore, I am of the view that the reversal of cenvat credit on the first issue involved in the SCN cannot be considered for allowing abatement in this case of undeclared value. Similarly, I do not accept their claim for abatement on the value which was not declared in the statutory records, and for these same reasons the various case laws cited on the earlier issue would not find its applicability here. Accordingly, I hold that the assessee is liable to pay the remaining amount of service tax as demanded in the SCN along with applicable interest.

78. The next issue involved in the SCN is the demand of interest on the aforesaid delayed payment of Rs. 47,52,045/- as shown in Para 75.1 supra. I find that the assessee has not disputed non-declaration of total value of Rs. 6,56,68,825/- in their ST-3 returns and the service tax was paid only as a result of the audit objection. I find no reason to drop the demand for interest on the delayed payment, as discussed in Para 44 of the SCN and tabulated in Annexure-C thereto, as the assessee had suppressed the taxable value from the statutory returns with intent to avoid appropriate payment of service tax and to derive benefits from delayed payment.

79. The last issue involved in the SCN is a demand of Rs. 17,07,343/- being the service tax payable by the assessee on reverse charge mechanism towards renting immovable property by their directors to the assessee, which is a declared service as per section 66E(a) of the Act. As per Rule 2(d) of STR, 1994 and as per Not. No. 30/2012 dated 20.06.2012, in relation to the service provided by a director to the company, service tax is payable in full by the recipient company. The assessee has put up their defence only to the extent that the service provided by the director was not in his capacity as a director but as the owner of the immovable property. I do not find merit in this argument, as the ownership of the property or the status of the director do not alter the intention of the legislature to levy service tax on the value of taxable services. Therefore, I hold that the said assessee is liable to pay service tax on the gross amount paid to their director towards renting of property by the director to the company, along with applicable interest.

80. I find that the assessee has also submitted that the demand is hit by time limitation as no suppression of facts are involved in their case nor they had any intent to evade service tax, besides they were filing returns regularly. Under the present tax regime, Government has reposed utmost faith on the tax payers and hence the tax payers have the bounden duty to remain faithful to the procedural relaxations and voluntary compliance. In the present case, the assessee was enjoying substantive benefits given under a notification which provides a principal condition that they should not avail cenvat credit of tax paid on inputs and input services. It is not only that the assessee has deliberately defied the conditions of non-availment of cenvat credit, but a simple reading of the facts involved in all the issues covered in this case would also make it abundantly clear that they have taken a lackadaisical approach to the mandatory procedural compliance. The various facts of non-payment of service tax/duty of excise would have remained unnoticed if the audit officers did not raise these issues. These acts of the assessee tantamount to suppression and wilfulmis-statement of facts with an intent to evade the payment of service tax. Therefore, the proviso to Section 73(1) of the Act is to be invoked for the demand and recovery of service tax and the provisions of Section 11A(4) of the Excise Act for the recovery of the duty of excise, from the assessee. Moreover, in the present regime of liberalization, self-assessment and filing of returns online, no documents whatsoever

are submitted by the assessee to the department and therefore, the department would only come to know about such non-payment of service tax/duty of excise during audit checks. In the case of *Mahavir Plastics Vs CCE, Mumbai reported at 2010 (255) ELT 241 (T),* it has been held that if facts are gathered by department in subsequent investigation, extended period can be invoked. In the case of *Lalit Enterprises Vs CST, Chennai reported at 2009 (23) STT 275*, it was held that extended period is invokable when department came to know of service charges received by appellant on verification of his accounts. I find that the citations of *Ispat Industries Ltd. – 2006 (199) ELT 509 (T) and NIRC Ltd – 2007 (209) ELT 22 (T)* by the assessee are not applicable in the present case as the issues involved are not mere interpretation of the law but violation of prime mandatory condition for availing substantial benefits given under a conditional notification. Similarly, the judgment of Hon'ble Supreme Court in *Pahwa Chemicals - 2005 (189) ELT 257 (SC)* is also not applicable for the present case as the issues involved are not merely non-declaration of some facts, but deliberate defiance of the law. Therefore, I hold that the extended period is invokable in the present issues, and the assessee is liable to discharge their liability along with applicable interest, as discussed above. Further, the facts and circumstances discussed in the foregoing paras make it abundantly clear that the assessee has deliberately contravened the provisions of law even when they were fully aware of the statutory provisions, with intent to evade payment of service tax, central excise duty and other taxes and cess, and hence they are liable for appropriate penalty as provided under the law. However, I am not inclined to impose any separate penalty under Rule 25 of the CER, 2002 when penalty for the same offence has already been proposed under Section 11AC of CEA, 1944 as per Para 57 (ix) and (viii), respectively. In this regard, I place reliance on Tribunal's decision in re *Schrader Dunkan Ltd. Vs. CCEx. Mumbai-III cited in 2010 (251) ELT 290 (Mum).*

