DIN - 20201064WT000006K086F

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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-04/OA/2019

आदेश की तारीख़ / Date of Order : 08.10.2020

जारी करने की तारीख़ / Date of Issue : 09.10.2020

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-25-27/2020-21

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 ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलगन की जाएंगीम एक प्रमाणित प्रति होगी।

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

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

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

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

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

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

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

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

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

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide Show Cause Notice No. **DGCEI/AZU/36-92/2016-17** dated 16.02.2017, Show Cause Notice No. **STC/15-04/OA/2019** dated 13.09.2019 and **STC/15-11/OA/2019** dated 03.10.2019 issued to M/s Jas Infra Space Private Limited, 202/B/4/205, City Center, Near Idgah Gate, Near Asarva Bridge, Ahmedabad-380016.

BRIEF FACTS OF THE CASE

The facts of the case, in brief, are that M/s.Jas Infra Space Private Limited, 202/B/4/205, City Centre, Near Idgah Gate, Near Asarva Bridge, Ahmedabad, Gujarat-380016 [*for brevity, hereinafter referred as the said assessee or as M/s. Jas*] were holding Service Sax Registration No. AACCJ7331ESD002 for "*Construction of Residential Complex Service*" and "*Construction Service other than residential complex including commercial/industrial buildings or civil structures*", as defined under Section 65(105) of the Finance Act, 1994 for the period upto 30.06.2012 and thereafter w.e.f. 01.07.2012, defined as Declared Service under sub-section (b) of Section 66E of the Finance Act, 1994, and "*Transport of Goods by Road/Goods Transport Agency Service*" as defined under Section 65(105)(zzp) of the Finance Act, 1994 none of which form part of the negative list service as per Section 66D of the Finance Act, 1994.

(I) INVESTIGATION CONDUCTED AND SCN ISSUED BY DGCEI

2. The officers of the Directorate General of Central Excise Intelligence, Ahmedabad Zonal Unit, Ahmedabad [herein after referred to as '*DGCEI*" for the sake of brevity] received an intelligence which indicated that the said assessee had evaded Service Tax on the unaccounted income/advances received from their buyers in respect of their commercial projects for which they had also made disclosures before the Income Tax authorities. Accordingly, a search operation was conducted at their premises on 29.01.2014 but only their records of official transactions, such as balance-sheets, profit and loss account, trial balance, bank statement, booking advance ledger and GAR-7 challans, etc. could be found. A statement of Shri Alin A. Shah, Director of M/s. Jas was recorded on the spot wherein he admitted that the Income Tax department had detected the unaccounted investment of Rs. 41,60,76,489/- in WIP [work-in-progress account]. He however, stated that the unaccounted amount was actually Rs. 36,81,79,388/-, and accepting their service tax liability of Rs. 1,36,52,092/- on the said unaccounted consideration received in the form of advances from the members, M/s. Jas paid the same during the investigation vide two GAR-7 Challans No. 10066 dated 20.12.2014 for Rs. 70,00,000/- and No. 16105 dated 31.03.2014 for Rs. 66,52,092/- totalling Rs. 1,36,52,092/-.

3. During the investigation, Assessment Order (AO) dated 23.12.2016 passed by the Deputy Commissioner of Income Tax, Circle-2(1)(2), Ahmedabad for AY 2014-15 (FY 2013-14) in respect of the said assessee was obtained vide letter No. DCIT/Cir.2(1)(2)/JASIPL/2016-17 dated 06.01.2017 of the Deputy Commissioner of Income Tax, Circle-2(1)(2), Ahmedabad. Accordingly, it was revealed that incriminating documents were recovered during the initial survey conducted under Section 133A of the Income Tax Act, 1961 showing actual investment of Rs. 90,63,11,765/- in WIP, details of which are discussed in

the AO alongwith the scanned images of the evidences recovered, whereas the said assessee had declared an investment of only Rs. 49,02,35,276/- in the WIP, which brought out their unaccounted investment of Rs. 41,60,76,489/- in the WIP. Shri Alin A. Shah, Director of M/s. Jas had admitted in his statement dated 29.01.2014 recorded before the DGCEI officers that the unaccounted investment in WIP was from the unaccounted advances received by them from their customers, though claiming that the actual unaccounted investment in WIP was only Rs. 36,81,79,388/- whereupon they have discharged the Service Tax of Rs. 1,36,52,092/- as stated above. However, in the assessment order, besides confirming the unaccounted investment in WIP as Rs. 41,60,76,489/-worked out on the basis ofseized documents, Income Tax departmentfurther estimated the actual unexplained investment in WIP to be much higher i.e. Rs. 84,82,83,218/-. As M/s. Jas are engaged in the construction Service, their entire receipt/income is from the advances from the customers and hence any investment by them is on account of receipt of advances from customers, against the taxable services, attracting Service Tax. Thus it appeared that, in addition of their Service Tax liability on the advances shown in their books of account, M/s. Jas are required to discharge Service Tax on the total consideration of Rs. 84,82,83,218/- invested in WIP which they did not show in their books of account.

4.1. The AO dated 23.12.2016 referred above also revealed an addition of Rs. 14,42,90,465/- which wasdeclared by M/s. Jas as unsecured loans from the following parties, on the ground that they failed to establish the genuineness or existence of these parties:-

Sr. No.	Name of the party against whom unsecured loan was denied by the Income Tax-M/s.	Amount in Rs.
1	Hannah Enterprises Pvt. Ltd.	14,14,291
2	Boaston Tradelinks Pvt. Ltd.	2,87,50,414
3	Biraj Maniplex Pvt. Ltd.	2,64,81,455
4	Vansh Glass Industries Pvt. Ltd	3,36,84,947
5	Sawaca Business Machines Ltd.	5,39,59,358
Total		14,42,90,465

4.2. It appeared that the said amount of Rs. 14,42,90,465/- is nothing but the unaccounted advances received from their prospective customers which M/s. Jas has accounted as unsecured loans so as to avoid service tax liability.

5. The AO further revealed that the Income Tax department made another addition of Rs. 38,69,50,307/- declared by the said assessee as receipts from sundry debtors for which they could not submit any supporting documents to establish the genuineness of such advances from sundry debtors, and therefore, it appeared that the said amount was alsopart of the unaccounted advances receivedfrom members but, intentionally, not shown as members advances in their books of account in order to escape the service tax liability.

6. Since the only source of income by M/s. Jas was the receipt of advances towards the construction service provided by them to their clients, it appeared that all the aforesaid additions made by under the IT AO dated 23.12.2016 would attract service tax levy, and hence service tax is liable to be recovered from the said assessee by invoking the appropriate provisions of Finance Act, 1994 and the rules made thereunder. Details of such additions made by Income Tax department under different categories, involving levy of service tax during the FY 2013-14 (AY 2014-15), are tabulated as under: -

[Amount in Rupees]

Sr. No.	Addition on account of	Addition Amount	Abatement @70%	Taxable amount	S. Tax liability @12.36%
1	Unaccounted investment in WIP	848283218	593798252.6	254484965	31454342
2	In the guise of Unsecured loans	144290465	101003325.5	43287140	5350290
3	In the guise of receipt from Sundry Debtors	386950307	270865214.9	116085092	14348117
Total		1379523990	965666793	413857197	51152750

7.1. A further statement of Shri Alin A. Shah, Director of M/s. Jas was recorded on 10.02.2017 wherein he submitted copies of ST-3s, Annual Audit reports, Trial balance, GAR-7 challans for the aforesaid payment of service tax totalling Rs. 1,36,52,092/- involved in the value of Rs. 36,81,79,388/- collected from their members and admitted to have not disclosed in WIP investments, details of receipts towards member advances, etc. for the years 2011-12 to 2015-16 and a copy of IT assessment order dated 23.12.2016 in respect of FY 2013-14.He stated that they have only two projects under his company namely City Centre (Commercial shops) and Platinum Heights (Residential flats), and produced copies of BU permissions issued on 22.10.2014 for City Centre and on 26.10.2016 for Platinum heights. On being asked about the additions made under the IT AO, he stated that they havealready filed an appeal in this case before the Commissioner of Income Tax (Appeal), Ahmedabad and the outcome would reveal the correct facts.

7.2. During the statement, Shri Alin A Shah produced work-sheets showing their regular service tax liability. The said details has been compared with the details of payments of Service Tax made by M/s. Jas during the period from April, 2014 to September, 2015 which revealed a short-payment of service tax amounting to Rs. 1,62,021/- as tabulated below :-

Amount in Rupees

As per ST-3 returns			As per details of members advances produced by Shri Alin A Shah			S. Tax short paid
Period of return	Taxable amount (on abatement of 70%)	ST liability	Taxable amount (on abatement of 70%)	ST Payable	ST paid	
1	2	3	4	5	6	7 (3-6)
Apr-Sep, 13-14	194942332	7228460	194942332	7228462	7253497	(-)25037
Oct-Mar, 13-14	174386656	6466258	174386655	6466257	6441221	25037
Sub-Total	369328988	13694718	369328987	13694719	13694718	0
Apr-Sep, 14-15	217161619	8052352	217065210	8048778	9303950	(-) 1251598
Oct-Mar, 14-15	338062918	12535375	333445939	12364175	11118865	1416510
Sub-Total	555224537	20587727	550511149	20412953	20422815	164912
Apr-Sep, 15-16	532301289	21211858	532034643	21201972	21214749	(-)2891
Oct-Mar, 15-16	Return not filed		325712927	14047727	14125306	
Sub-Total			857747570	35249699	35340055	
Total for Apr, 13-14 to Sep, 15-16	1456854814	55494303	1451874779	55309644	55332282	1,62,021

7.3. Thus, it appeared that the aforesaid short-paid Service Tax of Rs. 1,62,021/- is also liable to be recovered from M/s. Jas under the appropriate provisions of Finance Act, 1994.

