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/. V.24/15-70/OA/2018

आदेश की तारीख़ / Date of Order :29.09.2020

जारी करने की तारीख़ / Date of Issue : 06.10.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / **Dr. BALBIR SINGH**

प्रधान आयुक्त / **PRINCIPAL COMMISSIONER**

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-23-24/2020-21

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)

3. 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 ,रुद्ध अपील की गई होकी जाएगी तथा उसके साथ जिस आदेश के वि 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. **STC/15-49/OA/2018** dated 19.09.2018 and Show Cause Notice No. **STC/15-70/OA/2018** dated 19.03.2019 issued to M/s Aga Khan Rural Support Programme (India), 9th-10th Floor, Corporate House, Ashram Road, Opp. Dinesh Hall., Navrangpura, Ahmedabad-380009.

Brief facts of the case:

M/s. Aga Khan Rural Support Programme (India), Corporate House, Ashram Road, Opp. Dinesh Hall., Navrangpura, Ahmedabad-380009 (hereinafter referred to as "assessee") is a Company registered under companies Act. The assessee is holding Service Tax Registration No. AAACA6572CSD001 dated 02.08.2011 and engaged in providing services viz. Commercial training & coaching, Business Auxiliary Services, Legal Consultancy Services, Security detective Agency services, work contract services.

2. During the test check of the audit of the records for the period of 2013- 14 to 2015-16 by officers of office of the Principal Director of Audit (Central) Ahmedabad (CERA), it was noticed that :

"Section 66B of Finance Act, 1994, states that Service Tax shall be charged at the rate notified by the Government from time to time on value of all taxable services i.e. other than those specified in the negative list or exempted services, which are provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Sl. No. 25(a) of the Notification No. 25/2012-S.T. dated 20.06.2012, Services provided to Government, a local authority or a governmental authority by way of carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation is exempted from Service Tax.

Clause(s) of paragraph 2 of the said Notification defines governmental authority as to men as authority or a board or any other body

(i) Set up by an Act of Parliament or a State Legislature; or
(ii) Established by Government.
With 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

Article 243W is related to powers to Municipalities while Article 243G is related to powers to Panchayats. Thus, the benefit of aforesaid exemption in respect of local authorities is not admissible to Panchayats.

Section 65B (26A) of the Finance Act, 1994 defines "Government" as to mean the Departments of the Central Government, a State Government and its Departments and a Union Territory and its Departments, but shall not include an entity, whether created by statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution and the Rules made there under.

Further, Sl. No. 1 of the Notification No. 25/2012-S.T. dated 20.06.2012 stipulates that Services provided to the United Nations or a ***specified*** *international organization are exempted from Service Tax.*

Clause (zf) of Paragraph 2 of the aforesaid Notification defines "specified international organization" means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 to which the provisions of the Schedule to the said Act apply.

Item No. 7.1 of the Education Guide issued by the CBED enumerates the list of specified international organization for the aforesaid purpose which are as under:-
1. International Civil Aviation Organisation
2. World Health Organisation
3. International Labor Organisation
4. Food and Agriculture Organisation of the United Nations
5. UN Educational, Scientific and Cultural Organisation (UNESCO)
6. International Monetary Fund (IMF)
7. International Bank for Reconstruction and Development
8. Universal Postal Union
9. International Telecommunication Union
10. World Meteorological Organisation
11. Permanent Central Opium Board
12. International Hydrographic Bureau
13. Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants
14. Asian African Legal Consultative Committee
15. Commonwealth Asia Pacific Youth Development Centre, Chandigarh 16. Delegation of Commission of European Community
17. Customs Co-operation Council
18. Asia Pacific Telecommunity

19. International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)
20. International Centre for Genetic Engineering and Biotechnology
21. Asian Development Bank
22. South Asian Association for Regional Co-operation
23. International Jute Organisation, Dhaka, Bangladesh"

3.1 The assessee is a Company registered under the Companies Act. They were engaged in imparting training on receipt of fees and was paying Service Tax thereon. It was found that the assessee was also engaged in research and survey at the instance of clients and on the topics as directed by his clients, prepare study paper/report for his clients and submit the report to the clients, creating awareness amongst the people on various issues as directed by his clients, providing consultancy etc. on receipt of charges for such activities.

3.2 All the clients of the assessee were registered either as a Society under the Registration of Society Act, or a Charitable Trust or a Company under the Companies Act. Thus, none of the clients of the assessee were either Government or the Governmental Authority or a Public Authority in view of the aforesaid provisions.

3.3 Though the assessee rendered services to European Commissions in India, Foreign Consulates in India, World Bank and UNICEF also, none of these organizations were specified by the Central Government as the one falling under Section 3 of the United Nations (Privileges and Immunities) Act,1947.

3.4 Thus, all the services rendered by the assessee to such clients were taxable.

4. As ascertained from the financial statements of the assessee for the period from 2013-14 to 2015-16, it was found that the assessee had received a sum of Rs. 60,50,30,439/- between the said period on which Service Tax to the tune of Rs. 7,94,90,514/- as shown below was payable :

Year	Value of taxable Service	Rate of ST	ST Payable (Rs)
2013-14	17,66,40,506	12.36%	2,18,32,767
2014-15	20,83,54,808	12.36%	2,57,52,654
2015-16	22,00,35,125	14.50%	3,19,05,093
Total	**60,50,30,439**		**7,94,90,514**

5.1 The assessee was also engaged in imparting training on receipt of fee and was paying Service Tax thereon.

5.2 On scrutiny of financial statements of the assessee for the period of 2013-14 to 2015-16, it was found that the assessee had shown some receipts as Government Assistance for the aforesaid purposes from various parties. As ascertained from the list of parties from whom such assistance were received, it was found that none of the assistance were received from any 'Government' or a 'Government authority' or a local authority falling under Article 243W of the Constitution of India.

5.3 However, the detailed work orders showing scope of work, receipt of charges etc. in respect of such assesses were not furnished to Audit. The Range Superintendent had, vide letter F.No.SD-02/AR-I/HM 27&28/Aga Khan Rural/16-17 dated 10.03.2017 requested the said assessee to pay their Service Tax dues as per HM-27 and HM-28. In reply, the said assessee, vide their letter dated 24.04.2017 submitted their reply wherein they had stated that they were not a commercial training or coaching centre and neither were they engaged in providing any commercial training or coaching service but a NGO engaged in grass root socio-economic development activities. They received grants from Central Government, State Governments for implementation of projects initiated by the respective governments. They also received grants from various private donors as well as corporate as a part of their Corporate Social Responsibility. They had argued that there is no 'quid pro quo' relation between their activity carried out and grant received. Governments providing grants to them did not receive anything in return for the grant given, neither did any of the other NGOs providing grant receive anything in return from the activity carried out by the assessee and

the said assessee merely worked as an implementing agency for all such projects being implemented. Further, there were certain transactions which even though considered as service would fall under the Negative List. Further certain items are also covered under various exemption entries of Not. No. 25/2002-ST dated 20.06.2012.

5.4 The said assessee had submitted documents/work agreements including agreements with government departments. However, on going through the documents it was seen that there was no one to one co-relation between the agreements and the payments received. So, it was not possible to agree with the views of the said assessee.

5.5 Thus, all the services rendered by the assessee to such clients were taxable. It was found that the assessee had received a sum of Rs. 18,32,14,233/- between the said period on which Service Tax to the tune of Rs. 2,44,64,615/- as shown below was payable :

Year	Value of taxable Service	Rate of ST	ST Payable
2013-14	4,35,03,294	12.36%	53,77,007
2014-15	5,46,95,263	12.36%	67,60,335
2015-16	8,50,15,676	14.50%	1,23,27,273
Total	**18,32,14,233**		**2,44,64,615**

6. Therefore amount received in instance case by the assessee is liable for Service Tax. During 2013-14 to 2015-16, the said assessee had received Rs. 60,50,30,439/- and not paid Service Tax of Rs. 7,94,90,514/- and had received total Rs.18,32,14,233/- during 2013-14 to 2015-16, and had not paid Service Tax of Rs.2,44,64,615/-. Hence, total Service Tax of **Rs.10,39,55,129/- (Ten Crore Thirty Nine Lakhs fifty five Thousand & One Hundred Twenty Nine only)** was liable to be recovered under the provisions of section 73(1) of the Finance Act, 1994 as amended from time to time by invoking extended period of limitation.

7. Therefore, vide SCN No.STC/15-49/OA/2018, dated 19.09.2018, and corrigendum dated 7.2.2019, M/s. Aga Khan Rural Support Programme (India), Corporate House, Ashram Road, Opp. Dinesh Hall., Navrangpura, Ahmedabad-380009 was called upon to Show Cause as to why :-

(a) the amount of on **Rs.78,82,44,672/-** charged and received as consideration during 2013-14 to 2015-16 should not be considered as the value for taxable service provided under Section 66E(e) of the Finance Act, 1994.

(b) the Service Tax (including Education Cess and Higher Education Cess) amounting to **Rs.10,39,55,129/-** liable to be paid for the service provided under Section 66E (e) should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 (as amended from time to time) by invoking larger period of five years.

(c) Interest should not be demanded / recovered from them on the service tax amount demanded in para (b) above under the provisions of Section 75 of Chapter V of the Finance Act, 1994.

(d) Penalty should not be imposed upon them under Section 76 of the Finance Act 1994 (as mended) as they have failed to pay service tax within the prescribed time limits as per Section 68 of Finance Act, 1994.

(e) Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994, for failure to self assess the tax liability correctly and failure to file ST-3 returns with correct and full details;

(f) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppressing the value of taxable services provided by them and for contravening the provision of the Finance Act, 1994 and rules made there under with intent to evade payment of service tax .

8. Further, based on the information called for from the assessee for the further period i.e. 2016-17 to 2017-18 (upto June 2017), it appeared that the assessee had continued the same

practice as was discussed in the previous SCN F. No. STC/15-49/OA/2018 dated 19.09.2018 and had not paid the service tax thus payable during the period 2016-17 to 2017-18 (upto June 2017).

9. As ascertained from the financial statements of the assessee for the period from Financial Year 2016-17 to Financial Year 2017-18 (upto June, 2017) as per the information provided by the assessee in reply to range office letter F. No. SD-02/AR-I/HM 27 & 28/Aga Khan Rural/16-17 dated 03.10.2018, it was found that the assessee had received a sum of **Rs. 43,93,62,304/-** for providing the services to European Commissions in India, Foreign Consulates in India, World Bank and UNICEF. None of these organizations were specified by the Central Government as the one falling under Section 3 of the United Nations (Privileges and Immunities) Act, 1947. The details of the amount received by the assessee are as below:-

Year	Value of Service
2016-17 (April & May)	5,74,91,550
2016-17 (June to Mar)	27,02,79,162
2017-18 (upto June 2017)	11,15,91,592
Total	**43,93,62,304**

10. On scrutiny of the records of the assessee, it is also noticed that they are also engaged in imparting training on receipt of fees. Further on scrutiny of financial statements of the assessee for the period of 2016-17 to 2017-18 upto June, 2017, it is found that the assessee had shown certain amounts received from various parties for the services provided by them, as Government Assistance. As ascertained from the list of parties from whom such assistance were received, it was found that none of the assistance were received from any 'Government' or a 'Government authority' or a local authority falling under Article 243W of the Constitution of India. The assessee has received a sum of Rs. 6,35,77,673/-, as detailed below, for the period from 2016-17 to 2017-18 upto June, in return of all the services rendered by the assessee to such clients, as mentioned above.

Year	Value of Services
2016-17 (April & May)	46,50,183
2016-17 (June to Mar)	5,08,18,740
2017-18 (upto June 2017)	81,08,750
Total	**6,35,77,673**

11. From the above it appears that the assessee continued the same practice as was discussed in the previous SCN F. No. STC/15-49/OA/2018 dated 19.09.2018 and the services rendered by them to its clients are not exempted under Notification 25/2012-ST, dated 20.6.2012, as claimed by the assessee, but are taxable in nature as per the provisions discussed in earlier SCN dated 19.09.2018.

12. Therefore, Service Tax amounting to **Rs 6,56,16,888/-**, as detailed below, is payable on the amount of **Rs. 43,93,62,304 /-**, received for the period from 2016-17 to 2017-18 upto June, 2017.

Year	Value of taxable Service	Rate of ST	ST Payable (Rs)
2016-17 (April & May)	5,74,91,550	14.50%	83,36,275
2016-17 (June to Mar)	27,02,79,162	15.00%	4,05,41,874
2017-18 upto June	11,15,91,592	15.00%	1,67,38,739
Total	**43,93,62,304**		**6,56,16,888**

13 Further, the services of research and survey, consultancy, etc., provided by the assessee, are taxable in nature and therefore, Service Tax amounting to **Rs. 95,13,401/-** as

detailed below, is payable on the amount of **Rs. 6,35,77,673/-**, received for the period from 2016-17 to 2017-18 upto June.

Year	Value of taxable Service	Rate of ST	ST Payable (Rs)
2016-17 (April & May)	46,50,183	14.50%	6,74,277
2016-17 (June to Mar)	5,08,18,740	15.00%	76,22,811
2017-18 upto June	81,08,750	15.00%	12,16,313
Total	**6,35,77,673**		**95,13,401**

14. Therefore, during 2016-17 to 2017-18 (upto June 2017), the said assessee has received **Rs. 43,93,62,304/-** on the services rendered by them to its clients, which were not exempted under Notification 25/2012-ST, dated 20.6.2012, as claimed by the assessee and not paid Service Tax of **Rs. 6,56,16,888/-**. They have also received **Rs. 6,35,77,673/-** during 2016-17 to 2017-18 (upto June 2017), and not paid Service Tax of **Rs. 95,13,401/-**. Hence, total Service Tax of **Rs.7,51,30,289/-** (Rupees Seven Crore Fifty One Lakhs thirty Thousand & Two Hundred Eighty Nine only) is liable to be recovered under the provisions of section 73(1) of the Finance Act, 1994.

15. Therefore, Show Cause Notice No. STC/15-70/OA/2018, dated 19.03.2019 was issued to M/s. Aga Khan Rural Support Programme (India), Corporate House, Ashram Road, Opp. Dinesh Hall, Navrangpura, Ahemedabad-380009 was called upon to show cause as to why:-

(a) Provided, in terms of Section 65B(44) and Section 66E of the Finance Act, 1994.