81. In view of the facts and evidences as discussed in the foregoing paras, I pass the following order: -

ORDER

(i) I allow the benefit of abatement provided under Notification No. 26/2012-ST dated 20.06.2012 as amended, to M/s. Chartered Speed Limited [*Formerly known as Chartered Speed Pvt.Ltd.*], Ahmedabad, and appropriate the payment/reversal of **Rs. 2,56,98,531/-** [***Two Crores Fifty Six Lakhs Ninety Eight Thousand Five Hundred Thirty One only***] voluntarily made by the said assessee towards the Cenvat Credit wrongly availed by them on such Rent-a-Cab Services in terms of Rule 14(1)(ii) of Cenvat Credit Rules, 2004 together with applicable interest as discussed in Para 74 above;

(ii) I drop the demand of Service Tax amounting to **Rs. 23,17,65,488/-** [***Rupees Twenty Three Crores Seventeen Lakhs Sixty Five Thousand Four Hundred Eighty Eight only***] raised on M/s. Chartered Speed Limited [*Formerly known as Chartered Speed Pvt. Ltd.*], Ahmedabad vide Para 57(ii) of the SCN dated 15.10.2019 on the grounds and circumstances discussed in Para 74 above;

(iii) I drop the demand of Service Tax amounting to **Rs. 10,86,93,740/-** [***Rupees Ten Crores Eighty Six Lakhs Ninety Three Thousand Seven Hundred Forty only***] raised on the said assessee vide Para 57(v) of the SCN dated 15.10.2019 on the grounds and circumstances discussed in Para 75 above;

(iv) I appropriate thepayment of **Rs. 2,88,286/-** [***Two Lakhs Eighty Eight Thousand Two Hundred Eighty Six only***] voluntarily made by the said assessee towards proportionate amount of Cenvat Credit wrongly availed by them on common input services as discussed in Para 75 above, in terms of Rule 14(1)(ii) of Cenvat Credit Rules, 2004;

(v) I confirm that the activity of Bus Body building undertaken by M/s. Chartered Speed Ltd.amounts to manufacture of Motor Vehicle classifiable under Chapter heading 87.03 of the Central Excise Tariff Act, 1985;

(vi) I confirm demand of duty of excise amounting to **Rs 1,69,71,919/-*[Rupees One Crore Sixty Nine Lakhs Seventy One Thousand Nine Hundred Nineteen Only]*,**which was not paid by M/s. Chartered Speed Ltd. on the bus body manufactured and cleared by themas discussed in Para 76 above and quantified in Annexure-B to the SCN, under the provisions of Section 11A(4) of the Central Excise Act, 1944;

(vii) I confirm demand of National Calamity Contingency Duty amounting to ***Rs 13,57,753/- [Rupees Thirteen Lakhs Fifty Seven Thousand Seven Hundred Fifty Three only]***which was not paid by the said assessee on the bus body manufactured and cleared by them as discussed in Para 76 above and quantified in Annexure-B to the SCN, under the provisions of Section 11A(4) of the Central Excise Act, 1944 read with Section 136(1) of the Finance Act, 2001;

(viii) I confirm demand of Infrastructure Cess amounting to ***Rs 54,31,014/- [Rupees Fifty Four Lakhs Thirty One Thousand Fourteen Only]***which was not paid by the said assessee on the bus body manufactured and cleared by them as discussed in Para 76 above and quantified in Annexure-B to the SCN, under the provisions of Section 11A(4) of the Central Excise Act, 1944 read with Section 162 of the Finance Act, 2016;