8.1. Further, scrutiny of the details submitted by M/s. Jas indicated that they have availed and utilized the following Cenvat Credit in respect of their commercial project "City Centre":-

Amount in Rupees

Details of Cenvat credit taken by M/s. Jas in the project City Centre			
Period	Credit on other than GTA	Credit under GTA	Total
2012-13	28,99,653	2,91,311	31,90,964
2013-14	50,16,687	8,03,524	58,20,212
2014-15	13,75,551	7,256	13,82,807
2015-16	1,55,971	0	1,55,971
Total	94,47,862	11,02,092	1,05,49,954

8.2. The input services were common for the shops of "City Centre" booked during the period prior to and after the BU permission. Although the receipts after BU permission are not taxable in view of the provisions of sub-section (b) Section 66E of the Finance Act, 1994, the said assesseewas required to reverse an amount, equal to 6% for the period upto May, 2015 and thereafter 7%, of the amounts received towards sales/booking after receipt of BU permission on 22.10.2014 in terms of the provisions of Rule 6(3)(i) of Cenvat Credit Rules, 2004. Scrutiny of their records revealed that M/s. Jas had shown following receipts of advances/sales against the shops of their City Centreproject booked after the BU,requiringsuch payment of amounts under Rule 6(3)(i) of Cenvat Credit Rules, 2004, as shown in the following chart:-

		Amount in Rupees
Period of receipt from bookings after BU	Receipt from properties booked after BU	Amount to be paid (@ 6% upto May, 15 and 7% after May, 15)
Nov, 14 to Mar, 15	1,94,42,440	11,66,546
April and May, 2015	2,22,48,126	13,34,888
Jun, 15 to Mar, 16	16,31,31,501	1,14,19,205
Total	20,48,22,067	1,39,20,639

8.3. Further, it also appeared from the following chart prepared on the basis of ST-3 returns submitted by M/s. Jas they have not been filing such statutory returns before the due dates specified in this regard:-

Return period	Date of filing
Oct-Mar, 2011-12	07.12.2012
Apr-Jun, 2012-13	21.11.2012
Jul-Sep, 2012-13	29.04.2013
Oct-Mar, 2012-13	27.08.2013
Apr-Sep, 2013-14	26.10.2013
Oct-Mar, 2013-14	28.05.2014
Apr-Sep, 2014-15	14.11.2014
Oct-Mar, 2014-15	12.09.2015
Apr-Sep, 2015-16	05.10.2016
Oct-Mar, 2015-16	Not filed

9. It appeared from the facts and evidences, as discussed above, that M/s. Jas have contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of service tax and Cenvat Credit Rules, 2004 with intent to wrongly avail Cenvat Credit in respect of exempted services provided by them to their clients: -

(i) Section 70 of the Finance Act, 1994 read with Rule 6 and 7 of the Service Tax Rules, 1994 in as much as they failed to assess correctly, declare and pay the service tax due on the taxable services and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under;

(ii) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above;

(iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 and 6 of the Service Tax Rules, 1994 in as much as they failed to pay the Service Tax correctly within the prescribed time in the manner and at the rates as provided under the said provisions;

(iv) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they failed to file the ST-3 returns on the due dates attracting late fee under

Rule 7C of the Service Tax Rules, 1994 read with the provisions of Section 70 and 77 of the Finance Act, 1994;

(v) Rule 3 and 6(1) of Cenvat Credit Rules, 2004 in as much as they utilized the Cenvat credit on the taxable output service as well as the exempted activity and Rule 6(3)(i) of Cenvat Credit, Rules, 2004 in as much as they failed to pay the amount prescribed under the same towards the Cenvat credit used in the output exempted/ non-taxable activity.

10. M/s. Jas appeared to have been aware that they were providing taxable services. They were also aware that service tax is liable on the income/gross receipt/consideration received by them, but in order to evade service tax, they deliberately and wilfully not paid the samecorrectly with intent to evade service tax and have rendered themselves liable for penalty under Section 78 of the Finance Act, 1994. In the present era of self-assessment, it is the sole responsibility of the assessee to assess correct taxable value, calculate their service tax liability correctly, discharge the same properly, reverse the amount of cenvat credit towards the exempted/non-taxable services and declare all the relevant details in their ST-3 returns. For failure to determine the correct taxable value and to pay the correct service tax and for failure to file ST-3 returns on due dates, M/s. Jas have rendered themselves liable for penalty under Section 77 of the Finance Act, 1994. For failure to pay the amount specified under Rule 6(3)(i) of Cenvat Credit Rules, 2004, they are also liable to penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

11. Shri Alin A. Shah, Director of M/s. Jas was in charge and responsible for the taxation works of the company and was knowingly concerned with such contravention for the evasion of service tax as discussed in the above paras, and therefore, he appeared to be liable to a penalty under the provisions of Section 78A of the Finance Act, 1994.

12. Therefore,a show-cause-notice No. DGCEI/AZU/36-92/2016-17 dated 16.02.2017 was issued by the Additional Director General, DGCEI, Ahmedabad calling upon the said M/s. Jas Infra Space Private Limited, Ahmedabadto show cause to the Commissioner, Service Tax, Ahmedabad, as to why:-

(i) Service Tax of 5,11,52,750/- evaded by them during the year 2013-14 on the unaccounted receipt of advances of Rs. 1,37,95,23,990/-, should not be demanded and recovered from them under proviso to Section 73(1) read with Section 68 of the Finance Act, 1994;

(ii) Service tax of Rs. 1,36,52,092/- paid during the investigation, should not be appropriated against the Service Tax demanded as above;

(iii) Service Tax of Rs. 1,62,021/- short paid by them during the period April-2014 to September-2015 should not be demanded and recovered from them under proviso to Section 73(1) read with Section 68 of the Finance Act, 1994;

(iv) Rs. 1,39,20,639 /- should not be demanded and recovered from them under Rule 14(1)(ii) of Cenvat Credit Rules, 2004 read with the proviso to Section 73(1) of the Finance Act, 1994 and Rule 6(3)(i) of the Cenvat Credit Rules, 2004;

(v) Interest should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 on the amount of service tax evaded by them;

(vi) Interest should not be demanded and recovered under Rule 14(1)(ii) of Cenvat Credit Rules, 2004 read with Section 75 of the Finance Act, 1994 on the amount not paid by them under Rule 6(3)(i) of the Cenvat Credit Rules, 2004;

(vii) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for their contravention of different provisions of the Finance Act, 1994 and the Service Tax Rules, 1994;

(viii) Late fee should not be imposed upon them under Rule 7C of the Service Tax Rules, 1994 read with the provisions of Section 70 and 77 of the Finance Act, 1994;

(ix) Penalty under Section 78 of the Finance Act, 1994 should not be imposed upon them for suppression and mis-declaration of correct taxable value with an intent to evade Service Tax on the aforesaid taxable services; and

(x) Penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 should not be imposed upon them for non-payment of amount stipulated under Rules 6(3)(i) of the Cenvat Credit Rules, 2004

13. Shri Alin A. Shah, Director of M/s. Jas has also been called upon under the same SCN to show cause to the Commissioner, Service Tax, Ahmedabadas to why penalty should not be imposed upon him under the provisions of Section 78A of the Finance Act, 1994.

14. Subsequently, a corrigendum to the above SCN was issued vide F.No. STC/4-47/O&A/16-17 dated 04.04.2018 whereupon the noticees were asked to show cause before the Commissioner of CGST & Central Excise, Ahmedabad-North. The above SCN was issued by DGCEI to M/s. Jas for the service tax liabilities worked out on the basis of limited

data/information received from the said assessee and the IT AO dated 23.12.2016 referred supra. Therefore, the jurisdictional officers of CGST, Ahmedabad-North conducted further investigation on similar issues involved for the subsequent period, details of which are discussed in the following paras.

(II) *SCN ISSUED BY COMMISSIONER FOR SUBSEQUENT PERIOD*

15. The jurisdictional Superintendent of CGST, Range-I, Division-II (Naroda Road) Ahmedabad vide letter dated 30.10.2017, 14.02.2018 and 03.12.2018 called for certain documents from the said assessee; such as Ledger, ST-3 returns, Annual Audit Reports, AOs passed by the Income tax department, etc. for the FYs 2014-15, 2015-16 and 2016-17. Accordingly, the assessee vide letter dated 22.01.2019 furnished the information regarding receipts from their projects booked before BU and after BU, input service tax credit taken, details of advances received from members along with a copy of IT AO dated 29.12.2017 for the AY 2015-16 (FY 2014-15) issued from F.No. ACIT/Circle-2(1)(2)/Penalty 271(1)(c)/2017-18 passed by the Assistant Commissioner of Income Tax, Circle-2(1)(2), Ahmedabad. Scrutiny of the said AO revealed the facts as discussed in the following paras.