(b) the Service provided by the assessee should not be considered as "Service" under sub section (44) of section 65B of the Finance Act, 1994 and as to why the amount of Service Tax (including Education Cess and Higher Education Cess) amounting to **Rs.7,51,30,288/-**(Rupees Seven Crore Fifty One Lakhs thirty Thousand & Two Hundred Eighty Nine only) liable to be paid for the services, provided under Section 66B should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994.

(c) Interest should not be demanded / recovered from them on the service tax amount demanded in para (b) above under the provisions of Section 75 of Chapter V of the Finance Act, 1994.

(d) Penalty should not be imposed upon them under Section 76 of the Finance Act 1994 (as amended) as they have failed to pay service tax within the prescribed time limits as per Section 68 of Finance Act, 1994.

(e) Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994, for failure to self assess the tax liability correctly and failure to file ST-3 returns with correct and full details;

(f) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppressing the value of taxable services provided by them and for contravening the provision of the Finance Act, 1994 and rules made there under with intent to evade payment of service tax.

PERSONAL HEARING:

16. The personal hearing in this matter was held on 14.08.2020, wherein Shri Amish Khandhar,C.A., Shri Rashmin Vaja,C.A., and Shri Alok Krishna, CFO of the assessee appeared before me on behalf of the assessee. They reiterated their submissions made in their defence replies to the Show Cause Notices filed on 5.2.2019 and 10.5.2019.

17. **DEFENCE REPLY:**

A. Show Cause Notice has been issued without Authority of Law:

1. At the outset, the Noticee submitted that after the enactment of the Central Goods and Services Tax Act, 2017 and rules made thereunder, as well as the omission of Entry 92C from List-I of the Seventh Schedule of the Constitution of India vide Constitution (One Hundred and First Amendment) Act 2016, the Commissioner does not have the authority to enter into enquiry in respect of any short payment of Service Tax by the Noticee and as such the

present Show Cause Notices are without jurisdiction. The transitional provisions stated under GST law doesn't empower the Commissioner to adjudicate the SCNs issued under earlier law. Meaning thereby no provisions in the legislations which specifically confer the authority on GST officers enabling them to adjudicate the SCNs raised under old laws.

2. In this regard, stay order has been granted by Guwahati High court in case of **Mascot EntradePvt. Ltd. v. Union of India [2018 (9) GSTL 5 (Gauhati)]**wherein a stay was granted based on the prima facie observation that Service Tax proceedings cannot continue in view of Constitution (One Hundred and First Amendment) Act 2016.

B. Show Cause Notice (SCN) is based on conjectures and surmises without giving due regard to the factual details:

SCN has been issued based on assumptions and without ignoring the facts of case:

3. As stated in facts of case, the Noticee receives the payment from the Government, Semi – Government as well as Non – Government entities for carrying out specified activities agreed upon. List of the parties; narrating the nature of activity carried out by the Noticee as well as the nature of receipt received by Noticee is annexed to the SCN and marked as **'Exhibit – N'**. Part – A of the said exhibit contains the list of parties that falls under Government or Governmental authority. The said donors are either:

- *Division of Government; or*
- *Department of Government; or*
- *Establishment or entity where majority stake or control is of Government*

4. Hence, there is no ambiguity on the fact that there has been receipt of grants from the Government or Governmental Authority. Based on the agreements entered with Government or Governmental Authority (as **stated in Part – A of 'Exhibit – N'**); it is established that amount received is in the nature of grant only and such grant is received from Government or Governmental Authority only.

5. Further, the Ld. Commissioner has stated two contradictory views in SCN dated 19.9.2018 in para 4.3 and para 9.3 in relation to agreements with Government. Relevant extract of both the paras are reproduced below:

Para 4.3:
The said assessee has along with the above referred letter dated 24.04.2017 has submitted documents which mainly consist of work agreements including agreements with Government department.

Para 9.3:
It is also noticed that all the clients of the assessee were registered either as a Society under the Registration of Society Act; or a Charitable Trust; a Company under the Companies Act. Thus, none of the clients of the assessee were either Government or the Governmental Authority or Public Authority.

6. Further, in para 4.3 of SCN dated 19.9.2018, Ld. Commissioner admits that the Noticee has submitted documents including agreements with Government. Meaning thereby Ld. Commissioner believes that the Noticee has received the amount of grant from the Government as well. On the contrary, at para 9.3 of SCN, Ld. Commissioner states that none of the clients of the Noticee were either Government or Governmental Authority.

7. Hence, there is a contradiction in the SCN. As stated above, from the documents and summary submitted by the Noticee in relation to receipt; it is very well established that receipt stated in **Part – A of 'Exhibit – N'** is received from the Government or Governmental Authority or Local Authority only. Hence, by ignoring the facts of case the present SCN is issued and it needs to quashedon this ground only.

➢ **SCN has been issued without appreciating facts and submission made by the Noticee:**

8. In para 4.3 of SCN it is stated that there is no co-relation established between the agreements & payments received and hence it is not possible to agree with the views of the Noticee. Extract of the relevant para is reproduced below:

"The said assessee has along with the above referred letter dated 24.04.2017, had submitted documents which mainly consist of work agreements including agreements with government departments. However, ongoing through the documents Assistant Commissioner, CGST & C. Ex., Div – VII, Ahmedabad (North) vide his letter no. CGST A'badNorth/Div-VII/09/Agakhan/18-19 dated 17.09.2018 has certified that there is no one to one co-relation between the agreements and the payments received. So, it is not possible to agree with the views of the said assessee."

As stated above, even though full data is provided by the Noticee in relation to grant and donation receipt, Ld. Commissioner fails to co-relate the amount mentioned in agreements with payment received. Same cannot be an acceptable reason for non – considering the Noticee's argument in relation to grant and donation. Whether the payments received are in the nature of grant/donation depends on the scope of work/activity undertaken by the Noticee. Hence, the allegation of the Department that there is no co-relation between agreements and payment received is not acceptable and needs to be set aside.

9. In this respect, it is pertinent to note that as per the prevailing Accounting Standards, Note no. 15 of annual audited financial statement contains the actual utilization of grant/assistance, which will not be matched with receipt amount received from the donors during the financial year. This is because the amount towards grant may be received anytime as per the terms of contract which may be received either before or after incurring expense; or the same may even be received partly by the Noticee. The said receipt of grant and/or donations may vary on account of the different criterion of different donors and based on the said criterion the donors release the payments towards agreed assistance mentioned in the grant agreement.

10. Accordingly, the Noticee has prepared the consolidated year-wise and donor-wise statement that shows the co-relationship amongst the budgeted amount of grant, actual receipt of grant and expenditure incurred towards grant. The said consolidated statement is attached herewith and marked as **'Exhibit – O'**. Where the 'budgeted amount of grant' specifies the maximum amount that can be funded to the Noticee on carrying out specified

activity stated under teams of contract.The said 'budgeted amount of grant' is the upper limit for disbursing the grant amount. However, disbursement from Government and various donors is restricted to the actual expenditure incurred by the Noticee for carrying out specified activity. These payments may be made in advance or in specified installments.Further, while 'Grant receipt' specifies the actual amount received by the Noticeefrom various donors for carrying out specified activity, 'Actual utilization' states the amount spent or utilized by the Noticee as per the terms of agreement for carrying out specified activities. The total value of the said utilization matches with Note no. 15 of Notes to Accounts of each year.

11. In a nutshell, the Noticee submits the year-wise and donor-wise one-to-one co-relationship amongst 'grant budgeted', 'grant receipt', 'grant utilization'. Accordingly, the said contention raised by Ld. Commissioner needs to be set aside.

➢ **SCN is issued without concentrate proof and it is based on presumptions made by Ld. Commissioner:**

12. It is submitted that the Ld. Commissioner has raised demand assuming that the donor receives the desired advantage. But, the said demand of Service Tax is not supported with any evidence where it proves that desired benefit flows to donors from the donation given to Noticee. Without any authentication and verification Ld. Commissioner has stated in para 9.1 that Service Tax will be levied on amount received from the corporate and private firms and taxable u/s 66E of the Finance Act, 1994. Relevant extract of the said para of SCN dated 19.9.2018 is reproduced below:

"9.1 ...

In this age of CSR funding, every corporate, which funds activities wants to have visibility for the work that they do. The determining phrase in the provision, which makes Service Tax applicable: "advertise the name of the donor in as specified manner or such that it gives a business advantage to the donor." If such provisions are mentioned in the agreement between two entities, Service Tax will be applicable from such payments. It is observed that the Noticee has provided services to Corporate and Private firm in lieu of their CSR activities and the same is taxable under Sec: 66E of the Finance Act, 1994."

13. It can be noticed that Ld. Commissioner has raised a doubt that "if such provisions are mentioned then service tax will be applicable"; but the Ld. Commissioner could not point out any such provisions mentioned in any of the grant agreements submitted by the Noticee. As stated above, as donor doesn't receive any reciprocal benefit from the amount funded for social activities that cannot be fall under the definition of 'service'. As it is not service, that cannot be considered as 'declared service' u/s 66E of the Finance Act, 2017. Hence, it is deduced that the Ld. Commissioner has issued SCN without verifying the copies of agreements made with donors. Ld. Commissioner fails to establish the contention raised in SCN i.e. how the donation received by the donor falls in the declared service; as there is no benefit flows to donors and where the amount received by the Noticee doesn't fall within the definition of 'Service' itself.

14. In this regard, the Noticee would like to refer to the case of **M. Suganthi [2011 (23) STR 7 (Madras)]**wherein it was held that the Department while bringing an assessee under Tax net is required to render specific finding as to how he is liable and that any SCN based on surmises and conjectures is bad in law and liable to be set aside. The relevant extract of the said judgment is reproduced below:

> *"12. However, the respondent appears to have not considered this specific issue raised by the petitioners in their reply to the show cause notice, though, there was a direction to the said effect in the Judgment of the Hon'ble Division Bench as referred supra. Infact, the respondent in the impugned order accepts that the provision of Section 65 (77) of the Finance Act is not attracted in the petitioners case, respondent in the impugned order accepts that the provision of Section 65 (77) of the Finance Act is not attracted in the petitioners case, but yet, on a mere conjecture came to a conclusion that the petitioner has obtained or obtaining special Tourist permit is covered under Section 65 of the Finance Act, 1994. At this stage, it should be pointed out that therespondent, exercising power under a fiscal statue, while passing an order bringing the petitioner under the Tax net is required to render a specific finding as to how the petitioner is liable to pay the tax and the same cannot be on surmises and conjectures. The respondent cannot ignore the definition of "stage carriage", "tourist vehicle' as defined under the Motor Vehicles Act, since the provision of the Finance Act, 1994, refers to the meaning of the terms 'tourist vehicle' and 'tour operator' as defined under the Motor Vehicles Act, 1988. Therefore, the respondent has to necessarily examine the aspect as to whether the provision of the Finance Act, 1994, are attracted to the case of the petitioners vis-`-vis, the definition of 'stage carriage' and 'tour vehicle' as contained in the Motor Vehicles Act, 1988. From the definition of Section 2(40) of the Motor Vehicles Act, it is clear that carriages running under the public transport system fall under the category of stage carriage, since the passengers have a right to board or alight from such carriages according to their choice and convenience and such passengers individually pay the fares for the journey and such stage carriages do not fall under the definition of tourist vehicle under Section 2(43) of the Motor Vehicles Act."*

15. Similarly in the case of ***Commissioner of Central Excise v. DharampalPremchand Ltd. [2017 (358) ELT 288 (Tribunal – Chennai)*** it was held that no duty can be demanded vide a Show Cause Notice based on presumptions and assumptions. The relevant extract of the said judgment is reproduced below:

> *15. We find that in the show cause notice, the value/quantity of the goods has been taken as approximate basis which is patent error in the show cause notice and on the basis of assumption and presumption, the duty cannot be demanded from the assessee. Therefore, we hold that the show cause notices issued to the respondents are defective.*
>
> *16. In view of the above observation, we do not find any infirmity in the impugned orders, the same are upheld and the appeals filed by the Revenue are dismissed.*

16. Further, the Ld. Commissioner has not considered the submissions made by the Noticee in various stage of assessment. SCN doesn't contain any bonafide or sound reasons and grounds as to how the amount received by

the Noticee will fall under definition of 'declared service'. Therefore, a SCN without proper reasons being spelt out would be bad in law and would be liable to be quashed.

The same view is taken in **"M/s Shubham Electricals Vs. Commissioner of Service Tax, Rohtak 2015 (40) STR 1034 (Tribunal – Delhi)"**, where it was held that:

> *"..... The Department was not sure as to what taxable service they rendered, but sure they were that some service was rendered, only they were not sure where to classify it. In the entirety of the show cause notice, there was not a single assertion proposing to levy and collect service tax on the basis of any specified taxable services allegedly rendered by the appellant except the several alternative taxable services speculated to have been proved and set out as above. There cannot be a best judgment assessment regarding the specific taxable service provided. There can be no best judgment, for instance as to whether the tax liability is for income tax, sales tax, excise duty, customs duty, service tax or professional tax. A conclusion as to the taxable event and the liability to tax under the appropriate fiscal legislation authorizing the levy and collection of such tax is a matter for determination with precision and clarity and not by a process of guess-work or speculation."*

17. Also, in the case of **Cyril Lasardo (Dead) V/s Juliana Maria Lasarado 2004 (7) SCC 431** at Para 11, 12, the Hon'ble Apex Court has held as under:

> *"11.Reasons introduce clarity in an order. On plainest reading and consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amendable to further avenue of challenge. The absence of reasons has rendered the High Court's judgement not sustainable.*
>
> *12. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union observed: (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v Crabtree it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."*

18. Based on aforesaid explanation, it can be deduced that Ld. Commissioner has clearly overlooked facts of the case and documentary evidences that needs to be assessed before issuing SCN and confirming the demand against the Noticee. Thus, the impugned SCN dated 19.09.2018 being in gross violation of principles of equity, fair play and natural justice is liable to be set aside on this ground alone.

PART – II: Submissions on Merits:

C. Grants and Donations received does not qualify as a "Service" under Section 65B (44) of said Act in the absence of receipt of consideration:

19. As stated in facts above, the Noticee receives the payment from the Government, Semi – Government as well as Non – Government entities for carrying out specified activities agreed upon. List of the parties; narrating the nature of activity carried out by the Noticee as well as the nature of receipt received by Noticee is annexed to the SCN and marked as **'Exhibit – N'**(discussed in earlier para). The payments received from the said donors is in form of donation or financial assistance only. In case of donation the Noticee issues the receipt u/s 80G of the Income Tax Act, 1961.