(ix) I order that M/s. Chartered Speed Ltd. should pay interest at the applicable rates on the aforesaid amounts specified in Para 81 (vi), (vii) and (viii) above, in terms of Section 11AA of the Central Excise Act, 1944 read with Section 136(1) of the Finance Act, 2001 or Section 162 of the Finance Act, 2016, as the case may be;

(x) I impose penalty of ***Rs. 2,37,60,686/- [Rupees Two Crores Thirty Seven Lakhs Sixty Thousand Six Hundred Eighty Six Only]***being the equivalent total of the aforesaid amounts specified in Para 81(vi), (vii) and (viii) above,under the provisions of Section 11AC(1)(c) of the Central Excise Act, 1944 read with Section 136(1) of the Finance Act, 2001 or Section 162 of the Finance Act, 2016, as the case may be;

(xi) I drop proposal for a separate penalty under Rule 25 of the Central Excise Rules, 2002 on the aforesaidamounts specified in Para 81 (vi), (vii) and (viii) above;

(xii) I confirm demand of service tax amounting to **Rs 45,27,541/- [*Rupees Forty Five Lakhs Twenty Seven Thousand Five Hundred Forty One Only*]**not paid by M/s. Chartered Speed Ltd. on the differential income not shown in their ST3 returns, as discussed in Para 77 above, under the proviso to Section 73(2) of the Finance Act, 1994;

(xiii) I order that M/s. Chartered Speed Ltd. should pay interest at the applicable rates on the above amount of **Rs 45,27,541/-** under Section 75 of the Finance Act, 1994;

(xiv) I impose a penalty of**Rs 45,27,541/- [*Rupees Forty Five Lakhs Twenty Seven Thousand Five Hundred Forty One Only*]**on the said assessee under the provisions of Section 78(1) of the Finance Act;

(xv) I confirm demand of interest amounting to **Rs 2,79,406/-*[Rupees Two Lakhs Seventy Nine Thousand Four Hundred Six Only]***on delayed payment of service tax of Rs. 47,52,045/- as discussed in Para 78 above and tabulated in Annexure-C to the SCN, under the provisions of Section 75 of the Finance Act, 1994;

(xvi) I confirm demand of service tax amounting to **Rs 17,07,343/- [*Rupees Seventeen Lakhs Seven Thousand Three Hundred Forty Three Only*]**not paid by M/s. Chartered Speed Ltd. on the services provided to them by their Directors, under Section 73(2) of the Finance Act, 1994;

(xvii) I order that M/s. Chartered Speed Ltd. should pay interest at the applicable rates on the above amount of **Rs 17,07,343/-** under Section 75 of the Finance Act, 1994; and

(xviii) I impose a penalty of **Rs 17,07,343/-** [***Rupees Seventeen Lakhs Seven Thousand Three Hundred Forty Three Only***]on the said assessee under the provisions of Section 78(1) of the Finance Act, 1994.

(xix) The amount of penalty imposed under Section 78 of the Finance Act, 1994 shall be reduced to twenty-five percent of the corresponding service tax determined under Section 73(2) of the Act, provided such reduced penalty is also paid along with the service tax so determined and the interest as applicable, within a period of thirty days of the date of receipt of this order as provided under clause (ii) to second proviso to Section 78(1);

(xx) The amount of penalty imposed under Section 11AC(1)(c) of the Central Excise Act, 1944 shall be reduced to twenty-five percent of the corresponding duty of excise determined under Section 11A(4) of the Act, provided such reduced penalty is also paid along with the duty of excise so determined and the interest as applicable, within a period of thirty days of the date of receipt of this order as provided under Section 11AC(1)(e); and

(xxi) SCN F.No. VI/1(b)/Tech-31/SCN/Chartered Speed/2019-20 dated 15.10.2019 issued to M/s. Chartered Speed Ltd., Ahmedabad is accordingly disposed of.

(DR. BALBIR SINGH)
COMMISSIONER
CGST & CEX, AHMEDABAD NORTH

Date: 10.09.2020

F.NO. STC/15-52/OA/2019
BY REGD POST AD

To
M/s. Chartered Speed Limited
[*Formerly known as M/s Chartered Speed Pvt Ltd*],
Near Sanathal Circle,
Sarkhej-Bavla Highway,
Sanathal, Ahmedabad

Copy to: -

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