16.1. Para 4 of the said AO dated 29.12.2017 pertains to "*Unexplained cash credit and interest expenses thereon*". As per Point No. 1 of the said para, on verification of Audit Report and Balance sheet furnished by the assessee for the FY 2014-15, the Income Tax department gathered that the assessee had shown '*unsecured loans from the Directors and relatives*' as part of the total unsecured loans of Rs. 149.66 Crores declared during FY 2014-15. On verification of the details filed by the assessee inrespect of such '*unsecured loans*', it was revealed that the list of parties from whom they claimed to have received unsecured loans included following companies which were declared by the Government as shell companies: -

TABLE-1

Sr. No	Name of Party [M/s.]	Loan amount credited during the year	Interest Paid	Remarks
01	Allied Commodeal Pvt. Ltd.	86,000	44,088	Loans from shell company
02	Arihand Electrosoft Pvt.Ltd.	1,00,00,000	7,10,137	-do-
03	Brajdham Merchantile Pvt. Ltd.	26,000,000	17,92,849	-do-
04	Fetor Vintrade Pvt. Ltd.	45,00,000	24,411	-do-
05	Jalaram Finvest Ltd.	00	00	-do-
06	Monalika TexfabPvt. Ltd.	1,30,00,000	8,82,740	-do-
07	Neelgagan Nirman Pvt. Ltd.	00	6,75,000	-do-
08	Pace Properties Pvt. Ltd.	00	5,40,000	-do-
09	Shiv Om Investment& Consultancy Ltd.	2,50,00,000	15,22,356	-do-
10	Mountview Dealcomm Pvt.Ltd.	3,55,93,895	61,052	-do-
11	Cordillera Realtors Pvt. Ltd.	2,50,00,000	6,16,931	Unsecured loan-Squared up Account-Shell company

12	Cygnet Realtors Pvt. Ltd.	50,00,000	3,25,110	-do-
13	Slender Texfab Pvt. Ltd.	2,50,00,000	13,79,219	-do-
14	Sonali Suppliers Pvt. Ltd.	25,00,000	7,39,000	-do-
	TOTAL	18,01,93,895	93,12,893	

16.2. The assessee company had not filed the confirmation of account, bank statement and copy of the ITR to prove the creditworthiness of the lenders, their identity and genuineness of transactions. The identities of the lenders against whom amounts were credited in the books of account of the assessee wereconsidered as not genuine nor their transactionswere found authentic as they have no creditworthiness.

16.3. As per Point No. 2 of Para 4 of the AO dated 29.12.2017, during the course of assessment proceedings, it was noticed that the assessee had also accepted loans from the following parties and paid interest thereon. Theyhad furnished copy of ITR, confirmation in respect of parties mentioned at Sr. No. 2 to 5 of the below mentioned Table-2 but failed to explain the creditworthiness of these parties as their total income and share capital were not commensurate with the amount loaned by them to the assessee. In the case of party named at Sr. No.1, the assessee had not filed any evidences to prove its claim.

TABLE-2

Sr. No	Name of the party	Loan accepted during the year excluding Interest	Interest paid	Income declared as per ITR
01	Hannah Enterprises Pvt. Ltd.	1,68,53,233	9,67,674	-----
02	Brij Man Impex Pvt. Ltd.	11,76,28,202	1,02,11,590	Rs. 9,01,590 for AY 2014-15
03	Boston Tradelink Pvt. Ltd.	7,31,46,797	71,02,029	Rs. 3,15,630 for AY 2015-16
04	Sawaca Business Machineries Ltd.	43,70,708	48,56,342	Rs. 39,27,990 for AY 2015-16
05	Vansh Glass Industries Pvt. Ltd.	5,27,16,639	60,13,605	Rs.11,89,750 for AY 2015-16
	TOTAL	26,47,15,579	2,91,51,240	

16.4. Inthe absence of credible evidences regarding creditworthiness of the above parties, credit entries as appearing in the books of account of the said assessee in the name of the above parties were remained unexplained as per provisions of Section 68 of the Income Tax Act. The interest paid thereon was also remained unexplained and appeared not genuine and thus the same was also disallowed as unexplained expenditure under section 69C of the Income Tax Act.

16.5. Therefore, the aforesaid transactions stated in Table-1 and 2 were considered not genuine. The assessee failed to offer any satisfactory explanation of credits in the names of unsecured loans mentioned at the said Point No.1 and 2. Further purported interest expenditure is deemed to be income and the same was also disallowed under Section 69C of the IT Act. Accordingly, the loan amount of total Rs.44,49,09,474/- and interest amount of total

Rs.3,84,64,133/- were considered by Income tax department as unexplained cash credit for the AY 2015-16 (FY 2014-15) and the same were added to the total income of the assessee company.The breakup of receipts and expenditure considered as deemed income is shown in the Tabe-3 below as the same was liable to be added to the total income of the assessee as income from other sources.

TABLE 3

As per	Amount of unexplained credit u/s 68 of IT Act	Unexplained expenditure under Section 69C of IT Act
Point No. (1)	18,01,93,895	93,12,893
Point No. (2)	26,47,15,579	2,91,51,240
Total	44,49,09,474	3,84,64,133
Total addition	48,33,73,607	

17.1. Para-5 of the said AO dated 29.12.2017 spoke about '*interest on late payment of TDS Rs.4,19,407/-*. The assessee had debited interest expenses on late payment of TDS amounting to Rs.4,19,407/- in the Profit & Loss Account for the year under consideration. As per the Income Tax Act, the expenses incurred by an assessee for any purpose, which is an offence, or which is prohibited by law shall not be deemed to have been incurred for the purpose of business and the same is not allowable under Income Tax act. Therefore the interest expense for late payment of TDS is not an allowable expenditure. Accordingly, the aboveAO disallowed the sum of Rs.4,19,407/- being the interest on late payment of TDS and have added the same to the total income of the assessee.

17.2. Para-6 of the AO talked about'*addition on account of advance received from sundry debtors.*' On verification of the advances shown as received in their balance sheet, it was found that the advances of Rs.30,97,68,004/- had also been received from the old debtors, which have already been added during the previous year under Section 68 of the Income Tax Act. Such advances received from old debtors consists advances of Rs. 19,50,96,465/- received for City Centre Project and Rs. 11,46,71,539/- from Shahibaug Project. During the course of assessment proceedings, the assessee failed to prove the identity, creditworthiness of debtors and genuineness of the transactions. These debtors had been treated as bogus and not genuine u/s 68 of the Income Tax act during the previous AY 2014-15, and hence the credit in the names of these debtors amounting to Rs. 30,97,68,004/- during the AY 2015-16 [FY 2014-15] was also treated as unexplained u/s 68 of the Act. Thus, the total addition of income ordered in the aforesaid Para 4, 5 and 6 of the Assessment Order dated 29.12.2017 for the AY 2015-16 (FY 2014-15) is tabulated in the Table-4 below: -

TABLE-4

Income from Business & Profession as per return			Rs.3,24,91,130
Income from Other Sources			
Sl	Additions/Disallowables as discussed above		
1	Unexplained cash credit u/s 68 of the Act	Rs.44,49,09,474	
2	Unexplained expenditure u/s 69C of the Act	Rs. 3,84,64,133	
3	Interest on late payment of TDS	Rs. 4,19,407	
4	Unexplained advances from debtors u/s 68 of the Act	Rs.30,97,68,004	Rs.79,35,61,018
	Total assessed Income:		Rs.82,60,52,148

17.3 Since the assessee was engaged in providing taxable services such as construction of residential and commercial buildings as stated above, their entire receipt/income is from the advances/payments from their customers, which is leviableto service tax under the provisions of Finance Act, 1994.Therefore,they are liable to pay service tax on the addition of income ordered vide Para 4, 5 and 6 of the IT AO dated 29.12.2017 as discussed in the foregoing paras, by adding such income to their declared gross receipts towards taxable services. Details of such additional gross receipts are shown in the following Table-5: -

TABLE-5

Income from Other Sources			
Add:	Additions/Disallowable as discussed above		
01	Unexplained cash credit u/s 68 of the Income Tax Act	Rs. 44,49,09,474	
02	Unexplained expenditure u/s 69C of the Income Tax Act	Rs. 3,84,64,133	
03	Interest on late payment of TDS	Rs. 4,19,407	
04	Unexplained advances from debtors u/s 68 of the Income Tax Act	Rs. 30,97,68,004	Rs. 79,35,61,018
	Total assessed Income		Rs.79,35,61,018

17.4. The amount of service tax payable by the said assessee on the aforesaid additional/undeclared gross receipts from their clients towards provision of taxable services, is worked out in the following Table-6: -

TABLE-6

Sr. No.	Period (FY)	Addition on account of	Amount	Abatement @ 70%	Taxable amount	Service tax liability @ 12.36%
1	2014-15	In the guise of unsecured loans	483793014	338655110	145137904	1,79,39,045
2	2014-15	In the guise of receipt from Sundry debtors.	309768004	216837603	92930401	1,14,86,198
		TOTAL	793561018	555199128	237942483	2,94,25,243

18. A statement of Shri Alin Ajay Shah, Director of M/s. Jas was recorded on 25.04.2019 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, which is reproduced below: -

"Question-1 : Please describe in brief as to when did the project of M/s. JAS Infra Space Pvt. Limited "City Centre", Idgah Circle, Near Asarwa Bridge, Ahmedabad commenced and who are the Directors and what is the nature of business.
Answer-1 : M/s. JAS Infra Space Pvt. Limited "City Centre", Idgah Circle, Near Asarwa Bridge, Ahmedabad is engaged in providing construction of Commercial Complex services in the name of "City Centre" which commenced in December-2011. This Scheme consists of a total of 1450 shops/ offices having Ground floor plus first to fourth floors. The other Directors of the Company apart from myself are (1) Shri Bharatbhai Saremal Shah and (2) Shri Jayantibhai Somabhai Patel. We are holding Service Tax Registration No. AACCJ7331E SD002 received on 09.08.2012 under the category of "Construction Services other than Residential Complex, including Commercial/ Industrial Buildings or Civil Structures' and under "GTA Services".