20. In this regard, the Noticee would further like to reproduce the definition of **"Service"** as provided u/s 65B (44) of the Finance Act, 1994 as under:

> *"Service" means **any activity** carried out by a person for another **for consideration,** and includes a declared service.....*

The word consideration has also been defined in the Act. As per Explanation to Section 67 of the Finance Act, consideration includes – any amount that is payable for the taxable services provided or to be provided.

21. The Noticee would like to submit that for levy of Service Tax, it is primary condition that there is an activity taking place and for that "Consideration" is received by the service provider as per the definition given above. If there is no consideration then the said activity will not be covered within definition of 'Service' per se and hence, levy of service tax shall fail.

22. The Noticee also refers the meaning of consideration as derived from the definition of the expression in section 2(d) of the Contract Act, 1872. The definition of 'consideration' has been provided in Section 2(d) of the Indian Contract Act, 1872, which is reproduced below for a reference:

> *"when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."*

Accordingly, consideration means a reasonable equivalent for other valuable benefit passed on by the promisor to the promisee or by the transfer of to the transferee. It means there should be 'quid pro quo'. i.e. something in return.

23. The Noticee has also referred guidance note issued by department vide Service Tax education guide. Where para 2.2.2 states that amount received in the form of donation or grant can only be considered as 'consideration'; if the said charity is obligated to provide something in return. Relevant extract of the said para is reproduced below:

> *What are the implications of the condition that activity should be carried out for a 'consideration'?*

- *To be taxable an activity should be carried out by a person for a consideration.*
- *An act by a charity for consideration would be a service and taxable unless otherwise exempted.*
- ***Donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of the donor in a specified manner or such that it gives a desired advantage to the donor***

24. Accordingly, if the donor receives any desired benefit from the grant / donation made to the Noticee then only the amount received by the Noticee falls within the definition of consideration. But, if the donor doesn't receive any benefit from the charity made to Noticee then such amount of donation cannot be considered as consideration. For treating the amount of donation receipt as consideration desired advantage must flow to donor for such display or advertisement.

25. As submitted above, where there is no consideration, then it cannot be covered under the definition of service. Once it is established that there is no service provided, there cannot be any declared service, and neither can department ask for mention of such activity in negative list or exemption list; reason being firstly an activity has to be covered under definition of service and then only it can be excluded under negative list of exemption notification. Once it is established that with consideration activity does not constitute as service then levy itself fails to cover such activities.

26. With respect to the requirement of a quid-pro-quo relationship, a reference can be made to **CBIC Circular bearing no. 127/2010-ST dated 16.08.2010**, which clarified the Departments position with respect to the taxability of donations or grants-in-aid received by charitable foundation under Service Tax. The said Circular establishes a crucial point regarding the presence of a link between the "consideration" and the taxable service for the same to be subjected to Service Tax. Further, it was also clarified that such link does not exist in case of donations or grants-in-aid which is meant for the charitable cause championed by the respective charitable organization. The relevant extract is reproduced below:

"Donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. Between the provider of donation/grant and the trainee there is no relationship other than universal humanitarian interest. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training."

27. Although the said Circular was issued during the pre-negative list period, the same applies in the present case as it re-affirms the guidance provided in the Service Tax Education Guide stating that the existence of a reciprocal benefit is an essential ingredient for the provision of "service". Hence, it can be deduced that the donations or grants-in-aid received do not specifically benefit the person from whom such donations or grants-in-aid were received but is meant for charitable cause supported by them at large.

28. Additionally, we rely on the following judgments of various Tribunals, which hold that there must exist a service provider and client relationship between the recipient of such donations or grants-in-aid and the person providing such amounts for charitable causes to support the said contention.

i. ***Apitco Ltd. v. CST, Hyderabad [2010 (20) STR 475 (Tri. – Bangalore)]***

6. We have given careful consideration to the submissions. It is not in dispute that the assessee-company had implemented welfare schemes for the Central and State governments for the benefit of the poor or otherwisevulnerable/weaker sections of the society and collected grants-in-aid from the governments concerned. It is not in disputethat these grants-in-aid had been totally utilized for implementing the welfare schemes. Nothing over and above thesegrants-in-aid was received by the assessee from any of the governments. In other words, the assessee did not receive anyconsideration for "any service' to the governments. Therefore, we hold that, in the implementation of the Governmentalschemes, the assessee as implementing agency did not render any taxable "service" to the government. The departmentseems to be considering the Governments to be "clients" of APITCO. The question now is whether there was "serviceprovider-client" relationship between the assessee and the governments. Here, again, the nature of the amounts paid bythe governments to the assessee is decisive. A client must not only pay the expenses of the service but also theconsideration or reward for the service to the service provider. Admittedly, in the present case, there was no payment, byany government to the assessee, of any amount in excess of what is called "grant-in-aid". Thus any service provider-clientrelationship between the assessee and the governments is ruled out. It is true that the assessee had executed thegovernmental schemes mainly through their engineers (technocrats) but this was not enough for the revenue to bring theassessee within the ambit of "scientific or technical consultancy" as clearly held by this Bench in the case of AdministrativeStaff college of India (supra). An organization rendering "scientific or technical consultancy" service under Section 65(105)(za) of the Finance Act 1994 must be a science or technology institution. The assessee-company has not been shown to besuch an institution. Moreover, the revenue has failed to show that any scientific or technical advice or consultancy orassistance was rendered by the assessee to the governments. Many of the activities in question, such as micro-enterprisesdevelopment, training programmes, project planning, infrastructure planning etc., are apparently in the nature of projectsinvolving application of social science principles. The revenue has not shown that any techniques or principles of pure andapplied sciences were applied in the implementation of the governmental schemes by the assessee. In the case ofAdministrative Staff College of India (supra), this Bench held that, as the research activities of the assessee (AdministrativeStaff College) were related to social science, they would not be within the ambit of "scientific or technical consultancy" andhence no service tax could be levied under that category, which view is squarely applicable to the facts of the present case.The view taken by the Tribunal in the above case stood affirmed by the Apex Court in the above case with the dismissal ofthe department's Civil Appeal filed against the Tribunal's Order.

7. For the reasons noted above, we hold that any amount of service tax is not leviable on the grants-in-aid received by the assessee from the governments, as project-implementing agency of the governments, during the period ofdispute. The assessee has also made out a good case on the ground of limitation against a major part of the demand ofduty raised in the first show-cause notice. As early as in January 2004, the assessee had furnished all the relevant facts tothe department through a letter addressed to the jurisdictional Assistant Commissioner. Later on, in 2006, they stated allthese facts once again in a letter addressed to the Superintendent of Service Tax. The show-cause notice in question wasissued on 13-6-2006 invoking the first proviso to Section 73(1) of the Finance Act 1994 on the ground of suppression offacts. We have no hesitation to hold that the allegation of suppression of facts by the assessee is not tenable.

Further, the above holding of the Appellate Tribunal was maintained by the Hon'ble Supreme Court vide Commissioner Vs. Apitco Ltd. 2011 (23) STR J94 (S.C)

ii. *National Institute for Micro, Small and Medium Enterprises v. CCE, CC & ST, Hyderabad – II [2018 (5) TMI 606 – CESTAT Mumbai]*

"5. It has been consistently held by higher appellate forums that there can be no liability to service tax in respect of training programmes conducted on the basis of grants-in-aid received by the institutions set upby the Government for specific objectives. The Tribunal in the case of Apitco Ltd. Vs CST Hyderabad–2010 (20) STR 475 (Tri.-bang.) has set aside the demand of service tax holding that service tax is not leviable on the grants-in-aid received by the assessee from the Central and State Governments given as project implementing agency of the Government.

7. Coming to the issue of penalties, there is no gainsaying that the entire issue has arisen due to bonafidebelief of the appellants that being a national institute set up by the Government their activities would notbe exigible to service tax. We are also of the opinion that no malafide or devious intent can be ascribed tothe appellant for failure to discharge tax liability in respect of the above services to the extent applicable.Obviously, there was reasonable cause for failure on the part of appellant in not discharging their taxliability. This being so, we hold that imposition of penalties on the appellants under the Finance Act, 1994on the appellants would be too harsh and unjustified. We therefore set aside these penalties."

iii. *Madhya Pradesh Consultancy Organization Ltd. v. CCE, Bhopal [2017 (4) GSTL 100 (Tri. –Delhi)]*

"5. The appellant's organizational set-up, objective and the nature of activities carried out, are identical to that of Apitco Ltd. In fact, the Articles of Association of both the organizations are identically worded and are substantially havingthe same objects of functioning. Similar toApitco Ltd., the appellants also were entrusted with various project work,research work and training activities, and expenditures are paid by the concerned Ministries, by way of grants-in-aid. Theappellants have to account for the said grants and any excess should be returned back to the concerned Ministries. Thus, itcan be seen that the appellants were reimbursed the expenditures incurred by them in executing the work assigned to themby various government departments. There is no service provider-client relationship in such arrangement. Reliance wasalso placed on the Board's Circular dated 9-7-2001, which clarified that the grants received by public funded researchinstitutions from the Government, for conducting research - project work will not attract service tax. Further, reliance wasplaced on the decision of the Tribunal in Mineral Exploration Corporation Ltd. - 2015 (38) S.T.R. 421 (Tri.-Mum.). TheTribunal held that grants received are towards expenses involved in various activities and hence, it cannot be said that anyservice has been provided for taxable consideration.

...

11. Having considered the findings of the original authority as narrated above and on perusal of the decision of the Tribunal (as affirmed by the Hon'ble Supreme Court) in Apitco Ltd., we find that the impugned orders are devoid of merit in so far as they relate to tax liability of the appellant with reference to various works carried out by them for which consideration was paid by the Government through grants-in-aid."

iv. *M/s. ILFS Clusters Development Initiative Ltd. Vs. Commissioner, Customs, Central Excise & Service Tax, Noida [2018 (10) TMI 1007 – CESTAT Allahabad]*

"This Tribunal held that assessee therein collected grant-in-aid from Government andgrant-in-aid was totally utilized for implementation of welfare scheme and nothing over and above said grant-in-aid was received by the assessee and it was concluded that theassessee therein did not receive any consideration for any service to the Government. This Tribunal had held in the said case that service tax was not leviable on grant-in-aid received by the assessee from the Government as Project Implementing Agency of Government. The learned counsel for the appellant has submitted that the amount received for the said programme on which demand of about ₹ 23 crores (approximate) of service tax was demanded is not sustainable in view of the said Final Order passed by this Tribunal as affirmed by Hon'ble Supreme Court."

29. With respect to the meaning of the term "consideration" and, the arguments made in the earlier submission, we further rely on judgments of the various courts wherein its propounded that in order to render a transaction to the levy of Service Tax, the nexus between the consideration agreed and service activity to be undertaken ought to be direct and clear. In the absence of such quid-pro-quo between the parties, the element of consideration is absent. Some of the Tribunal judgments are:

v. *Mormugao Port Trust v. CC, CE & ST, Goa [2017 (48) STR 69 (Tri. – Mumbai)]*

"18. In our view, in order to render a transaction liable for service tax, the nexus between the consideration agreed and the service activity to be undertaken should be direct and clear. Unless it can be established that a specific amount has been agreed upon as a quid pro quo for undertaking any particular activity by a partner, it cannot be assumed that there was a consideration agreed upon for any specific activity so as to constitute a service."

vi. *Cricket Club of India Ltd. v. CST, Mumbai [2015 (40) STR 973 (Tri. – Mumbai)]*

"11. ... Consideration is, undoubtedly, an essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. - The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient."

vii. *Jaisal Club Ltd. v. CCE & ST, Jaipur – II [2017 (4) GSTL 357 (Tri. – Del.)]*

"It is an admitted fact on record, that the donation amount collected by the appellant from its members is not compulsory payment and the same is paid voluntarily by the members for construction of the building. Since the donation amount does not present any additional facilities or relating to the membership in the club, the same has no nexus with the taxable service provided by the appellant."

30. In other words, the Noticee receives the payments from various donor in form of 'Grant' or 'Donation' only; and the same funds were utilized in the manner specified in the agreement. Mere utilization of funds doesn't amount to provision of service as the essential ingredient of reciprocal benefit i.e. consideration will be missing. Based on the above explanation, it is deduced that amount received by the Noticee in the form of 'Grant' or 'Donation' doesn't fall within the definition of 'Service' and hence Service Tax on such receipt cannot be levied. Accordingly, the demand raised by Ld. Commissioner is not acceptable and needs to be set aside.

D. Adjudicating Authority is exercising powers beyond the scope of its jurisdictional authority:

31. Noticee has received departmental notice seeking the various data with respect to all the activities carried out across its various registration. The said notice does not isolate the demand solely for the activities carried out by the offices under the Ahmedabad jurisdiction of Noticee. Thus, the Adjudicating Authority may be exercising powers beyond the scope of its adjudication by raising a demand for jurisdictions whose registrations is distinct from the Gujarat registration of Noticee. Accordingly, the demand sought to be raised in this inquiry is beyond the scope of its authority and jurisdiction. It is submitted that during Service Tax Regime, the Noticee had obtained de-centralized registration where in registration was obtained in Gujarat, Madhya Pradesh and Bihar. Copy of such registration certificates are attached herewith as **'Exhibit-P'**.

32. Furthermore, considering the potential demand has been raised based on the amounts collected by the Noticee on a PAN India basis, it is submitted that the assessment has been carried out in a summary and perfunctory manner by merely considering the balance sheet figures of the Noticee. There does not exist any section-wise or activity-wise bifurcation of the activities on which the Service Tax levy is alleged. Therefore, it is submitted that there has been no proper analysis carried out by the department for the activities under the Gujarat registration as assessment has been carried on totality basis on the data of PAN India base of Noticee.

33. For this argument we would like to rely upon the judgments in the case of Centre for **Entrepreneurship Development v. CCE, Bhopal [2017 (4) GSTL 338 (Tri. – Delhi)]** wherein the Hon'ble CESTAT at Delhi had held that show cause notices issued in a perfunctory manner which suffers from serious infirmity of vagueness and lack of application of mind, are not legally sustainable in law. Accordingly, SCN issued by Ld. Commissioner needs to be set aside.

E. Extended Period of limitation cannot be invoked in the absence of fulfilment of the conditions under sub-section (1) to Section 73:

34. The relevant extract of the Section 73(1) provision is reproduced below:

Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

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

(a) fraud; or
(b) collusion; or
(c) wilful mis-statement; or
(d) suppression of facts; or
(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words thirty months, the words "five years" had been substituted.

35. Thus, only in cases of fraud or collusion or willful misstatement or suppression of facts or contravention of any provision of Chapter V or any Rules made thereunder with intent to evade payment of service tax, a show cause notice might have been issued within five years from the relevant date.

36. In the present case, in para 4.1 of SCN it is contended that Noticee has not provided requisite documents for verification during the course of audit. The said relevant para is reproduced for your reference:

"However, the detailed work orders showing the scope of work, receipt of charges, etc. in respect of such Noticee were not furnished to Audit."

37. Against the same, Noticee would like to submit that Noticee has duly submitted the required documents with detailed agreements to Ld. Superintendent at the time of audit. The acknowledged copies of the submission made at various stage of audit are attached herewith for your reference and marked as **'Exhibit – Q'**.

38. The following table shows the summary of the submissions made in chronological order.

Sr. No.	Date of submission	Details of submission
1	18.01.2017	Submission of requisite documents against letter issued during the CERA audit [i.e. Brief note about activity carried out by AKRSPI, Annual report, Balance sheet, Audit report and ST-3 returns for the years 2013-14 to 2015-16, Sample sales invoices, List of addresses of head office & branch office]
2	26.04.2017	Submission against the demand of Service Tax raised on financial assistance received by Noticee vide letter received from CERA auditor
3	17.09.2018	Defense reply along with required exhibits containing the various grounds against the contention raised by Ld. Commissioner in pre – show cause notice

39. Accordingly, the Noticee has duly submitted the requisite details demanded by departmental officer during the course of Audit. Further, Noticee has also filed Service Tax returns in Form ST-3 from 2013-14 to 2015-16 by declaring the taxable income accrued by Noticee. Thus, there has been no suppression of fact to departmental officers. However, the Ld. Commissioner has ignored the Service Tax which has already been discharged and disclosed in Form ST-3 filed by Noticee.

40. In this respect, reliance can be placed on **Saboo Coatings Ltd. [2014 (36) STR 447 (Tri. – Del.)]**, where it has been held that non – disclosure of facts not required by law cannot be attributable to suppression. Relevant para of the said judgment is reproduced below:

"It is well settled that non-disclosure of the fact which is not required to be disclosed in the law, cannot attribute any suppression to the Noticee. As such, the reasoning of the Commissioner (Appeals) that appellants have not disclosed the digital photograph service as a service on which credit was availed thus leading to suppression, cannot be upheld. Accordingly, I set aside the demand on the point of limitation."

41. Further, in Form ST-3 filed for the relevant periods, the Noticee has provided taxable services from 7 different locations in 3 States of India; and accordinglyNoticee has taken 7 single registrations under Service Tax regime. Following table shows the summary of the registrations and taxable income shown in different heads is explained as under:

(Amount in Rs.)

Reg. details	Service head	2013-14	2014-15	2015-16
AAACA6572CSD001 (Ahmedabad)	Commercial coaching service	16,61,907	2,86,589	16,87,711
	Business Auxiliary service	5,73,007	2,15,662	97,090
AAACA6572CSD004 (Sayla)	Commercial coaching service	45,000	6,14,715	32,751
	Mandap keeper service	12,48,364	10,58,901	13,82,681
	Technical Inspection service	97,725	2,880	-
AAACA6572CSD005 (Gadu)	Commercial coaching service	5,92,571	4,83,884	99,397
	Mandap keeper service	9,256	4,000	6,000
AAACA6572CSD003 (Netrang)	Commercial coaching service	6,21,477	4,59,749	3,97,283
	Mandap keeper service	19,20,327	13,34,381	4,90,641
	Manpower supply service	6,159	10,157	-
AAACA6572CSD007 (Dangs)	Commercial coaching service	-	-	4,804
AAACA6572CSD002 (Khandwa)	Commercial coaching service	1,26,979	1,33,800	7,33,560
AAACA6572CSD006 (Bihar)	Commercial coaching service	14,87,532	8,28,413	4,88,963
Total Taxable Income		**83,90,304**	**54,33,131**	**54,20,881**

42. Therefore, the Noticee has shown only the income which is taxable under the Service Tax law; whereas the payments received towards grant or donation has not been shown in the filed ST-3; as the said payments can't be treated as 'service'. Moreover, to avoid any mixing of different types of income and for easily reconciling financial records with Service Tax returns, Noticee maintains the separate records for taxable and non-taxable incomes in books of accounts. The said taxable income matches with the Service Tax returns filed by the Noticee during the financial year under aforesaid registrations.Consequently,the annual audited statement contains the details of the total income (taxable as well as non-taxable) accrued in all the locations of the Noticee; on the other hand ST-3 returns contains the location-wise taxable income only. To reconcile the same; Noticee has attached the reconciliation statement between taxable income shown in ST-3 filed under aforesaid registrations and total income accrued & reported in annual audited statement. The said statement is attached herewith for your reference and marked as **'Exhibit – R'**. Summary of the said annexure is explained as under:

(Amount of Rs.)

Year	Note No.	Non – Taxable income	Taxable income (ST-3)
2013-14	15	22,01,43,798	-
	-	3,67,84,732	22,36,539
	16	35,00,067	61,53,765
	17	2,72,98,819	-
	Total	**28,77,27,416**	**83,90,304**
2014-15	15	26,30,50,068	-
	-	5,67,92,073	20,46,139
	16	83,69,017	33,86,991
	17	3,30,95,449	-
	Total	**36,13,06,607**	**54,33,130**
2015-16	15	30,50,50,976	-
	-	5,16,30,500	11,18,615
	16	15,95,809	43,02,238
	17	3,72,77,868	-
	Total	**39,55,55,153**	**54,20,853**

43. In light of the above, it can be surmised that the Noticee has duly paid Service Tax on the taxable receipt received from service recipient under the head 'commercial training and coaching service' or 'business auxiliary service'. Further, on the other payments received such as grant, donation, community contribution, interest income earned on such contributions etc.; Noticee is not liable to pay Service Tax as the said incomes are not covered within the definition of 'service' and hence the same are not disclosed in Form ST-3 of the respective years.

44. Accordingly, the Ld. Commissioner has overlooked the Service Tax paid and disclosed in Form ST-3 and straight away demanded the Service Tax on the accrued income reported in audited financial statement under Note 15 of the said report which consists of grant and donation received by Noticee. Hence, the allegation of suppression of facts is unfounded and the demand raised by the Ld. Commissioner in that respect is liable to be set aside.

45. Various courts have in catena of judgments held that allegation of 'suppression of facts' needs to be construed strictly. There must be a willful evasion of law and thus such an allegation cannot be raised in cases where there is a dispute relating to interpretation of law. Reliance can be placed on the following:

i. Bharat Hotel Ltd. [2018 (12) GSTL 368 (Del.)]

"It is evident that failure to pay tax is not a justification for imposition of penalty. Also, the word 'suppression' in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in the proviso, i.e. "fraud, collusion, wilful misstatement" - there must be deliberate suppression of information for the purpose of evading of payment of duty. It connotes a positive act of the Noticee to avoid paying excise duty. The terms 'mis-statement' and 'suppression of facts' are preceded by the expression 'wilful'. The meaning which has to be ascribed is, deliberate action (or omission) and the presence of an intention. Thus, invocation of the extended limitation period under the proviso to Section 73(1) does not refer to a scenario where there is a mere omission or mere failure to pay duty or take out a license without the presence of such intention."

ii. Pushpam Pharmaceuticals Company [1995 (78) ELT 401 (SC)]

"4.Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

iii. Punjab Laminates Pvt. Ltd. [2006 (202) ELT 578 (SC)]

"It is settled law that mere failure to declare does not amount to willful mis-declaration or willful suppression. There must be some positive act on the part of the party to establish either willful mis-declaration or willful suppression. When all facts are before the Department and a party in the belief that affixing of a label makes no difference does not make a declaration, then there would be no willful mis-declaration or willful suppression. If the Department felt that the party was not entitled to the benefit of the Notification, it was for the Department to immediately take up the contention that the benefit of the Notification was lost."

iv. Sourav Ganguly v. UOI [2016 (43) STR 482 Cal.]

"The petitioner was prompt and diligent in responding to all the notices issued by the Department and in his replies, the petitioner clearly explained the nature and scope of his activities. Subsequently, copies of contracts entered into by the petitioner with the corporate entities were also made available to the Department. In my view, there was full and sufficient disclosure of the nature of the petitioner's activities to the Department and it cannot be said that the petitioner suppressed material facts to deceive the Department with intent to evade payment of service tax."

46. It is submitted that the Noticee has never suppressed any details which were asked by the departmental officers and has duly submitted relevant documents demanded by departmental officers during the various stage of audit and assessment, the allegation 'suppression of facts' is incorrect.

47. Thus, in the absence of willful suppression on the part of the Noticee, extended priod of limitation under Section 73(1) cannot be invoked and therefore the demand to that extend is liable to be set aside.

F. <u>Interest and Penalty cannot be demanded when there is no Service Tax payable:</u>

➢ <u>As Regards Interest u/s 75:</u>

48. It is submitted that when no Service Tax is payable, the question of interest does not arise.

➢ <u>As Regards Penalty u/s 76, 77 & 78:</u>

49. On the basis of arguments as stated above, as no Service Tax is required to be paid by the Noticee, no penalty for non-payment of service tax can be levied u/s 76, 77 and 78 of the Act.

50. Ld. Commissioner has simultaneously levied penalty u/s 76 as well as penalty u/s 78 of the said Act. But, the same demand is unsustainable in eyes of law. As in any event, once penalty is imposed u/s 78 of the said Act no penalty can be imposed u/s 76 of the said Act. There is a controversy as to whether both the penal provisions u/s 76 and 78 can be invoked for the same offence. Further, on the principal of equity is also department cannot impose both the penalty simultaneously.

51. There are number of judicial pronouncement which confirm that both the penalties could not be levied simultaneously. The extract of the certain decisions are reproduced as under:

"Hon'ble Tribunal in the Opus Media & Entertainment vs CCE, Jaipur (2007 TMI 2921 CESTAT, NEW DELHI) and The Financers vs

CCE, Jaipur (2008 TMI 4599 CESTAT, NEW DELHI) has been very clearly held that cases in which penalty are imposed under Section 78 cannot fall in respect of the same service tax evaded under Section 76. There is no scope for imposing double penalty, both under Sections 76 and 78 for the same offence. It has to fall either under Section 76 or 78 and mens rea will have to be proved Levy of penalties u/s 76 and 78 is contrary to the statutory provisions."

"In CCE vs First Flight courier Ltd. (2011) 22 STR 622 (P & H), High Court held that penalty u/s 76 is not justified if penalty under section 78 is imposed. It held, thus as under section 76 provides for penalty for failure to pay the amount while Section 78 provides for penalty for sup pressing the taxable value. Section 78 is, thus, more comprehensive and provides for higher amount. Even if technically, the scope of Sections 76 and 78 is different, penalty under Section 76 may not be justified if penalty had already been imposed under Section 78."

"It has been held in Desert Inn Ltd. v. CCE, Jaipur (2011) 23 STR 234 (CESTAT, New Delhi) that once penalty under section 78 has been imposed, penalty under section 76 further is not maintainable."

52. It can also be submitted that there has not been any deliberate defiance of the law or non-compliance of the Service Tax provisions on the part of the Noticee. As a result, penalty should not be imposed. Reliance can be placed on the following:

i. ***Commissioner of Service Tax v. Motor World [2012 (27) STR 25 (Karnataka)]***

"Whether for imposing penalty under sections 76, 77 and 78 not only ingredients of those sections should exist, but also there should be absence of reasonable cause for said failure; thus imposition of penalties under those sections are not automatic."

ii. ***Municipal Corporation of Delhi v. Jagannath Ashok Kumar, (1987) AIR 2316 (Supreme Court), Apex Court***

"The reasons given by the Arbitrator are cogent and based on materials on record. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the time and circumstance in which he thinks.Failure on his part to collect or pay Service Tax or to furnish prescribed return or suppressing or furnishing inaccurate value of taxable service was not intentional and that there was reasonable cause for such failure."

iii. ***Hindustan Steel Ltd. v. State of Orissa [1978 (2) ELT (J159) SC***

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

53. Further, there has been no deliberate defiance of the law by the Noticee and even assuming that the Noticee was liable to discharge Service Tax on their activities, it is settled principal of law that penalty cannot be imposed on matter of interpretation. In this respect, reliance is based on the following judgments:

i. **Sundaram Finance Ltd. v. CCE & ST, LTU, Chennai [2018 (11) GSTL 305 (Tri. – Chennai)]**

"11.The appellant-assessee contested the first demand on limitation also, along with imposition of penalty under Section 78. We note that the question involved in the present case is one of interpretation and as can be seen even by order of Commissioner (Appeals), the possibility of two views cannot be ruled out. Further, we note in the earlier proceedings through show cause notice dated 28-1-2005, the Revenue dealt with the taxability of various income under the category of "Fleet Card Services". As such, we find merit in the submission of the appellant-assessee against invoking demand for extended period and also imposition of penalty under Section 78. The original authority upheld the demand for a longer period only on the ground that the appellant-assesseedid not include the full particulars of income in their statutory ER-1 returns. The appellant-assessee is contesting the nature of income and there are grounds for them to entertain a bona fide belief regarding non-liability to tax of such income. The impugned order did not bring out sustainable reasons for invoking wilful suppression, misstatement etc., against the appellant-assessee. Accordingly, we hold that while the appellant-assessee is liable to service tax on the income shown as "finance charges" and "additional finance charge", the demands are confirmed for normal period. On the same reasoning, the penalty imposed under Section 78 is also not sustainable."

ii. **C.C.E vs Swaroop Chemicals (P) Ltd. [2006 (204) E L T 492 (Tri)]**

"5.The learned authorized representative for the department submits that there was no valid reason for the Commissioner (Appeals) to set aside the penalties imposed on the assessee or to reduce the penalty as done under the impugned orders. While confirming, the Commissioner (Appeals), however, set aside the penalties imposed in the order-in-original on the ground that no mala fide intent of evasion of duty was established and that the issue involved the question of interpretation of law."

iii. **Haldia Petrochemicals Ltd. vs. CCE [2006 (197) E L T 97 (Tri)]**

24. We, therefore, hold that the appellant was entitled to take Cenvat credit on the duty paid on Naphtha, sent as such, or after being partially processed (CLS) to the power plant for generation of steam or electricity, which was sent to the petrochemical complex of the appellant for use or in relation to the manufacture of final products under Rule 57AC or Rule 4(5)(a) of the Central Excise Rules or Cenvat Credit Rules. We are also of the view that no relevant facts were suppressed by the appellant as is evident from various letters and discussions with the Departmental Officers, and, therefore, the extended period of limitation cannot be invoked under the proviso to Section 11A(1) of the Central Excise Act, 1944. There is also no case for imposition of penalty, firstly for the reason that the demand of

duty is unsustainable and secondly for the reason that the case involves a question of interpretation of law.