Q-2 : How are you discharging Service Tax liability ?
A-2 : We are paying the Service Tax on the advances received from our customers.

Q-3: Who is looking after the work of the company.
A-3: All the three Directors are looking after the work of the company. However, taxation matters are looked after myself and Bharatbhai Shah..

Q-4: Is it correct that a case was booked by Income tax department ?
A-4: Yes, It is correct that a case was booked by Income Tax Department.

Q-5: Are you discharging Service tax liability on monthly basis ?
A-5: Yes, We are discharging Service Tax liability on monthly basis.

Q-6: Inform whether any other projects/ schemes are being undergoing or completed by M/s. Jas Infra Space Pvt. Ltd.
A-6: M/s. JAS Infra Space Pvt. Limited was having two projects; (i) project of "City Centre" and (ii) Project of Platinum Heights at Shahibaug. Both are completed; today.

Q-7:Please clarify whether your company has paid Service Tax during the financial year 2014-15.
A-7: Yes. Our company M/s. Jas Infra Space Pvt. Limited had paid Service Tax during the financial year as mentioned in ST-3 return.

Q-8: Please clarify whether ST-3 returns for the financial year 2014-15 (half yearly basis) has been filed or otherwise.
A-8: Yes, The company has already filed ST-3 returns for the half year ie. April 2014 to September-2014 and October 2014 to March-2015 before the Superintendent of Service Tax.

Q-9: The Income tax Department, Ahmedabad has issued Assessment Order dated 29.12.2017 for the financial year 2014-15 (Assessment Year 2015-16). Have you seen the said Assessment order?
A-9: The Assessment Order dated 29.12.2017 for the financial year 2014-15 (Assessment Year 2015-16) has been received by the company and I have seen the same. Today, in the office of the Superintendent of CGST & Central Excise, Range-I, Division-II, Ahmedabad North, I have been shown the said Assessment Order. I have seen, perused and puts my dated signature on it being seen.

Q-10: As per the Assessment order dated 29.12.2017, the Income Tax department gathered that the noticee company had shown unsecured loans from the Directors and relatives and also

during the year 2014-15, the noticee company had received unsecured loans of Rs. 149.66 Crores. On verification of the facts, it was noticed by the income tax department that the noticee company had claimed to have received as unsecured loan from the parties shown as per Annexure-A & Annexure-B. Please clarify whether these huge amounts had been accounted for in the Books of Accounts of the company or otherwise.
A-10: During the year 2014-15, assessee has taken unsecured loans from various parties. The same has been received by account payee cheques. The same is accounted for in the books of accounts of the company. The said books are audited by company auditors and tax auditors. No irregularity has been found in the accounting of above loans.

Q-11: The sum of Rs. 44,49,09,474/- and Rs. 3,84,64,133/- were considered by the Income tax department stands unexplained cash credit for the year under consideration i.e. 2014-15 and the same were added to the total income of the assessee company and demanded tax on the said amount along with interest. Please clarify whether, the company had paid the Service Tax on this unexplained cash credit or otherwise.
A-11: Company has received unsecured loans from various parties during the year. From the said loans income tax department has considered loan of Rs. 44,49,09,474/- as unexplained cash credit. Company had submitted copy of account, confirmation in all the cases and income tax return acknowledgement copy and audit reports in some cases. However, income tax department was not convinced with evidences filed and treated the above loan as unexplained cash credit. However I have to submit that the same receipt is loan only. In nowhere income tax department has held that the said loan is booking deposit. As the amount received is unsecured loan and not booking deposit, service tax is not applicable on the same. In respect of disallowance of Rs.38464133/-, the said is interest paid to sharafi depositors, Service tax is not applicable on interest payment.

Q-12: The Income tax Department further observed that the advance received from old debtors consists advances of Rs. 19,50,96,465/- received for City Centre and Rs. 11,46,71,539/- from Shahibaug project. During the Course of assessment proceedings, the assessee failed to prove the identity, credit worthiness of debtors and genuineness of the transactions. These debtors had been declared treated as bogus and not genuine u/s 68 of the Income tax act during the A.Y. 2015-16, therefore, credits in the names of these debtors amounting to Rs.30,97,68,004 for the A.Y. 2015-16 are also treated as unexplained u/s 68 of the Act. Therefore, demanded Income tax on the said amount. Please clarify whether the company has paid any service tax on this transaction of Rs. 30,97,68,004 or otherwise.
A-12 : Company has received booking deposit from customers and shown the same in balance sheet as advances received for booking of unit. Service tax has been paid on such deposits. Advances received as shown in books is reconciled with ST-3 Returns. Therefore, Service tax has been duly paid on booking deposits added in income by the income tax department. Therefore, no further liability of service tax arises on booking deposits added in income by Income Tax Department. Honorable CIT (Appeals) of Income tax has deleted this addition in earlier assessment year (A.Y. 2014-15).Income Department has filed appeal before Tribunal for the same.

Q-13: Please see the Assessment order dated 29.12.2017 passed by the Income Tax Department for the Assessment year 2015-16 wherein various additions on the income has been made. Please comment.
A-13: Addition made by Income Tax department for unexplained cash credit of Rs.44,49,09,474/- is duly replied in answer 11 above.Addition for interest payment is also replied in Ans. 11 above. Addition made for advances received from debtors is replied in Ans-12 above. Addition has been made for interest on late payment of TDS for Rs.419407. Service tax is not applicable on interest payment. To sum up no addition of income tax department in assessment order attracts service tax liability."

19. During the investigation, letters dated 01.03.2019 and 11.04.2019 weresent toIT Department seekingcopies ofAO in respect of M/s. Jas for the FYs 2015-16 to 2017-18. The

Assistant Commissioner of Income Tax Circle 1(1)(2), Ahmedabad vide his letter No. ACIT/Cir. 2(1)(2)/Jas Infra Space/2019-20 dated 11.04.2019 informed that the case of M/s. Jas Infra Space Pvt. Ltd. for AY 2016-17 (FY 2015-16) was not selected for scrutiny and therefore, no AO was passed; and that for the AY 2017-18 (FY 2016-17), the AO will be issued on or before 31.12.2019, while for AY 2018-19 (FY 2017-18), the CASS cycle (Computer Aided Scrutiny Selection) has not been run and therefore, it is not known whether their case for AY 2018-19 would be selected or otherwise.

20. SinceAOs for the AYs 2016-17, 2017-18 and 2018-19 [FYs 2015-16, 2016-17, 2017-18 respectively] were not available, details regarding Unsecured Loan, Investment made in Work in progress (WIP), and Advances received from the Sundry Debtors were requisitioned from the said assessee through letter dated 02.05.2019covering the said period upto June, 2017, which were furnished by them on 07.05.2019, 28.05.2019 and 29.05.2019. Category-wise details worked out in this regard, along with service tax payable on each such item, are tabulated as under: -

TABLE-7

Sr. No	Period	Amount	Abatement	Taxable Amt.	S. Tax @ rate	Service Tax liability
Unsecured Loan						
1.	2015-16	88,06,59,148	61,64,61,404	26,41,97,744	14.5%	3,83,08,672
2.	2016-17	39,82,09,994	27,87,46,996	11,94,62,998	15%	1,79,19,450
3.	2017-18 (Till June, 2017)	1,56,37,740	1,09,46,418	46,91,322	15%	7,03,698
Total		1294506882	906154817	388352065		56931821
Receipt from Sundry Debtors						
1.	2015-16	147,73,30,545	103,41,31,381	44,31,99,164	14.5%	6,42,63,879
2.	2016-17	110,99,90,408	77,69,93,285	33,29,97,123	15%	4,99,49,568
3.	2017-18(TillJune, 2017)	85,98,23,675	60,18,76,572	25,79,47,102	15%	3,86,92,065
Total		3447144628	2413001240	1034143388		152905512
Investment in WIP (Work in Progress)						
1.	2015-16	11,59,86,091	8,11,90,263	3,47,95,828	14.5%	50,45,395
2.	2016-17	5,34,96,210	3,74,47,347	1,60,48,863	15%	24,07,329
3.	2017-18 (Till June, 2017)	0	0	0	15%	0
Total		169482301	118637611	50844690		7452724
Total Service Tax liability from 2015-16 to 2017-18 (upto June)					21,72,90,057	

21. The assessee was engaged in construction service and their only source of income is the advances from their prospective customers, hence it appeared that they are liable to dischargeservice tax of Rs. 21,72,90,057/-, as mentioned in Table 7 above, on the amount of unsecured loan, receipts from sundry debtors and investment in WIP for the FYs 2015-16, 2016-17 and 2017-18 (upto June 2017). Therefore, a further statement of Shri Alin Ajay Shah, Director of M/s. Jas was recorded on 20.05.2019 which is reproduced below: -

"Q-1:In pursuance to statement recorded on 25.04.2019 you were asked to produce details regarding unsecured loans for 2015-16, 2016-17 and 2017-18 (upto 30.06.2017).
A-1: We have submitted details regarding unsecured loans for F.Y. 2015-16, 2016-17 and 2017-18 (upto 30.06.2017) vide our earlier letter dated 07.052019.