54. Thus, in the absence of demand, interest and penalty under the above interest and penalty provisions would not arise.

G. **Without Prejudice, the amount received should be treated as Inclusive of Taxes:**

55. Notwithstanding anything submitted above, according to section 67(2) of the Finance Act, 1994 where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to gross amount charged. Where reliance can be placed on the following:

i. *Commr. of Cen. Excise &Cus., Patna Versus M/S Advantage Media Consultant &Anr. 2008 (10) TMI 570 – SC*

ii. *Commissioner of Service Tax, Mumbai-I Versus Allied Aviation Ltd. 2017 (4) TMI 438 – CESTAT Mumbai*

iii. *Commissioner of Central Excise, Delhi v. Maruti Udyog Ltd. [2012 (141) ELT 3 (SC)]*

56. It is submitted that all the above submissions made are alternate and without prejudice to each other.

57. We crave leave to add, alter or amend all or any of the submissions mentioned hereinabove and to lead such oral and / or documentary evidence as may be considered necessary.

58. Further, Ld. Principal Commissioner has given contradictory view in SCN dated 19.03.2019 in para 5.1 Relevant extract of the para is reproduced below:

> ***Para 5.1:***
> *It is observed that the assessee has provided services to Corporate and Private firms in lieu of their CSR activities and the same is taxable under Section 66E of the Finance Act,1994*

59. Further, in para 4.1 of SCN dated 19.3.2019, it has been admitted that the Noticee has submitted documents including agreements with Government. Further, it is also stated that the noticee received grants from Government for implementation of projects of such Governments. Relevant Extract of the para is reproduced as under:

> ***Para 4.1:***
> *They received grants from Central Government, State Government for implementation of projects initiated by the respective governments. They also receive grants from various private donors as well as corporate donors.*

60. Meaning thereby Ld. Principal Commissioner believes that the Noticee has received the amount of grant from the Government as well as from private donors and corporate donors. Hence, it is admitted fact and also agreed upon by Commissioner that noticee has received grants from Government or Government department. In stark contradiction, in the same para, Ld. Principal Commissioner states that none of the clients of the Noticee were either Government or Governmental Authority.

61. Hence, there is a contradiction in the SCN. As stated above, from the documents and summary submitted by the Noticee in relation to receipt; it is very well established that receipt stated in **Part – A of 'Exhibit – J'** is received from the Government or Governmental Authority or Local Authority only. Hence, by ignoring the facts of case the present SCN is issued and it needs to be quashed on this ground only.

➢ **SCN dated 19.3.2019 is issued without concentrate proof and it is based on presumptions made by Ld. Principal Commissioner:**

62. It is submitted that the Ld. Principal Commissioner has raised demand assuming that the donor receives the desired advantage. But, the said demand of Service Tax is not supported with any evidence where it proves that desired benefit flows to donors from the donation given to Noticee. Without any authentication and verification Ld. Principal Commissioner has stated in para 5.1 that Service Tax will be levied on amount received from the corporate and private firms and taxable u/s 66E of the Finance Act, 1994. Relevant extract of the said para of SCN is reproduced below:

> *"5.1 ...*
>
> *It is observed that the assessee has provided services to Corporates and Private firms in lieu of their CSR activities and the same is taxable under Sec: 66E of the Finance Act, 1994."*

63. Further, in Form ST-3 filed for the relevant periods, the Noticee has provided taxable services from 7 different locations in 3 States of India; and accordingly,Noticee has taken 7 single registrations under Service Tax regime. Following table shows the summary of the registrations and taxable income shown in different heads is explained as under:

Reg. details	Service head	2016-17	2017-18(Q1)
AAACA6572CSD001 (Ahmedabad)	Commercial coaching service	12,48,045	2,60,651
	Business Auxiliary service	7,24,712	4,39,626
AAACA6572CSD004 (Sayla)	Commercial coaching service	93,549	81,304
	Mandap keeper service	16,88,674	2,33,379

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AAACA6572CSD005 (Gadu)	Commercial coaching service	3,69,053	1,78,174
AAACA6572CSD003 (Netrang)	Commercial coaching service	5,39,002	3,43,478
	Mandap keeper service	7,31,549	32,960
AAACA6572CSD007 (Dangs)	Commercial coaching service	52,990	11,135
AAACA6572CSD002 (Khandwa)	Commercial coaching service	11,981	5,217
AAACA6572CSD006 (Bihar)	Commercial coaching service	3,71,096	93,308
Total Taxable Income (Amount in Rs.)		58,30,651	16,79,232

64. Therefore, the Noticee has shown only the income which is taxable under the Service Tax law; whereas the payments received towards grant or donation has not been shown in the filed ST-3; as the said payments can't be treated as 'service'. Moreover, to avoid any mixing of different types of income and for easily reconciling financial records with Service Tax returns, Noticee maintains the separate records for taxable and non-taxable incomes in books of accounts. The said taxable income matches with the Service Tax returns filed by the Noticee during the financial year under aforesaid registrations.Consequently,the annual audited statement contains the details of the total income (taxable as well as non-taxable) accrued in all the locations of the Noticee; on the other hand ST-3 returns contains the location-wise taxable income only. To reconcile the same; Noticee has attached the reconciliation statement between taxable income shown in ST-3 filed under aforesaid registrations and total income accrued & reported in annual audited statement. The said statement is attached herewith for your reference and marked as **'Exhibit – L'**. Summary of the said annexure is explained as under:

Year	Note No.	Non – Taxable income (Rs.)	Taxable income (ST-3) (Rs.)
2016-17	15	38,20,41,581	11,98,056
	-	5,34,73,525	28,07,795
	16	25,53,987	18,24,800
	17	2,79,64,605	-
	Total	46,60,33,698	58,30,651
2017-18(Q1)	18	11,97,00,341	-
	-	2,82,16,214	12,26,926
	19	1,99,220	4,52,306
	20	7,08,010	-
	Total	14,88,23,785	16,79,232

65. In light of the above, it can be surmised that the Noticee has duly paid Service Tax on the taxable receipt received from service recipient under the head 'commercial training and coaching service' or 'business auxiliary service'. Further, on the other payments received such as grant, donation, community contribution, interest income earned on such contributions etc.; Noticee is not liable to pay Service Tax as the said incomes are not covered within the definition of 'service' and hence the same are not disclosed in Form ST-3 of the respective years.

66. Accordingly, the Ld. Principal Commissioner has overlooked the Service Tax paid and disclosed in Form ST-3 and straight away demanded the Service Tax on the accrued income reported in audited financial statement under (Note 15 for F.Y.16-17 & Note 18 for F.Y.17-18) of the said report which consists of grant and donation received by Noticee. Hence, the allegation of suppression of facts is unfounded and the demand raised by the Ld. Principal Commissioner in that respect is liable to be set aside.

67. Further, reliance is also placed on the following judgments

a. International Metro Civil Contractors [2019 (20) GSTL 66 (Tri. – Del.)

b. Principal Commr. of GST & C. Ex., Chennai [2018 (18) GSTL 589 (Mad.)]

c. Gujarat Pulses Manufacturing Association v. Union of India [2018 (15) GSTL 58 (Guj.)] *Drop the proceedings initiated by the Show Cause Notice F. NO.STC/15-70/OA/2018 dated 18.02.2019.*

68. The synopsis of the submissions made by the assessee are as under:

I. **Preliminary Submission**

1. Show Cause Notice (SCN) is based on conjectures and surmises without giving due regard to the factual details:

- The Noticee receives payment from Government, Semi – Government as well as Non – Government entities for carrying out specified activities agreed upon.Parties that falls under Government or Governmental authority are either:
  - *Division of Government; or*
  - *Department of Government; or*
  - *Establishment or entity where majority stake or control is of Government*
- There is no ambiguity on the fact that there has been receipt of grants from the Government or Governmental Authority based on agreements provided.*(Exhibit -N of SCN Reply)*
- Contradictory views in SCN in para 4.3 and para 9.3 in relation to agreements with Government.
- The Department has failed to co-relate the amount mentioned in the agreement with the payment received. In failing to do so, refusal to accept the explanation provided by the Noticee is untenable.
- As per the prevailing Accounting Standards, note no. 15 of annual audited financial statement contains the actual utilization of grant/assistance, which will not be matched with receipt amount received from the donors during the financial year.
- Noticee has prepared the consolidated year-wise and donor-wise statement that shows the co-relationship amongst the budgeted amount of grant, actual receipt of grant and expenditure incurred towards grant. *(Exhibit – O of SCN Reply).* These amount receipts may be made in advance or specified installments.

II. **Submissions on Merit**

2. Grants and Donations received does not qualify as a "Service" under Section 65B (44) of said Act in the absence of receipt of consideration:

- If there is no consideration then the said activity will not be covered within definition of 'Service' per se and hence, levy of service tax shall fail.
- The Noticee has also referred guidance note issued by department vide Service Tax education guide. Where para 2.2.2 **[para 24 of SCN reply]** states that amount received in the form of donation or grant can only be considered as 'consideration'; if the said charity is obligated to provide something in return.
- In the present case, the donor does not receive any benefit from the charity made to Noticee then such amount of donation cannot be considered as consideration. Donor does not receive any reciprocal benefit from the grant / donation made to the Noticee. Thus, such amount of donation cannot be considered as consideration and hence does not fall within the ambit of Service.
- Reliance is also placed on CBIC Circular bearing no. 127/2010-ST dated 16.08.2010, with respect to the requirement of link between the 'consideration' and the service. **[para 27 of SCN reply]**
- Mere utilisation of funds does not amount to provision of services in the absence of the essential ingredient of reciprocal benefit.

3. Adjudicating Authority is exercising powers beyond the scope of its jurisdictional authority

- Adjudicating Authority may be exercising powers beyond the scope of its adjudication by raising a demand for jurisdictions whose registrations is distinct from the Gujarat registration of Noticee.It is submitted that during Service Tax Regime, the Noticee had obtained de-centralized registration where in registration was obtained in Gujarat, Madhya Pradesh and Bihar.

4. Extended Period of limitation cannot be invoked in the absence of fulfilment of the conditions under sub-section (1) to Section 73

- Noticee has duly submitted the requisite details demanded by departmental officer during the course of Audit.
- Further, Noticee has also filed Service Tax returns in Form ST-3 from 2013-14 to 2015-16 by declaring the taxable income accrued by Noticee***(Exhibit-R)***. Thus, there has been no suppression of fact to departmental officers.

List of the Case Laws on which reliance is placed:

Ground	Point of Reliance	Citation of Case Law
2.	Department while bringing an assessee under Tax net is required to render specific finding as to how he is liable	*M. Suganthi [2011 (23) STR 7 (Madras)]*
		Siddharth Optical Disc Pvt. Ltd. & Others Vs. UOI and Another [2013 (288) ELT 17 (Del.)]
		Commissioner of Customs (Export), Mumbai Vs. Yasha Overseas [2017 (4) TMI 13 – CESTAT Mumbai],
		Raymond Ltd. Vs. Commissioner of Central Excise, Bhopal [2016 (338) ELT 148 (Tri – Delhi)]
	No duty can be demanded vide a Show Cause Notice based on presumptions and assumptions	*Commissioner of Central Excise v. DharampalPremchand Ltd. [2017 (358) ELT 288 (Tribunal – Chennai)]*
	SCN without proper reasons being spelt out would be bad in law and would be liable to be quashed	*M/s Shubham Electricals Vs. Commissioner of Service Tax, Rohtak 2015 (40) STR 1034 (Tribunal – Delhi)*
	Absence of reasons has rendered the High Court's judgement not sustainable	*Cyril Lasardo (Dead) V/s Juliana Maria Lasarado 2004 (7) SCC 431*
3.	There must exist a service provider and client relationship	*Apitco Ltd. v. CST, Hyderabad [2010 (20) STR 475 (Tri. –Bangalore)]*
		National Institute for Micro, Small and Medium Enterprises v. CCE, CC & ST, Hyderabad – II [2018 (5) TMI 606 – CESTAT Mumbai]
		Madhya Pradesh Consultancy Organization Ltd. v. CCE, Bhopal [2017 (4) GSTL 100 (Tri. –Delhi)]
		Mineral Exploration Corporation Ltd. v. Commr. of C. Ex., Nagpur [2015 (38) STR 421 (Tri. – Mumbai)]
		M/s. ILFS Clusters Development Initiative Ltd. Vs. Commissioner, Customs, Central Excise & Service Tax, Noida [2018 (10) TMI 1007 – CESTAT Allahabad]
	In order to render a transaction to the levy of Service Tax, the nexus between the consideration agreed and service activity to be undertaken ought to be direct and clear. In the absence of such quid-pro-quo between the parties, the element of consideration is absent	*Mormugao Port Trust v. CC, CE & ST, Goa [2017 (48) STR 69 (Tri. – Mumbai)]*
		ACL Mobile Ltd. v. Commissioner of C. Ex., Delhi [2019 (20) GSTL 362 (Tri. – Delhi)]
		Maharaj Bhag Club v. Commissioner of C. Ex. & Customs [2017 (4) GSTL 274 (Tri. – Mumbai)]
		Cricket Club of India Ltd. v. CST, Mumbai [2015 (40) STR 973 (Tri. – Mumbai)]
		Jaisal Club Ltd. v. CCE & ST, Jaipur – II [2017 (4) GSTL 357 (Tri. – Del.)]
4.	Show cause notices issued in a perfunctory manner which suffers from serious infirmity of vagueness and lack of application of mind, are not legally sustainable in law	*Entrepreneurship Development v. CCE, Bhopal [2017 (4) GSTL 338 (Tri. – Delhi)]*
		Commissioner of C. Ex., Bangalore v. Brindavan Beverages (P) Ltd. [2007 (213) ELT 487 (S.C.)
5.	Non – disclosure of facts not required by law cannot be attributable to suppression	*Saboo Coatings Ltd. [2014 (36) STR 447 (Tri. – Del.)]*
	There must be a willful evasion of law and thus such an allegation cannot be raised in cases where there is a	*Bharat Hotel Ltd. [2018 (12) GSTL 368 (Del.)]*
		Pushpam Pharmaceuticals Company [1995 (78) ELT 401 (SC)]

	dispute relating to interpretation of law	*Punjab Laminates Pvt. Ltd. [2006 (202) ELT 578 (SC)]*
		Continental Foundation Joint Venture Holding v. Commissioner of Central Excise, Chandigarh-I [2007 (216) ELT 177]
		Sourav Ganguly v. UOI [2016 (43) STR 482 Cal.]
6.	Penalty u/s 76 and u/s 78 could not be levied simultaneously	*Opus Media & Entertainment vs CCE, Jaipur (2007 TMI 2921 CESTAT, NEW DELHI)*
		CCE vs First Flight courier Ltd. (2011) 22 STR 622 (P & H)
		Desert Inn Ltd. v. CCE, Jaipur (2011) 23 STR 234 (CESTAT, New Delhi)
	Penalty cannot be imposed on matter of interpretation	*Sundaram Finance Ltd. v. CCE & ST, LTU, Chennai [2018 (11) GSTL 305 (Tri. – Chennai)]*
		C.C.E vs Swaroop Chemicals (P) Ltd. [2006 (204) E L T 492 (Tri)]
		Haldia Petrochemicals Ltd. vs. CCE [2006 (197) E L T 97 (Tri)]

17.1 The assessee vide their above replies requested that the proceedings initiated by the Show Cause Notices under consideration may be dropped.