Q-2: Are you still following same assessment procedure as pointed by DGCEI in SCN No. DGCEI/AZU/36-92/2016-17 dated 16.02.2017 and whether you have done self-assessment correctly and paid service tax at the applicable rate?
A-2: We pay service tax on the amount received from members on which service tax is applicable. Service tax is paid on such receipts. However, unsecured loan and investment in WIP being of the nature on which service tax is not applicable. Therefore, we do not pay service tax on unsecured loan and investment in WIP. Yes, we have done self-assessment correctly and paid service tax at the applicable rate.

Q-3:Why did not pay service tax on unsecured loan and investment in WIP?
A-3: In our opinion, service tax is not applicable on unsecured loan received by the company. Service tax is also not applicable on investment in WIP because WIP represents amount of construction expenditure in respect of shops/flats not booked/sold. Therefore, we have not paid service tax on such amount.

Q-4: Please state whether there is any unsecured loan/advances (as pointed out in DGCEI's SCN) collected and shown in Books of Accounts for the year 2015-16, 2016-17 and 2017-18(upto 30.06.2017).
A-4: Company has received unsecured loan and advances from members during financial year 2015-16, 2016-17 and 2017-18 (upto 30.06.17). Company has paid service tax on advances received from members on which service tax is applicable. However, service tax is not applicable on unsecured loan received by the company. Therefore, company has not paid service tax on such amount.

Q-5: If Yes, whether you have submitted details to your jurisdictional Service Tax range office?
A-5: Company has been regularly submitting details asked by jurisdictional service tax range office. Company has submitted details of unsecured loan, advances received from members and investment in WIP to jurisdictional range office on 07.05.2019

Q-6: Whether you have paid service tax as pointed out by DGCEI on the amount collected by you during the period 2015-16, 2016-17 and 2017-18 (upto 30.06.2017) in accordance to category as:(i) Unsecured loan, (ii) Advances, (iii) Sundry debtors, (iv) Investment in WIP, and (v) Any other amount of consideration?
A-6: The company pays service tax on collection received from members for booking their shop/flats. Company has paid service tax wherever applicable on collection received from members for the period 2015-16, 2016-17 and 2017-18 (upto 30.06.17). DGCEI has proposed to levy service tax on unsecured loan taken by the company and investment in WIP. Company does not agree with the contention of DGCEI to levy service tax on unsecured loans and investment in WIP. Therefore, company has not paid service tax on unsecured loans received and investment in WIP. However, company has fully paid service tax on all the collections received from members on which service tax is applicable i.e. collection received from members towards booking made before B U permission received.
(i) Company has received unsecured loan from various parties during the period 2015-16 to 2017-18 (June 17). Service tax is not applicable on loan received by the company. Therefore, company has not paid service tax on unsecured loan received.
(ii) Company has paid service tax on advances received from members/debtors wherever service tax is applicable.
(iii) Company has received amount from sundry debtors towards booking of shops/flats by them. Service tax is paid on this amount wherever applicable. Company has not received any other amount from debtors which is liable to service tax.

(iv) Company has shown investment in WIP in profit and loss account in respect of expenditure incurred for construction for which sale is yet not made. It is closing stock of the company for expenditure incurred on construction work. Service taxis not applicable on closing WIP stock of the company. Therefore, company has not paid service tax on investment in WIP.
(v) Company has not received any other amount of consideration on which service tax is applicable.

Q-7: Please submit sources of the amount of investment in WIP and when was the same reported/posted on Books of Accounts.
A-7: Company has incurred construction expenses from funds available with it. Such funds are received as unsecured loans, collection from members etc. Construction expenses incurred in respect of units which are not sold/booked are credited to P& L account as investment in WIP. Therefore, there is no separate investment in WIP. WIP only represents proportionate expenditures incurred by the company for units which are not booked/sold. Amount of WIP is recorded in Books of Accounts on 31st March for the respective financial year i.e. amount of WIP for financial year 2015-16 has been recorded on 31st March 2016 and so on.

Q-8: Whether this amount towards WIP has been included in unsecured loan data or any other amount submitted to this office and if WIP is shown as investment for units not booked/sold in P & L account, then it implies that it is a consideration not reported anywhere and service tax not paid.
A-8: Amount of WIP is not included in unsecured loan or advances from sundry debtors. Amount of investment in WIP is separately shown in our submission. WIP is closing stock of the company representing expenditure incurred in respect of unsold units. It is not a consideration received by the company.

Q-9: Whether the amount submitted by you for unsecured loans, advances received from sundry debtors and investment in WIP is correct?
A-9: We hereby confirm that the amount shown by us for unsecured loans, advances received from debtors and investment in WIP are correct. We are producing ledger copies self-attested by me and duly attested by Auditor."

22. Thus, the total amount of undisclosed advances received by the said assessee from their clientsduring the FYs 2014-15, 2015-16, 2016-17 and 2017-18 (Till June 2017) and the liability of service tax arising out of such receipts are summarized in the following chart :-

Sr. No	Period	Amount	Abatement	Taxable Amt.	S. Tax @ rate	Service Tax liability
Unsecured Loan:						
1	2014-15	48,37,93,014	33,86,55,110	14,51,37,904	12.36%	1,79,39,045
2.	2015-16	88,06,59,148	61,64,61,404	26,41,97,744	14.5%	3,83,08,672
3.	2016-17	39,82,09,994	27,87,46,996	11,94,62,998	15%	1,79,19,450
4.	2017-18(Till June)	1,56,37,740	1,09,46,418	46,91,322	15%	0,07,03,698
Total		177,78,80,489	124,45,16,342	53,33,64,147		7,48,70,865
Receipt from Sundry Debtors						
1.	2014-15	030,97,68,004	021,68,37,603	09,29,30,401	12.36%	1,14,86,198
2.	2015-16	147,73,30,545	103,41,31,381	44,31,99,164	14.5%	6,42,63,879
3.	2016-17	110,99,90,408	77,69,93,285	33,29,97,123	15%	4,99,49,568
4.	2017-18(Till June)	85,98,23,675	60,18,76,572	25,79,47,102	15%	3,86,92,065
Total		375,69,12,632	262,98,38,843	112,70,73,789		16,43,91,710
Investment in WIP (Work in Progress)						
1.	2014-15	00	00	000	00	00
2.	2015-16	11,59,86,091	8,11,90,263	3,47,95,828	14.5%	50,45,395
3.	2016-17	5,34,96,210	3,74,47,347	1,60,48,863	15%	24,07,329
4.	2017-18(Till June)	00	00	00	15%	00

Total	16,94,82,301	11,86,37,611	5,08,44,690		74,52,724
Total Service Tax liability from 2014-15 to 2017-18 (upto June, 2017)				24,67,15,299	

23. It appeared that the said assessee is liable to pay the aforesaid amount of service tax of Rs. 24,67,15,299/-. It also appeared from the statements of Shri Alin Ajay Shah recorded on 25.04.2019 and 20.05.2019 as referred supra, that he was responsible and aware of the aforesaid facts of non-payment of service tax. Further, it is noticed fromthe ST-3 returnsfiledby M/s. Jas for the period 2014-15 to 2017-18 (Q1) thatCol. No. B1.2 which requires to declare the "*amount received in advance for services for which bills/invoices/challans or any other documents have not been issued*" has been declared by them as zero. This shows that the assessee has deliberately suppressed the facts from the department with malafide intent of evading payment of service tax on the receipts from buyers received towards providing taxable services. The assessee was also required to file Annual Financial statement for every financial year, as they were falling in the category of paying Tax more than Rs 1 Crore, which they have not filed during the aforesaid FYs from 2014-15 to 2017-18. They have never submitted the data regarding unsecured loans and WIP investment to any other wing of department i.e. audit section, preventive section etc., implying that the assessee has not informed the department, in any manner, about receipts towards advances for providing the taxable services and have suppressed the facts from the department with a malafide intention of evading payment of Service Tax.