DISCUSSION AND FINDINGS:

18. I have gone through the records of the case and submissions made by the assessee in their written submissions as well as during their course of the personal hearing. I find that the demand of Service Tax has been raised on the following grounds:

(A) None of the assistance received by the Noticee is from any 'Government' or 'Government authority' or 'Local authority' falling under Article 243W of the Constitution of India.

(B) The amount received from various parties doesn't fall in exemption and hence liable to Tax. There is no one to one co-relation between the agreements and payments received.

(C) The activity carried out by the Noticee for which aforesaid payments are received falls under sub-section (e) of Sec: 66E of the Finance Act, 1994 i.e. constitutes declared service.

19. On going through the submissions, I find that the assessee has also raised the following issues:

(D) That after the enactment of the Central Goods and Services Tax Act, 2017 and rules made thereunder, as well as the omission of Entry 92C from List-I of the Seventh Schedule of the Constitution of India vide Constitution (One Hundred and First Amendment) Act 2016, the Commissioner does not have the authority to enter into enquiry in respect of any short payment of Service Tax by the Noticee and as such the present Show Cause Notices are without jurisdiction. The transitional provisions stated under GST law doesn't empower the Commissioner to adjudicate the SCNs issued under earlier law. Meaning thereby no provisions in the legislations which specifically confer the authority on GST officers enabling them to adjudicate the SCNs raised under old laws.

(E) That the Adjudicating Authority is exercising powers beyond the scope of its jurisdictional authority:

The said notice does not isolate the demand solely for the activities carried out by the offices under the Ahmedabad jurisdiction of Noticee. Thus, the Adjudicating Authority may be exercising powers beyond the scope of its adjudication by raising a demand for jurisdictions whose registrations is distinct from the Gujarat registration of Noticee. Accordingly, the demand sought to be raised in this inquiry is beyond the scope of its authority and jurisdiction. It is submitted that during Service Tax Regime, the Noticee had obtained de-centralized registration where in registration was obtained in Gujarat, Madhya Pradesh and Bihar.

20. Before discussing the main issue pertaining to the Show Cause Notices, first of all I shall address the points (D) and (E) above.

21. (D) The transitional provisions stated under GST law doesn't empower the Commissioner to adjudicate the SCNs issued under earlier law. Meaning thereby no provisions in the legislations which specifically confer the authority on GST officers enabling them to adjudicate the SCNs raised under old laws.

21.1. The proceedings proposed and that may be taken against the said noticee, under the aforementioned provisions of the Finance Act 1994 read with the Service Tax Rules, 1994 framed there under, are saved by the Section 174(2) of the CGST Act, 2017, which is reproduced as under:

174. (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173

21.2. From the Section 174(2) of the CGST Act, 2017, it is evident that the said Act itself has empowered the Commissioner to raise demand of Service Tax and thereby also adjudicating the Show Cause Notices, in the matters pertaining to pre-GST period. Thus the claim of the assessee that the Commissioner is not empowered to adjudicate the SCNs issued under earlier law, is baseless and does not hold any ground.

22. (F)That the Adjudicating Authority is exercising powers beyond the scope of its jurisdictional authority:

22.1 It has been alleged by the assessee that the Adjudicating Authority **may be** exercising powers beyond the scope of its adjudication by raising a demand for jurisdictions whose registrations is distinct from the Gujarat registration of Noticee. During Service Tax Regime, the Noticee had obtained de-centralized registration wherein registration was obtained in Gujarat, Madhya Pradesh and Bihar. Accordingly, the demand sought to be raised in this inquiry is beyond the scope of its authority and jurisdiction. There does not exist any section-wise or activity-wise bifurcation of the activities on which the Service Tax levy is alleged. Therefore, it has been submitted that there has been no proper analysis carried out by the department for the activities under the Gujarat registration as assessment has been carried on totality basis on the data of PAN India base of Noticee. Further, in Form ST-3 filed for the relevant periods, the Noticee has provided taxable services from 7 different locations in 3 States of India; and accordingly, the Noticee has taken 7 single registrations under Service Tax regime.

22.2 Regarding this, I find that the assessee had shown only the income which is taxable under the Service Tax law under the respective regional Service Tax Registrations; whereas the payments received towards grants or donations have not been shown in any ST-3 Returns anywhere nor have they taken registration of the said service thereof. The assessee had treated the income towards Grant and donations as non taxable and hence, such service has not been registered in other place. Further, it is the assessee's own admission in their replies to the Show Cause Notices that to avoid any mixing of different types of income and for easily reconciling financial records with Service Tax returns, Noticee maintains the separate records for taxable and non-taxable incomes in books of accounts. Though they have separate registrations for taxable services, since the services under consideration under the Show Cause notices was not considered taxable by the assessee, the income was solely under the jurisdiction of their Ahmedabad Branch and it was being earned by the Ahmedabad Branch only. This is validated by the fact that the data pertaining to the Show Cause Notices was provided by the noticee himself and they did not find it necessary to distribute the income among its branches as this was the consolidated income incurred by Ahmedabad Branch only and distributing the income to its branches would have been factually wrong. At no point of time, while submitting the data called for during the investigation of the case, has the assessee pointed this fact to the Department. All the information/ data regarding the services provided by the Ahmedabad branch of the assessee have been provided by them. Further from the details of the donations received by the asseessee and submitted by them, it comes out clearly that even for services provided in different regions of India, the income has been received by the Ahmedabad branch or the same have been transferred to Ahmedabad Branch of

the assessee. Hence, it is concluded all the income from grants and donations have been received by this assessee.Therefore, the Show Cause Notices have been issued well within the jurisdiction of the Commissionerate and that the Adjudicating Authority is exercising powers well within the scope of its jurisdictional authority and this contention of the assessee is only an afterthought.

23. The main allegation in the Show Cause Notices is that the assessee is not eligible for exemption from payment of Service Tax on the above grounds, as:

(i) All the clients of the assessee were registered either as a Society under the Registration of Society Act, or a Charitable Trust or a Company under the Companies Act. Thus, none of the clients of the assessee were either Government or the Governmental Authority or a Public Authority in view of the aforesaid provisions.

(ii) Though the assessee rendered services to European Commissions in India, Foreign Consulates in India, World Bank and UNICEF also, none of these organizations were specified by the Central Government as the one falling under Section 3 of the United Nations (Privileges and Immunities) Act,1947.

24. I now hereby examine the issues alleged in the Show Cause Notice.

24.1 At first it is important to discuss whether the activities of the assessee amount to "Service" or otherwise.

25. It was found that the assessee was also engaged in research and survey at the instance of clients and on the topics as directed by his clients, used to prepare study paper/report for his clients and submit the report to the clients, creating awareness amongst the people on various issues as directed by his clients, providing consultancy etc. on receipt of charges for such activities.

25.1 Section 66 B of the Finance Act, 1994, stipulates as under:

Section 66 B:

Section 66B of Finance Act, 1994, states that Service Tax shall be charged at the rate notified by the Government from time to time on value of all taxable services i.e. other than those specified in the negative list or exempted services, which are provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

25.2. As per **sub-section (e) of Section 66E** of the Finance Act, 1994, -

"*The following shall constitute declared services, namely :-*
(e) ***agreeing to the obligation*** *to refrain from an act, or to tolerate an act or a situation, or* ***to do an act;***".

25.3 The assessee was engaged in activities for creating awareness amongst the people on various issues and was also providing consultancy etc., as directed by its clients. The assessee was conducting such activities on receipt of charges from its clients.

25.4 Every corporate, which funds activities wants to have visibility for the work that they do. The determining phrase in the provision, which makes Service Tax applicable is: "advertise the name of the donor in a specified manner or such that it gives a business advantage to the donor". If such provisions are mentioned in the agreement between the two entities, Service Tax will be applicable regarding such payments. It is observed that the assessee has provided services to Corporates and Private firms in lieu of their CSR activities and the same is taxable under Section 66 E of the Finance Act, 1994.

25.5. As per **sub-section (e) of Section 66E** of the Finance Act, 1994 ***agreeing to the obligation*** *to refrain from an act, or to tolerate an act or a situation, or* ***to do an act,*** as constitute provision of service. In this case, the assessee has provided service on behalf of their clients and therefore have provided taxable services under Section 66 E. Now,considering the

activities to be service, it needs to be examined whether the said service provided by the assessee as discussed hereinabove are exempted from payment of Service Tax or otherwise.

25.6. The activities undertaken by the assessee do not fall in the Negative list as specified under the Finance Act, 1994, as amended during the relevant period. The assessee has received remuneration for providing such services. Therefore, they are aptly covered the definition of "Service".

26. One of the allegation in the Show Cause Notices is that the Service receivers of the assessee,were registered either as a Society under the Registration of Society Act, or a Charitable Trust or a Company under the Companies Act. Thus, none of the clients of the assessee were either Government or the Governmental Authority or a Public Authority in view of the following provisions.

Sl. No. 25(a) of the Notification No. 25/2012-S.T. dated 20.06.2012, Services provided to Government, a local authority or a governmental authority by way of carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation is exempted from Service Tax.

Clause(s) of paragraph 2 of the said Notification defines governmental authority as to men as authority or a board or any other body

(i) Set up by an Act of Parliament or a State Legislature; or
(ii) Established by Government.
With 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

Article 243W is related to powers to Municipalities while Article 243G is related to powers to Panchayats. Thus, the benefit of aforesaid exemption in respect of local authorities is not admissible to Panchayats.

Section 65B (26A) of the Finance Act, 1994 defines "Government" as to mean the Departments of the Central Government, a State Government and its Departments and a Union Territory and its Departments, but shall not include an entity, whether created by statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution and the Rules made there under.

27. I have gone through the details of the work done by the assessee and find that the assessee has received remuneration for the work done from the following service receivers as under:

TABLE-A(DETAILS OF DONATIONS RECEIVED DURING 2013-14 TO 2015-16)

DETAILS OF DONATIONS RECEIVED BY M/S. AGA KHAN RURAL SUPPORT PROGRAMME (INDIA)						
Sr. No.	Name of the Donor	Amount Received (In Rs.)			Name of the Project	Work done
Sr. No.	Name of the Donor	2013-14	2014-15	2015-16		
1	2	3	4	5	6	7
1	National rural employment generation scheme	37799			Watershed Development through MGNREGA	Achieving objectives of MGNREGA Act is to provide wage employment in rural areas as per demand, resulting in creation of productive assets of prescribed quality and durability
2	District rural development agency	0	254400		Watershed Development	Development of Watershed as per Guidelines prescribed by Government
3	Gujarat Water Resource Development Corporation Ltd. Gandhinagar Office of The Executive Engineer, Lift irrigation Division Ukai	998644	1111773	0	Lift Irrigation Scheme	Irrigation facilities for poor tribal families

4	Integrated water management programme Collector & Mission Leader, Rajiv Gandhi Mission for watershed management, Badwani (MP) Integrated Watershed Management Programme (IWMP) of Department of Land Resources	4950278	4377547	3544500	Integrated watershed Management Programme	Soil conservation, land development, water conservation, plantation as per government guidelines on IWMP
5	Sardar sarovar nigam ltd. A Wholly Owned Government of Gujarat Undertaking)	11996	0		Participation Irrigation Management	Training and capacity building of irrigation societies
6	Bihar government SC-ST Department Mission Director- Bihar Maha Dalit Vikas Mission, SC&ST Welfare Department, Government of Bihar	201241	7238	0	Bihar Maha Dalit Vikas Mission,	Vegetable cultivation technique exposure to farmers
7	NREGA, Dang Commissioner ate of Rural Development, Govt. of Gujrat, Gandhinagar	147043	542511		Engagement of CSO for Pilot Project for supporting MGNREGA Implementation	Achieving objectives of MGNREGA Act; mainly providing wage employment and ensuring reduction in distress migration
8	Bharat Rural Livelihoods Foundation (An independent society set up by the Govt of India, to upscale civil society in partnership with Govt.)	0	0	6867628	Rural Support Programme	Enhancing tribal livelihood through integrated planning and implementation of flagship rural livelihood activities
9	Tribal sub plan (Tribal Development Department, Government of Gujarat)	8139381	13452515	10609132	Intergraded Dairy development project for BPL/Halpati Families (TSPBPL01, TSPPTG06, TSPPTG07) Bamboo Project (TSPPTG08) TSPPTG10 Providing fodder to milch cattle in tribal area of surat district	Distribution of buffalo and cows and training for modern cattle management
10	Forest Development Agency, Surat Agency of Government of Gujrat	500176	1412272	2650	To Develop Community owned Bamboo Enterprise at Visdaliya Centre for livelihood enhancement of poor tribal Kotwaliya community through Bamboo Project.	Income enhancement for tribal youths through bamboo based skills
11	Gujarat tribal development corporation	4774000	4300000	4140000	BPL Dairy Project Improving Socio - Economic conditions of Primitive Tribe Group families through Dairying and Animal husbandry activities	Supply of Milk giving animals
12	Gujarat tourism development	36794	644059	113739	Capacity Building for service providers (CBSP) Scheme (software) aiming to develop sustainable rural tourism in convergence with govt of India Ministry of Tourism Rural Tourism Scheme(Hardware) through Gujarat Tourism Corporation Ltd. Gandhinagar.	Improved home-based earning of village women in locations near tourist destinations

13	Water and sanitation management organisation (District Water & Sanitation Committee, Dangs district)	0	216008	1516506	Ensuring Drinking Water Security and Promoting Safe Sanitation in the Tribal Villages of Dahod and Dangs District of Gujarat	Safe drinking water and sanitation for tribal households
14	Horticulture department, Rajkot	0	4636	1859	Food & nutrition security of women and households with poor families through land less garden and kitchen garden programme	Training of women farmers and supply of vegetable seeds and fertilisers
15	Ganga Action Plan (Bihar Govt) District Water Sanitation Committee cum Executive Engineer, Public health Division, Samastipur & Muzaffarpur	0	0	35333550	Execution of Swachh Bharat Mission (Gramin)/ Lohiya Swachchhata yojana	Toilet construction & Safe sanitation for poor families
16	Gujarat Livelihood Promotion Company Under the administrative control of Rural Development Department Govt. of Gujarat	0	6102586	8199447	Aajeevika Skill Development Programme in Gujarat	Jobs for unemployed youths
	Sub Total	19797352	32425544	70329010		
	Total	122551906				

TABLE B: DETAILS OF DONATIONS RECEIVED DURING 2016-17 TO 2017-18 (UPTO JUNE)

Sr. No.	Name of the Donor	Amount Received		Name of the Project	Work done
Sr. No.	Name of the Donor	2016-17	April 2017 to June 2017		
1	2	3	4	6	7
1	Bharat Rural Livelihoods Foundation (An independent society set up by the Govt of India, to upscale civil society in partnership with Govt.)	10008714	1066537	Rural Support Programme	Enhancing tribal livelihood through integrated planning and implementation of flagship rural livelihood activities Capacity Building Initiative for Tribal Youth
2	Development Support Agency of Gujarat	0	44815	Devlopment Support Agency of Gujarat Tribal Devlopment Department (Vanbandhu Kalyan Yojana)	The system of Rice intensification ifs an evolving set of practices, principles, and philosophies aimed at increasing the productivity of irrigated rice by changing the management of plants, soil, water and nutrients.
3	Ganga Action Plan (Bihar Govt) District Water Sanitation Committee cum Executive Engineer, Public health Division, Samastipur & Muzaffarpur	26212606	0	Execution of Swachh Bharat Mission (Gramin)/ Lohiya Swachchhata yojana	Toilet construction & Safe sanitation for poor families
4	Forest Development Agency, Surat Agency of Government of Gujrat	259664	112624	To undertake the work for improving quality of life through improved drinking water, sanitation, health and hygiene practices in the Kotwalia village,	

				Chichinagawtha, District Dangs	
5	Integrated water management programme Collector & Mission Leader, Rajiv Gandhi Mission for watershed management, Badwani (MP) Integrated Watershed Management Programme (IWMP) of Department of Land Resources	395969	0	Integrated watershed Management Programme	Soil conservation, land development, water conservation, plantation as per government guidelines on IWMP
6	Irrigation Department	478908	322606	Participatory irrigation Management	Training and capacity building of irrigation societies
7	Tribal sub plan (Tribal Development Department, Government of Gujarat)	254229		Intergraded Dairy development project for BPL/Halpati Families (TSPBPL01, TSPPTG06, TSPPTG07) Bamboo Project (TSPPTG08) TSPPTG10 Providing fodder to milch cattle in tribal area of surat district	Distribution of buffalo and cows and training for modern cattle management
8	Water and sanitation management organisation (District Water & Sanitation Committee, Dangs district)	625365	0	Ensuring Drinking Water Security and Promoting Safe Sanitation in the Tribal Villages of Dahod and Dangs District of Gujarat	Safe drinking water and sanitation for tribal households
	SUB TOTAL	38235455	1546582		
	TOTAL....	39782036			

28. **A BRIEF NOTE ON THE SERVICE RECEIVERS IS AS UNDER:**

(1) NREGA:

Local governments are given a central role in the planning and implementation of NREGA (National Rural Employment Guarantee Act 2005) and are the sole agencies responsible for implementation of local development projects under the scheme. he National Rural Employment Generation Scheme **(NREGS)** is an employment scheme for providing 100 days guaranteed wage employment for all employment seekers above 18 years of age and willing to do work.

(2) District rural development agency:

DRDA has traditionally been the principal organ at the district level to oversee the implementation of anti-poverty programmes of the Ministry of Rural Development. This agency was created originally to implement the Integrated Rural Development Programme (IRDP). Subsequently the DRDAs were entrusted with number of programmes of both state and central governments

(3) Gujarat Water Resources Development Corporation Limited:

Gujarat Water Resources Development Corporation Ltd is classified as State Govt company and is registered at Registrar of Companies,

(4) M/s Tourism Corporation of Gujarat Ltd.

M/s Tourism Corporation of Gujarat Ltd. was established by the Government of Gujarat, comprising 100% equity by Government of Gujarat,and is a state government undertaking, for development of facilities and welfare of pilgrims/tourists, under different Work Orders. one of the purposes of M/s Tourism Corporation of Gujarat Limited, is to carry out the function c))Planning for economic and social development, entrusted to a municipality under Article 243W, as stated above. In view of the above, the job of M/s Tourism Corporation of Gujarat Limited, aptly falls within the ambit of "j) Planning for economic and social development." of the Schedule 12 to the Constitution of India read with Article 243W.

(5) Bharat Rural Livelihoods Foundation (BRLF)

M/s. Bharat Rural Livelihoods Foundation was set up by the Government of India as an independent society under the Ministry of Rural Development, to scale up civil society action in partnership with the central and state governments. The Union Cabinet decided to form Bharat Rural Livelihoods Foundation (BRLF) through a cabinet decision on 3rd September 2013 to ensure better implementation and outreach of the government schemes and programmes in partnership with civil society organizations.

(6) Development Support Agency of Gujarat

M/s. Development Support Agency of Gujarat (D-SAG) has been created by Tribal Development Department, Government of Gujarat. It is an autonomous Society established through Government resolution (GR) Dated 5th April, 2007. D-SAG is registered under the Societies Registration Act, 1860 and under the Bombay Public Trust Act, 1950 and is chaired by the Chief Secretary, Government of Gujarat.

(7) The Ganga Action Plan

The Ganga Action Plan was, launched on 14 Jan. 1986 by the then Prime Minister of India Shri Rajeev Gandhi, with the main objective of pollution abatement of the river Ganga, to improve the water quality by interception, diversion and treatment of domestic sewage, and to identify grossly polluting units to prevent their toxic and industrial chemical wastes from entering the river. The Government of India proposed to extend this model with suitable modifications to the national level through a National River Action Plan (NRAP).

(8) Forest Development Agency:

This is a Govt. Agency under Chief Conservator of forests, Government of Gujarat. The Principal Chief Conservator of Forests,Gujarat State is the chairperson.

(9) Integrated Watershed Management Programme (IWMP) of Department of Land Resources (DoLR)/Watershed Development Component of PMKSY (erstwhile IWMP)

Government of India is committed to accord high priority to water conservation and its management. To this effect **Pradhan Mantri Krishi Sinchayee Yojana (PMKSY)** has been formulated with the vision of extending the coverage of irrigation **'Har Khet ko pani'** and improving water use efficiency **'More crop per drop'** in a focused manner with end to end solution on source creation, distribution, management, field application and extension activities. The Cabinet Committee on Economic Affairs chaired by Hon'ble Prime Minister has accorded approval of Pradhan Mantri Krishi Sinchayee Yojana (PMKSY) in its meeting held on 1st July, 2015.

PMKSY has been formulated amalgamating ongoing schemes viz. Accelerated Irrigation Benefit Programme (AIBP) of the Ministry of Water Resources, River Development & Ganga

Rejuvenation (MoWR,RD&GR), Integrated Watershed Management Programme (IWMP) of Department of Land Resources (DoLR) and the On Farm Water Management (OFWM) of Department of Agriculture and Cooperation (DAC);

(10) Tribal sub plan (Tribal Development Department, Government of Gujarat)

From September, 1985, when it was created (carved out of the Ministry of Home Affairs) till the formation in October, 1999, of a separate Ministry for Tribal Affairs, the Ministry of Welfare (renamed Ministry of Social Justice and Empowerment in May, 1998) has been looking after activities related to the welfare and development of Tribal at the Central Government level. This Ministry coordinates the Tribal Sub-Plan (TSP) activities, grants under the first proviso to Article 275(1) of the Constitution, schemes for girls and for boys hostels for scheduled tribes, ashram schools and vocational training centres, grants to voluntary agencies, village grain bank scheme, Central Sector Scheme for Development of Primitive Tribal Groups, point (2) (b) of the Government of India's 20-point programme related to economic assistance to scheduled tribe families (so as to raise them above the poverty line), grant-in-aid to state Tribal Development Corporations (TDCs) and other agencies for minor forest produce (MFP) operations, price support and share capital support to the Tribal Cooperative Marketing Development Federation (TRIFED), and equity capital support to the National SC/ST Finance and Development Corporation.

29. Eligibility of Exemption:

Sl. No. 25(a) of the Notification No. 25/2012-S.T. dated 20.06.2012, Services provided to Government, a local authority or a governmental authority by way of carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation is exempted from Service Tax.

Clause(s) of paragraph 2 of the said Notification defines governmental authority as to men as authority or a board or any other body

(i) Set up by an Act of Parliament or a State Legislature; or
(ii) Established by Government.
With 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

Article 243W is related to powers to Municipalities while Article 243G is related to powers to Panchayats. Thus, the benefit of aforesaid exemption in respect of local authorities is not admissible to Panchayats.

Services provided to Government, a local authority or a governmental authority by way of carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation is exempted from Service Tax.

Clause(s) of paragraph 2 of the said Notification defines governmental authority as to men as authority or a board or any other body

(i) Set up by an Act of Parliament or a State Legislature; or
(ii) Established by Government.
With 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

29.1 I find that the above mentioned service receivers of the assesee fall within the purview of the definition of "Governmental Authority" as defined under Clause(s) of paragraph 2 of the said Notification as above. These agencies have either been set up by an Act of the Parliament or a State Legislature; or have been established by the Government, State or Central. Therefore I hold that the services provided to the service providers mentioned in TABLE A and TABLE B are exempt from payment of Service Tax, in accordance with Sl. No. 25(a) of the Notification No. 25/2012-S.T. dated 20.06.2012.

29.2. I find that the assessee has relied upon the following judgments which interalia hold that that

service tax is not leviable on the grants-in-aid received by the assessee from the Central and State Governments given to the assessee as project implementing agency of the Government.

i. ***Apitco Ltd. v. CST, Hyderabad [2010 (20) STR 475 (Tri. – Bangalore)]***
ii. ***National Institute for Micro, Small and Medium Enterprises v. CCE, CC & ST, Hyderabad – II [2018 (5) TMI 606 – CESTAT Mumbai]***
iii. ***Madhya Pradesh Consultancy Organization Ltd. v. CCE, Bhopal [2017 (4) GSTL 100 (Tri. – Delhi)]***
iv. ***M/s. ILFS Clusters Development Initiative Ltd. Vs. Commissioner, Customs, Central Excise & Service Tax, Noida [2018 (10) TMI 1007 – CESTAT Allahabad]***

30. In view of the above discussion and relying on the above decisions of various Tribunals above,I hold that the assessee is not liable to pay service tax on services provided to the Service receivers listed in Table A and Table B above. In view of the above, I drop the demand of Rs. **1,66,52,456/-** out of the demand of Rs. **7,94,90,514/-** for the period from 2013-14 to 2016-17 and drop the demand of **Rs. 57,76,128/-** out of the demand of Rs. **95,13,401/-** for the period from 2016-17 to 2017-18 (upto June 2017), as shown below.

Year	Value of taxable Service	Rate of ST	S.Tax demand dropped
2013-14	19797352	12.36%	2446953
2014-15	32425544	12.36%	4007797
2015-16	70329010	14.50%	10197706
Total	122551906		16652456

Year	Value of taxable Service	Rate of ST	ST Payable (Rs)
2016-17	38235455	14.50%	5544141
2017-18 upto June	1546582	15.00%	231987
Total	39782037		5776128

31. SERVICES PROVIDED UNDER CORPORATE SOCIAL RESPONSIBILITY (CSR)

31.1 I find that the assessee has received payments from Companies under their CSR obligation for carrying out social programmes for the betterment of the society.

31.2. The Companies Act 2013 replaced the Companies Act of 1956. The New Act has introduced far-reaching changes that affect company formation, administration, and governance, and incorporates an additional section i.e. Section 135 – clause on Corporate Social Responsibility obligations ("CSR") for companies listed in India. The clause covers the essential prerequisites pertaining to the execution, fund allotment and reporting for successful project implementation.It is mandatory to report CSR activities under the new Companies Act 2013.

31.3 The broad and important features of the CSR laws, relevant to this case, are as follows:

- Quantum of money utilized for CSR purposes are to be compulsorily included in the annual profit-loss report released by the company[12].
- The CSR rules came into force on 1st April 2014 and will include subsidiary companies, holdings and other foreign corporate organizations which are involved in business activities in India[13].
- CSR has been defined in a rather broad manner in Schedule VII of Companies Act, 2013. The definition is exhaustive as it includes those specific CSR activities listed in Schedule VII and other social programmes not listed in schedule VII, whose inclusion as a CSR activity is left to the company's discretion[14].

31.4 CSR activities listed in schedule VII include[15]:

"eradicating hunger and poverty, promotion of education and employment, livelihood enhancement projects, promoting gender equality, women empowerment, hostels for women and orphans, old age homes, day care, environmental sustainability, protection of flora and fauna, contributions to PM relief fund, measures to benefit armed forces veterans, war widows and dependants, promotion of sports, and rural development projects".

- Net profits are calculated on the basis of Section 198 of Companies Act, 2013. However, only domestic branches are included and dividend-related payments are left out of the final calculation of total net profits[16].
- Companies are allowed to implement CSR via any of the following means possible[17].
- Setting up a Trust or Society under Section 8 of the 2013 Companies act under its direct administrative control.
- Corporates can outsource the CSR tasks to established social enterprises- institutions engaged in CSR activities for 3 years or more. These institutions are meant to engage in not for profit activities. The corporates though are supposed to monitor the social enterprises meant to enforce their CSR mandate.
- Companies can collaborate with fellow companies and work out some arrangement based on the CSR rules.