24. As per the provisions of Section 73(1) of the Act, read with the instructions contained in CBIC Master Circular No. 1053/02/2017-CX dated 10.03.2017 and in terms of the decision of Hon'ble Tribunal *in re Speed-o-graph reported at 2014 (314) ELT (283)*, demand of service tax for the period subsequent to the period covered under the SCN dated 16.02.2017 (supra) issued by DGCEI, would qualify for invoking extended period of limitation. Further, as per Para 2.8 of the said CBIC Master Circular No. 1053/02/2017-CX dated 10.03.2017 and in terms of the decision of Hon'ble High Court of Madhya Pradesh in the case of *Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI cited at 1982 (010) ELT 0844 (MP),* demand which remains unquantified at the time of issuing SCN but arising as a liability out of subsequent proceedings would remain valid.

25. Therefore, Commissioner of CGST, Ahmedabad-North issued another SCN No. STC/15-04/OA/2019 dated 13.09.3019 to the said M/s. Jas Infra Space Pvt. Ltd., Ahmedabad, calling upon them to show cause as to why: -

(i) Service Tax of Rs.24,67,15,299/- evaded by them during the FYs 2014-15 to 2017-18 (upto June 2017) on the unaccounted receipt of advances of the amounts as shown inTable-8above, should not be demanded and recovered from them under proviso to Section 73(1) read with Section 68 of the Finance Act, 1994;

(ii) Interest should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 on the amount of service tax evaded by them;

(iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppression and mis-declaration of correct taxable value with intent to evade service tax on the aforesaid taxable services;

(iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1944 for not declaring true and correct value in the ST-3 returns; and

(v) Differential amount of service tax towards short payment/non-payment, if any arises, due to the AO passed by the Income Tax Department or any other sources/agencies, for the year 2015-16 to 2017-18 [upto June'17] should not be recovered under proviso to Section 73(1) of the Finance Act, 1994.

26. Shri Alin A. Shah, Director of M/s. Jas has also been called upon to show cause to the Commissioner, CGST, Ahmedabad-North as to why penalty should not be imposed upon him under the provisions of Section 78A of the Finance Act, 1994.

(III) ***SUBSEQUENT SCN ISSUED BY ADDL. COMMISSIONER***

27. While the SCN dated 16.02.2017 issued by DGCEI covered the service tax liability arising out of the undeclared income for the FY 2013-14 worked out on the basis of IT AO dated 23.12.2016, the aforesaid SCN dated 13.09.2019 issued by the Commissioner of CGST, Ahmedabad-North covered such liability arising out of similar income for the FY 2014-15 worked out on the basis of IT AO dated 29.12.2017 and for subsequent FYs 2015-16, 2016-2017 and 2017-18 [Till June, 2017] calculated on the basis of the books of account submitted by the said assessee. Further, the DGCEI SCN dated 16.02.2017 also covered demand of cenvat credit involved on the exempted output services in terms of Rule 6(3) of Cenvat Credit Rules, 2004 for the FYs 2014-15 [November onwards] and 2015-16, whereas the SCN dated 13.09.2019 issued by the Commissioner did not discuss this issue. Similarly, DGCEI SCN dated 16.02.2017 had proposed to impose late fee provided Rule 7C of the Service Tax Rules, 1994 read with the provisions of Section 70 and 77 of the Finance Act, 1994for late filing of returns, but subsequent SCN dated 13.09.2019 did not contain such proposal.

28. Therefore, the jurisdictional officers of CGST, Ahmedabad-North verified the documents produced by the said assessee which indicated that theyhad taken and utilized the following cenvat credit of input services for providing output services in respect of their

commercial projects i.e. at City Centre and at Shahibaug: -

Period	Credit for City Centre	Credit for Shahibaug	Total
2016-17	14980/-	524295	539275/-
April- 2017 to June- 2017	5115/-	21612/-	26727/-

29. It appeared that the input services, such asconstruction, manpower supply, security, architect service etc. are common input services for the output services which were taxable, exempted and/or non-taxable services. It also appeared that the assessee had availed and utilized input services credit in both the services i.e. taxable services and exempted services, and hence they are required to reverse an amount, equal to 7% of the value of the exempted services provided. The records indicated that the assesseehad declared/shown following receipts of advances/sales against the shops of their City Center and Shahibaug Projects after receipt of BU permission from the competent authority,thus attracting corresponding levy in terms of Rule 6(3)(b)(i) of Cenvat Credit Rules, 2004: -

Period of Receipt from bookings after BU Permission	Receipt from properties booked after BU-permission (City Centre project)	Receipt from properties booked after BU-permission (Shahibaug project)	Amount to be paid @ 7% as per Rule 6 (3)(b)(i) of CCR 2004
2016-17	20,61,64,171	38,00,000	1,46,97,492
2017-18 (April-17 to June-2018	45,59,491	0	03,19,164
TOTAL	21,07,23,662	38,00,000	1,50,16,656

30. Since the assessee has suppressed relevant information regarding the receipts of booking after BU permission while filing their ST-3 returns, it appeared that the amount of Rs. 1,50,16,656/- is required to be recovered from them under the provisions of Rule 14(1)(ii) of Cenvat Credit Rules, 2004 read with Section 73 (1) of the Finance Act, 1944 along with interest as per Section 75 of the Finance Act, 1994. Besides, the noticee is also liable for penalty under Rule 15 (1) of the Cenvat Credit Rules, 2004 read with Section 76 of the Finance Act, 1944.

31. It also appeared from the scrutiny of the records that the said assessee had not filed their ST-3 returns on the specified dates, as shown in the following chart, hence they are also liable to pay late fee under Rule 7C of the Service Tax Rules, 1994 read with the provisions of Section 70 and 77 of the Finance Act, 1994.

Return Period	Date of filing	No. of days delayed	Late fee (Rs.)
Apr-Sep 2016-17	29.06.2017	247	20000/-
Oct-Mar 2016-17	23.08.2017	115	9500/-
Apr-June 2017-18	02.10.2017	48	1900/-

32. Therefore, in terms of the provisions of Section 73(1A) of the Finance Act, 1994, the Additional Commissioner, CGST, Ahmedabad-North issued a further SCN No. STC/15-11/OA/2019 dated 03.10.2019 calling upon the said M/s. Jas Infra Space Pvt. Ltd., Ahmedabad to show cause as to why: -

(i) Rs. 1,50,16,656/- should not be demanded and recovered from them under Rule 14(1)(ii) of Cenvat Credit Rules, 2004 read with the proviso to Section 73(1) of the Finance Act, 1994 and Rule 6(3)(b)(i) of the Cenvat Credit Rules, 2004;

(ii) Interest should not be demanded and recovered under Rule 14(1)(ii) of Cenvat Credit Rules, 2004 read with Section 75 of the Finance Act, 1994 on the amount not paid by them under Rule 6(3)(b)(i) of the Cenvat Credit Rules, 2004;

(iii) Late fee should not be imposed upon them under Rule 7C of the Service Tax Rules, 1994 read with the provisions of Section 70 and 77 of the Finance Act, 1994;

(iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for their contravention of different provisions of the Finance Act, 1994 and the Service Tax Rules, 1994; and

(v) Penalty under Rule 15(1) of Cenvat Credit Rules, 2004 read with Section 76 of the Finance Act, 1994 should not be imposed upon them for non-payment of amount stipulated under Rules 6(3)(i) of the Cenvat Credit Rules, 2004

DEFENCE REPLY

33. M/s. Jas vide their letter dated 26.03.2017 filed a defence reply *inter alia* stating that they have not collected any cash amounts from their buyers and the allegations made in the SCN are mere surmises and conjectures not supported by factual or real evidence; that the proceedings under survey under IT Act are separate proceedings and no inference should be drawn from such proceedings, as they have not admitted the observations made in the survey which are in appeal; that during the survey one diary was found which contained valuation of work in progress for obtaining bank loan at market rate; that the said valuation of Rs. 90,63,11,765/- whereas the actual amount recorded in the books was Rs. 49,02,35,276/-, thus the market valuation recorded in the diary was higher by Rs. 41,60,76,489/-; that the valuation of Work in Progress at market rate cannot be compared to actual cost as per books of accounts; that the difference of such market value and actual rate can never be a source of income either

accrual or realization basis; that without prejudice, even if such difference is suggestive of any income, such actual difference would be Rs. 36,81,79,388/- and not Rs. 41,60,76,489/-; and that even if service tax is quantified the same should be calculated as the amount inclusive of tax.

PERSONAL HEARING& FURTHER SUBMISSION

35.In response to a notice for PH dated 22.07.2020, Shri Gauravkumar Shriram Katyal, Chartered Accountant appeared for Personal Hearing on 13.08.2020 on behalf of the said assessee. He submitted a detailed reply dated 13.08.2020, along with detailed worksheets and calculation charts attached in one file, by refuting all the allegations contained in the aforesaid three SCNs; (i) F.No. DGCEI/AZU/36-92/2016-17 dated 16.02.2017, (ii) F.No. STC/15-04/OA/2019 dated 13.09.2019, and (iii) F.No. STC/15-11/OA/2019 dated 03.10.2019. He stated that the SCNs were wrongly issued on the basis of figures reported in their books of accounts without verifying its taxability under Finance Act, 1994. He also referred to some judgments which say that service tax cannot be worked out merely on the basis of IT assessment documents without explaining its applicability under service tax law. He also requested in the light of their submissions, no penalty may be imposed upon the company or the director. Apart from reiterating the submissions made in the written reply dated 13.08.2020 filed during the PH, Shri Gauravkumar Shriram Katyal, CA also requested to allow them to file additional submissions, if any, in the forthcoming one week's time in case if they find it necessary to do so. He therefore, requested to drop the demand and vacate the SCN and had nothing more to say.