32. In view of the above discussion, all the services rendered by the assessee to its clients were taxable, in as much as the assessee was engaged in imparting training on receipt of fees. It was found that the assessee was also engaged in conducting research and survey at the instance of clients and on the topics as directed by its clients. They also prepared study papers/reports for its clients and submit the reports to the clients. If the grant agreement has any clause where any benefit or business value is going back to the donor, then it shall be treated as a taxable service. For example, if the donor puts a clause that the implementing organisation has to display its logo or name at the places of activity, then it could be considered as a taxable service. In such cases, the consideration is not only in terms of money but the activity indirectly benefits the donor's business. If the implementing organisation is conducting some research, survey or activity in which the donor is interested and the implementing organisation is under obligation to provide certain specified output to the donor, then the services are to be considered as taxable services. In this case, the assessee has itself admitted that they are preparing study papers and reports as per the requirement of its clients. It is clear from the letter dated 20.04.2017 of the assessee that it was under obligation to provide specific data or specific research report as an outcome of the activity. Therefore the services rendered by the assessee are to be considered taxable service. Any payments received by the assessee are Grants or income received for providing services, and on how the donor or the service receiver is treating the payment is detrimental in deciding whether the assessee had provided taxable service or not. If the payment is released without TDS, it is being treated as a grant and if there is TDS, it is being treated as a Service Charge. Further, if any grant is received by the assessee and if at any point of time, the assessee provides any services to the donor, the same is also be treated as remuneration for the services provided by the assessee.

As per **sub-section (e) of Section 66E** of the Finance Act, 1994, -

"The following shall constitute declared services, namely :-
(e) ***agreeing to the obligation*** *to refrain from an act, or to tolerate an act or a situation, or* ***to do an act;***".

33. In this age of CSR funding, every corporate, which funds activities wants to have visibility for the work that they do. The determining phrase in the provision, which makes Service Tax applicable is: "advertise the name of the donor in a specified manner or such that it gives a business advantage to the donor". If such provisions are mentioned in the agreement between the two entities, Service Tax will be applicable from such payments. It is observed that the assessee has provided services to Corporates and Private firms in lieu of their CSR activities and the same is taxable under Section 66 E of the Finance Act, 1994.

34. I rely on the decision of CESTAT, Mumbai,in the case of M/s. Essel Propack Ltd., wherein it has been held as under:

Cenvat credit of Service Tax - Input service - Corporate Social Responsibility (CSR) activities - Denial of credit on payments made to third agency for imparting training to students of under-privileged section of society - Refusal of credit mainly on three scores (1) CSR, charity and unrelated to production (2) no direct service availed by assessee from said charitable Trust and (3) Same not in conformity to Rules meant for raising of invoice as contemplated under Rule 9(2) of Cenvat Credit Rules, 2004 besides being outside scope of input service defined

under Rule 2(l) of Cenvat Credit Rules, 2004 - *HELD* : CSR not only holistic approach but integrating core business strategy since same addresses well being of all stake holders and not just company's shareholders - Also, CSR not charity as same having direct bearing on manufacturing activity of company that is largely dependent on smooth supply of raw materials - CSR also augmenting credit rating of company as well as its standing in corporate world - Hence, sustainability of company dependent on CSR without which companies cannot operate smoothly for long period as they are dependent on various stakeholders to conduct business in economically, socially and environmentally sustainable manner i.e. transparent and ethical - Impugned order demanding duty, interest and penalty against input service availed hereby set aside - Rules 2(l) and 14 of Cenvat Credit Rules, 2004. *[paras 8, 11.1]*

Para 11.1. states as under:

".....CSR which was a mandatory requirement for the public sector undertakings, has been made obligatory also for the private sector and unless the same is to be treated as input service in respect of activities relating to business, production and sustainability of the company itself would be at stake. The relied upon case laws, which have equated CSR only with charity and not covered the other aspects of CSR namely triple bottom-line approach (discussed above), corporate citizenship, philanthropy, (charity just being a part only), strategic philanthropy, share value, corporate sustainability and business responsibility are of no application to the case on hand. Further, CSR activity being held as input service that was maintained by the appellant through an agency (Trust), the other dispute relating to suppression etc. that would attract extended period is not required to be discussed in the appeal, nor the part acceptance of the duty liability by the appellant.".

35. In view of the amended Companies Act 2013,it is mandatory for the companies to discharge Corporate Social Responsibilty. Vide the above decision of CESTAT,Mumbai, it has been interalia held that CSR activity is input service to the company and the input service credit has been allowed on this count. Relying on this decision of CESTAT, it automatically implies that the service provided by the assessee to such companies, is output service of the assessee. Therefore, the services provided by the assessee to Companies under CSR is taxable under Service Tax. In view of this, I hold that Services provided under CSR by the assessee to companies are not exempt from Service Tax.

36. Lastly, it has been alleged in the Show Cause Notices is that the assessee is not eligible for exemption from payment of Service Tax on the services rendered to European Commissions in India, Foreign Consulates in India, World Bank and UNICEF etc.

Sl. No. 1 of the Notification No. 25/2012-S.T. dated 20.06.2012 stipulates that Services provided to the United Nations or a ***specified*** *international organization are exempted from Service Tax.*

Clause (zf) of Paragraph 2 of the aforesaid Notification defines "specified international organization" means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 to which the provisions of the Schedule to the said Act apply.

Item No. 7.1 of the Education Guide issued by the CBED enumerates the list of specified international organization for the aforesaid purpose which are as under:-

1. International Civil Aviation Organisation
2. World Health Organisation
3. International Labor Organisation
4. Food and Agriculture Organisation of the United Nations
5. UN Educational, Scientific and Cultural Organisation (UNESCO)
6. International Monetary Fund (IMF)
7. International Bank for Reconstruction and Development
8. Universal Postal Union
9. International Telecommunication Union
10. World Meteorological Organisation
11. Permanent Central Opium Board
12. International Hydrographic Bureau
13. Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants
14. Asian African Legal Consultative Committee
15. Commonwealth Asia Pacific Youth Development Centre, Chandigarh 16. Delegation of Commission of European Community
17. Customs Co-operation Council
18. Asia Pacific Telecommunity
19. International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)
20. International Centre for Genetic Engineering and Biotechnology
21. Asian Development Bank

22. South Asian Association for Regional Co-operation
23. International Jute Organisation, Dhaka, Bangladesh"

37. The assessee had received a sum of **Rs. 60,50,30,439/-** for the period from 2013-14 to 2015-16 and **Rs. 43,93,62,304/-** for the period from 2016-17 to 2017-18(June 2017) for providing the services to European Commissions in India, Foreign Consulates in India, World Bank and UNICEF. None of these organizations were specified by the Central Government as the one falling under Section 3 of the United Nations (Privileges and Immunities) Act, 1947. Further, there is also no precedent,wherein such exemption has been granted by any Tribunal or Court. The exemption under Notification 25/2012-ST, has been denied to the assessee,as they did not adhere to the conditions prescribed in the said Notification. Notifications are statutes issued by the Government to exercise the power of a legislative enactment and ensure the procedural aspects of the law. These Notifications are to be followed to the core without making any adjustments as per one's whims and convenience.

38. Therefore, I hold that the assessee is liable to pay Service Tax on the amounts of **Rs. 60,50,30,439/-** and **Rs. 43,93,62,304/-** received during the years 2013-14 to 2015-16 and the period from 2016-17 to 2017-18(June 2017) respectively. Therefore I confirm the service tax demand amounting to Rs.7,94,90,514/- and Rs.6,56,16,888/- for the periods period from 2013-14 to 2015-16 and he period from 2016-17 to 2017-18(June 2017) respectively and order the same to be recovered from the assessee under under proviso to Section 73(1) of the Finance Act, 1994.

39. Thus, I hereby summarise the Service Tax demands raised under the two Show Cause Notices as under:

TABLE C:Pertaining to services provided to Govt., Trusts, Pvt. Companies etc.

	SERVICE TAX DEMAND			DEMAND DROPPED			SERVICE TAX CONFIRMED	
Year	Value of taxable Service	Rate of ST	ST Payable	Value of taxable Service	Rate of ST	S.Tax demand dropped	Value of taxable Service	S.Tax demand confirmed
2013-14	43503294	12.36%	5377007	19797352	12.36%	2446953	23705942	2930054
2014-15	54695263	12.36%	6760335	32425544	12.36%	4007797	22269719	2752538
2015-16	85015676	14.50%	12327273	70329010	14.50%	10197706	14686666	2129567
Total	183214233		24464615	122551906		16652456	60662327	7812159

TABLE D:Pertaining to services provided to Govt., Trusts, Pvt. Companies etc.

	SERVICE TAX DEMAND			DEMAND DROPPED			SERVICE TAX CONFIRMED	
Year	Value of taxable Service	Rate of ST	ST Payable	Value of taxable Service	Rate of ST	S.Tax demand dropped	Value of taxable Service	S.Tax demand confirmed
2016-17	55468923	14.5%/15%	8297088	38235455	14.5%/15 %	5544141	17233468	2752947
2017-18 upto June	8108750	15.00%	1216313	1546582	12.36%	231987	6562168	984326
Total	63577673		9513401	39782037		5776128	23795636	3737273

40. From the foregoing facts and discussions,I find that the assessee had contravened the provisions/conditions of Notfn No 25/2012-ST dated 20.6.2012, as amended and have wrongly availed the exemption. They had not disclosed to the revenue 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 had shown the consideration with respect to the said services as income in their financial records but had not shown the same consideration as receipt in their ST3 returns until the same was detected during the course of audit. They have wrongly availed the exemption of Notfn No 25/2012-ST dated 20.6.2012, as amended even though they knew they were ineligible for the exemption.They had 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.

41. In view of the above, as tabulated in TABLE-C and Table D above, the service tax amounting to Rs. 78,12,159/- for the period 2013-14 to 2015-16 and Rs.37,37,273/- for the period from 2016-17 to 2017-18 (upto June 17) is liable to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Finance Act, 1994. Further the service tax amounting to Rs.7,94,90,514/- and Rs.6,56,16,888/- for the period from 2013-14 to 2015-16 and the period from 2016-17 to 2017-18(June 2017) respectively is also liable to be recovered from the assessee under the proviso to Section 73(1) of the Finance Act, 1994 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 appeared 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 appeared that by the act of not disclosing the amount of consideration received on account of the services provided by the said assessee and by wrongly availing the exemption benefit under Notfn No 25/2012-ST dated 20.6.2012, as amended, they had suppressed the material facts with an intention to evade the payment of service tax, as discussed above and therefore the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act.

42. In the present case, the said assessee had not declared the amount which they had received from their customers in their periodical ST-3 returns and they had deliberately suppressed these facts and the department had no prior knowledge of the facts and issues on which the present notice has been issued.Therefore, the assessee had suppressed the material facts of receiving consideration on the services provided by them to their customers in their ST3 returns, with an intent to evade the payment of service tax. This fact amounts to suppression and is vital for invoking extended period under the circumstances.

43. I rely on the case of M/s. *Mahavir Plastics versus CCE Mumbai,* reported in 2010 (255) ELT 241, wherein it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275. I also rely on the case of *Lalit Enterprises* Vs. *CST Chennai,wherein* it is held that extended period is evocable when department came to know of Service charges received by appellant on verification of his accounts. The above - mentioned acts of contravention of the provisions of the Finance Act and Rules framed thereunder on the part of the assessee have been committed with intent to evade payment of duty and thereby they have rendered themselves liable for penalty under Section 78(1) of the Act.

44. In view of the above, I pass the following order:

::O R D E R::

(i) I hereby confirm the demand of Service Tax amounting to **Rs. 8,73,02,673/-** (Rs 78,12,159/- +Rs. 7,94,90,514/-) (Rupees Eight Crore, Seventy three Lakhs Two Thousand Six hundred Seventy three only), for the period 2013-14 to 2015-16 , and order that the same should be recovered from them, under the proviso to Section 73(1) of the Act;

(ii) I hereby drop the demand of service tax amounting to **Rs.1,66,52,456/-** (Rupees One Crore Sixty Six Lakhs Fifty two thousand Four hundred Fifty six only) for the period from 2013-14 to 2015-16.

(iii) I hereby confirm the demand of Service Tax amounting to **Rs. 6,93,54,161/-** (Rs. 37,37,273/- + Rs.65616888/-) (Rupees Six Crore,Eighty Lakhs Seventeen Thousand Nine hundred Thirty nine only), for the period 2016-17 to 2017-18 (upto June), and order that the same should be recovered from them, under the proviso to Section 73(1) of the Act;

(iv) I hereby drop the demand of service tax amounting to **Rs. 57,76,128/-** (Rupees Fifty Seven Lakhs Seventy Six Thousand Three Hundred Twenty Eight only) for the period from 2016-17 to 2017-18 (upto June)

(v) I order that interest should be charged and recovered from them under the provisions of Section 75 of the Act on the proposed demand at (i) and (iii) above;

(vi) I impose a penalty amounting to **Rs. 15,66,56,834/-** (Rupees Fifteen Crores, Sixty Six Lakhs Fifty Six Thousand Eight Hundred Thirty Four only) on the assessee under the

provisions of Section 78(1) of the Act on the confirmed demand at (i) and (iii) above;

(vii) I give the option of benefit of reduced penalty @ 25% of the penalty if the entire amount as per point (i) is paid along with interest and the reduced penalty so determined, is paid within 30 days from the receipt of the this order; under Section 78(1) of the Finance Act, 1994.

The SCN No.STC/15-49/OA/2018 dated 19.09.2018 and the SCN No. STC/15-70/OA/2018 dated 19.03.2019 are hereby disposed off.

(Dr. BALBIR SINGH)
PRINCIPAL COMMISSIONER
CENTRAL GST & C.EX.
AHMEDABAD NORTH.

F.No STC/15-70/OA/2018

Date: 06.10.2020

BY *R. P. A. D./HAND DELIVERY*

To,
M/s. Aga Khan Rural Support Programme (India),
9th-10th floor, Corporate House,
Ashram Road, Opp. Dinesh Hall.,
Navrangpura,
Ahmedabad-380009.

Copy to:-

(1) The Pr. Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad
(2) The Deputy/Assistant Commissioner, CGST & C. Ex., Div.-VII, Ahmedabad-North.
(3) The Superintendent, Range-I, Div-VII, CGST & C. Ex., Div.-VII, Ahmedabad-North.
(4) Guard File