36. In their written submission dated 13.08.2020, the said assessee *inter alia*, stated that they deny the averments and allegations of contravention of any provisions of the Finance Act, 1994 or the rules made thereunder, deliberately or otherwise, which would have resulted in any non-payment or short-payment of service tax, that warrants any demand or recovery of such tax with or without any interest, or that calls for any imposition of penalty on their firm under the provisions of the said law, except the facts and situations which are expressly stated and admitted by us, if any, in the following submission; that the subject show cause notice is not based on any actual facts or figures nor it contains any proper interpretation of the law but instead, the same has been framed upon mere fictions and fancies of the investigating officers with no legal substance; and that based on the following facts and explanations the proceedings initiated under the subject notices are required to be dropped *in limine* without causing any undue injury to the honest taxpayers.

37. In order to better comprehend the issues involved in the aforesaid SCNs and to make their submission brief to the relevant points, they listed below the grounds/issues based on which the demand of service tax has been constructed by the department: -

Sl	Issue/grounds for demand	Period of demand FY
1.	Addition of Income towards receipts from Sundry Debtors	2013-14, 2014-15, 2015-16, 2016-17, 2017-18 (Till June, 2017)
2	Addition of Income towards Unsecured Loans	
3	Unaccounted investment in WIP (Work in Progress)	
4	Short-payment of ST on members' advance	2014-15
5	Reversal of Cenvat Credit under Rule 6(3)(i) against common inputs/input services utilized for providing taxable and exempted output services	2014-15, 2015-16, 2016-17 and 2017-18 (Till June, 2017)

38. They submitted that except for Sl. No. 5 of the above table (cenvat reversal issue), each of the remaining items of demand has been worked out on the basis of a single document, viz. Income Tax Assessment Order dated 23.12.2016 for the Assessment Year 2014-15 (FY 2013-14) whereupon the Income Tax department had made certain additions to their taxable income solely for the purpose of the levy of Income Tax. In this connection, they vehemently stated and submitted that the department has committed an error by considering the IT Assessment Order as sacrosanct for working out and fastening upon them a huge service tax liability with a faulty invocation of extended period of limitation for the FY 2013-14, and applying the same faulty theories and logics for the subsequent FYs 2014-15 to 2017-18 merely by grouping the total figures of receipts as reflected in their books of account into different categories as specified in the aforesaid Income Tax Assessment Order and by demanding Service Tax on each of such receipts. They stated that no investigation whatsoever has been done by the department on the basis of the facts and figures appearing in the Income Tax Assessment Order; no efforts have been made to ascertain the status and fate of the said assessment order through its appellate journey under the Income Tax Act; and no attempts have been made to find out the procedures adopted by the Income Tax department for their assessment vis-à-vis the mandatory procedures prescribed under Finance Act, 1994 for determining the liability of service tax. Furthermore, the department has not even spared a casual thought to find out if the necessary ingredients for service tax liability existed in the additions specified in the IT Assessment Order or otherwise, i.e. actual provision of a taxable service against the additions, correlation between a service provider and a service recipient to attribute themselves to the additions, and the confirmed receipt of income from such service recipients to such service provider towards the provision of such taxable service, etc. They claimed that the demand of service tax worked out hypothetically without compliance of the aforesaid mandatory ingredients of Service Tax Law cannot *ipso facto* survive the scrutiny of the law, and that on this ground alone, the entire demand requires to be dropped.

39. They also stated that the department has committed an error by not verifying the status of the IT Assessment Order dated 23.12.2016 before construction of a huge service tax liability on its bonafide assessees; that the aforesaid IT Assessment Order was appealed against before the Hon'ble Commissioner of Income Tax (Appeals) at Ahmedabad under Section

143(3) of the IT Act, 1961 whereupon most of the additions made by the assessment officer were struck down. They submitted a copy of the said Appellate Order dated 11.12.2017 passed in Appeal No. CIT(A)-2/618/DCIT, Cir.2(1)(2)/2016-17 filed by them, as ANNEXURE-1 to the submission, and stated that a simple perusal of the said order makes it abundantly clear that the service tax liability worked out merely on the basis of such dropped additions will not stand the test of law, andfor the same reasons, service tax liability sought to be enforced for the subsequent FYs on similar grouping of receipts will also not survive, and hence, the demand SCNs deserves to be quashed and set aside.

40. The said assessee further stated that without prejudice to the above basic principles of law and mandatory procedures, theywould discuss each of the aforesaid issues/grounds based on which the demand has been worked out, and would prove that they have properly discharged the service tax liability on each of such issues, if at all these receipts form part of their gross receipts from the service recipients towards provision of taxable services, except what has been specifically admitted by them if any, as additionally payable.

41. *Addition of Income towards receipts from Sundry Debtors*: -The DGCEI SCN dated 16.02.2017 seeks recovery of service tax amounting to Rs. 1,43,48,117/- for the FY 2013-14 on the alleged ground that they had an additional income of Rs. 38,69,50,307/- which they recorded in the guise of receipts from sundry debtors. Based on the same stories and surmises, Commissioner has issued SCN dated 13.09.2019 seeking recovery of service tax amounting to Rs. 16,43,91,710/- leviable on a total receipt of Rs. 375,69,12,632/- spread over FYs 2014-15 to 2017-18 (Till June, 2017). In this connection, they firmly stated that all these amounts were actually recorded in their official books of account as receipts from their members who are the service recipients, and that they have actually paid applicable service tax on all such receipts wherever service tax is actually leviable under the law; and that their claim is fully substantiated through the following discussions and annexed documents, which they separately stated for each FY.

41.1.1. *Sundry Debtors:2013-14*:- The only ground for demanding service tax on Rs. 38,69,50,307/- shown as receipt from sundry debtors is mentioned in Para 5.7 of the SCN dated 16.02.2017, which states that they could not submit documents before Income Tax to establish the genuineness of these advances from sundry debtors which clearly indicated that the said amount is actually advances from the members but intentionally not shown as members advance in the books of account in order to escape service tax liability. The grounds of addition made in the Assessment Order dated 23.12.2016, the grounds of appeal made by them before CIT (Appeals) and the final decision in this regard by CIT Appeals are all discussed in Para 7 of the CIT (Appeals) Order dated 11.12.2017 enclosed as Annexure-A. In the grounds of appeal appearing at Page-25 of the said order, they had categorically stated that the amount is already

shown as advance from members in their audited balance sheet under the head "other current liabilities"; that even on such advances from members for booking, they had already paid service tax and submitted proof of such service tax payments; and that an identical addition made in AY 2012-13 was already deleted by the CIT (Appeals), etc. All these facts were considered by the CIT (Appeals) while passing his appellate order, relevant part of which is reproduced below for ease of reference: -

> *"7.3 I have carefully considered the facts of the case, assessment order and submission of the appellant. The AO has made addition of booking advance of Rs. 38,69,50,307/- u/s 68 of the I.T. Act, 1961 on the ground that appellant has failed to produce any confirmation from the parties. Appellant has submitted that during the assessment proceedings it has submitted details of 1210 persons whose shops were booked along with details of opening balance, debit, credit, sale deed, execution date etc. Appellant submitted that addition was made ignoring the fact that these were advance against booking on which revenue was recognized by debiting the said account. Appellant further submitted that the AO has made similar addition in the preceding year which has been deleted by the CIT(A)-2, Ahmedabad.*
>
> *7.4. It is evident from the details submitted by the appellant before the AO that sum of Rs. 38,69,50,307/- is the receipt against the sale of shops. Appellant has recognized revenue of Rs. 72.85 Crores on account of sales. Appellant has submitted details of shop No., party name, opening balance, debit, credit, remarks of sale deed executed/ account squared up etc. The CIT(A)-2, Ahmedabad in the preceding year after examining the fact has held that advance received were not the cash credit or loan, and therefore provision of section 68 does not apply on such advances received towards sale. Considering above facts, as the receipt of Rs. 38,69,50,307/- is against the sale of shops which have been offered for taxation as per the revenue recognized addition u/s 68 of the I.T. Act, 1961 is uncalled for. The ground of appeal is accordingly allowed."*

41.1.2. The stated that a simple reading of the above decision of CIT(A) would make it unambiguously clear that the subject SCN was issued without any application of mind, verification of facts, examination of the law or scrutiny of their records including details of service tax payment; that it also makes it evidently clear that the reason for addition proposed by the AO under IT Act has nothing to do with the provisions of Finance Act, 1994 or with the determination of service tax liability is concerned; and that it is factually and legally correct that the moment when they had received the advance from their members towards sale of shops, such advances have been booked as revenue and recorded it as their 'other current liabilities', besides they had also paid service tax on such amounts at the applicable rates. CIT(A) has irrefutably accepted these facts and also cited instance of similar deletion made during the preceding AY before striking down the Assessment Order dated 23.12.2016. In the light of these facts, they stated that when the presumptions based on which the allegations were worked out itself have been struck down by the appellate authorities, and that too on merits, there remains no scope for the purported liability sought to be illegally enforced upon them under the subject SCN.

41.1.3. Further, they requested to refer Para 6.3 of the SCN wherein it is stated during the statement proceedings they had already brought to the notice of the DGCEI officers that an

appeal has been filed on this issue, the result of which will decide the facts. However, they have arbitrarily worked out huge service tax liability even without waiting for the outcome of such appeal. Investigating officers have also done great injustice to them by not properly verifying their books of account to ascertain whether the subject amounts were recorded as receipts and whether they had actually paid service tax on such receipts, etc. In view of these facts, evidences and legal provisions, they earnestly requested to drop the aforesaid demand for FY 2013-14.

41.2.1. *Sundry Debtors: 2014-15*:-They submit that based on the aforesaid DGCEI SCN dated 16.02.2017 and the IT Assessment Order dated 29.12.2016 (now struck down by the CIT-Appeals), jurisdictional officers had called for details of similar advances and receipts during the subsequent FYs. Accordingly, they had supplied a copy of another IT Assessment Order dated 29.12.2017. Para-6 of the said AO proposed addition of total sum of Rs. 30,97,68,004/- on the ground that the said amount is shown in the balance sheet as advances received from old debtors, which was already added during the preceding year, details of which were discussed in Para 41 above. The AO dated 29.12.2017 stated that the amount of Rs. 30,97,68,004/- consisted of Rs. 19,50,96,465/- for their City Centre project and Rs. 11,46,71,539/- for Shahibaug Project being advances received from the old debtors. Thus, the said AO does not provide any other reasons for this addition, except that the same comprises of advances received from same old debtors against whom addition was already done during previous AY. They stated that before issuing SCN dated 13.09.3019, the department has not considered the fact that the said previous AO was struck down by the CIT(A) vide appellate order dated 11.12.2017. The department has also not thought it fit to examine whether the amount for FY 2014-15 has actually been accounted for in their records as 'other current liability", in the same way as CIT(A) confirmed to have done for FY 2013-14, and whether they had actually discharged service tax liability on such advances, or otherwise. They stated that similar addition proposed for the two previous years 2012-13 and 2013-14 have been struck down by CIT (A) as referred supra, and there is no reason for the department to determine any additional liability for the present FY 2014-15. In the absence of any other evidences to demand service tax on the above receipts of Rs. 30,97,68,004/- during FY 2014-15, they stated that on this ground alone, the subject demand for FY 2014-15 deserves to be dropped.

41.2.2. Notwithstanding the above facts, they stated that they have already discharged service tax, wherever applicable, on such advances received from the members. The facts regarding payment of service tax on such amount was already stated by their director before the department in answer to Qn 12 of his statement dated 25.04.2019 details of which are reflected in Page-8 of the SCN dated 13.09.2019. As already stated above, the SCN states the total receipts shown against sundry debtors as Rs. 30,97,68,004/- during the FY 2014-15. However, they stated and submitted that the IT assessment order dated 29.12.2017 had only considered

their receipts from the old customers who were named in the previous assessment orders. The manner and method of working out the receipts from the old customers, out of the total receipts towards sundry debtors, is shown in the enclosed ANNEXURE-2 (COLLY) for detailed perusal and understanding. In other words, the receipt of Rs. 30,97,68,004/- mentioned in the SCN is only in respect of partial receipts from their books of accounts, to the extent it pertains to the same old parties as named in the IT assessment order. As per the books of account for the said FY 2014-15, their actual receipt from sundry debtors for the FY 2014-15 was Rs. 73,58,65,102/-. In this regard, their detailed calculation charts are attached herewith as ANNEXURE-2 (COLLY). As per the main summary of this annexure, the aforesaid total receipt of Rs. 73,58,65,102/- has been grouped in their consolidated ledger of debtors maintained in Tally Accounting Software as Rs. 54,37,04,041/- received from City Center-1 Project and Rs. 19,21,61,061/- from Shahibaug Project. Now, as per the project-wise summary attached to this annexure, the said Rs. 54,37,04,041/- received from CC-1 Project has a bifurcation of Rs. 60,08,771/- towards service tax reversal entries done during the year due to cancellation debited to debtors' ledger; and Rs. 2,00,000/- being internal account cross entry; leaving the net receipts from the clients for the said CC-1 project as Rs. 53,74,95,270/-. As per Page-1 of the reconciliation sheet attached to the annexure for the same CC-1 Project, the said Rs. 53,74,95,270/- included Rs. 1,97,24,300/- received from the clients after the BU permission received in October, 2014 thus leaving the taxable receipts as Rs. 51,77,70,970/-. Again, out of this, a sum of Rs. 20,25,47,787/- is deductible against cancellation and cheque return from previous receipts worked out as per the rate of service tax prevailed during the respective periods, thus leaving the net receipt as Rs. 31,52,23,183/-. Page-2 of the reconciliation sheet attached to the annexure for the same CC-1 Project, reflects the comparison of the figures appearing as per their books of account and as per the ST-3 returns filed by them for the corresponding month. The Gross Receipt appearing in this page is the amount shown as taxable receipt less cancellation amount with the same prevailing ST rate and cheque return amounts, both of which appearing in Page-1. Similarly, value shown as Rule 6(3) reversal is the sum of ST reversed on cancellation at earlier prevailing ST rate. This page shows that we had actually declared a higher ST-3 value of Rs. 26,67,051/- and have made an excess ST payment of Rs. 98,894/-.

41.2.3. Similar, consolidated summary chart, project summary chart, Page-1 and Page-2 of reconciliation chart have been prepared for Shahibaug Project, which also form part of the same Annexure-2. As per consolidated summary, Shahibaug Project had a total receipt of Rs. 19,21,61,061/-. As per project summary, there is a service tax reversal of Rs. 6,40,000/- towards cheque return/cancellation, thus leaving the net receipt for this project is the same as Rs. 19,15,21,060/-. While Page-1 of the reconciliation chart shows the break-up of receipts, cancellation, cheque return, etc., Page-2 of the project reconciliation chart shows a minor difference value of Rs. 3,54,041/- and short-payment of ST of Rs. 13,128/- between the taxable

value declared in their books of account and ST-3 returns. However, consolidated reconciliation sheet for the two projects has also been similarly prepared in two pages, which also form part of the same Annexure-2, showing the fact that they had paid an excess amount of ST of Rs. 61,819/-.

41.2.4. To sum up, they stated and submitted that the aforesaid bifurcation and reconciliation charts attached as Annexure-2 (Colly) irrefutably establish the fact that the amount of Rs. 30,97,68,004/- shown in the SCN dated 13.09.2019 towards receipt as sundry debtors for the FY 2014-15 are fully and diligently accounted for in their official books of account, and they have properly and assiduously discharged service tax liability on whatever the amounts received towards provision of taxable services to their clients, besides filed ST-3 returns in respect of all such payments, in accordance with the provisions of Finance Act, 1994 and the rules framed thereunder. Thus, the above facts which are brought out from the official accounts conclusively prove that there is absolutely no substance in the aforesaid demand of service tax as they have already discharged the same as stated by the director during the course of recording his statement by the investigating officers. They, therefore, requested to drop the above demand for the FY 2014-15 also.

41.3.1. *Sundry Debtors: 2015-16*:- They submitted that based on the aforesaid DGCEI SCN dated 16.02.2017 and the IT Assessment Order dated 29.12.2016 (now struck down by the CIT-Appeals), jurisdictional officers had called for details of similar advances and receipts during the subsequent FYs from the IT Department. Para-6 of the SCN states that the Assistant Commissioner of Income Tax, Circular 1(1)(2), Ahmedabad vide his letter No. ACIT/Cir.2(1)(2)/Jas Infra Space/2019-20 dated 11.04.2019 had informed the service tax department that their case was not selected for scrutiny for the AY 2016-17 (FY 2015-16) and therefore, no assessment order was passed during this year. The SCN states that in the absence of such AO, department has sought for similar details of advances from them, which they provided on 07.05.2019, 28.05.2019 and 29.05.2019. Thus, it is a fact on record that the IT department had no objections or scrutiny of their accounts for the FY 2015-16 and the subject demand was raised purely on the basis of details supplied by them to the department. They submitted that since the original action has been evidently initiated against them on the basis of an addition of income ordered by the IT department for the FY 2013-14 and 2014-15 (though the former was subsequently struck down by CIT-A), and since the said IT department has no issues, scrutiny or objections towards similar further receipts reported in their books of account during the FY 2015-16, there is no reason for the department to artificially construct a fake service tax liability on the basis of hypothesis or presumptions. On this ground alone, the demand for the FY 2015-16 will not sustain.

41.3.2. Notwithstanding their above submissions, they stated that they have already discharged the service tax, wherever applicable, on such advances received from their members during the FY 2015-16. As per the SCN dated 13.09.2019, their receipts from sundry debtors during 2015-16 was Rs. 147,73,30,545/- whereupon service tax liability of Rs. 6,42,63,879/- has been proposed. In this regard, their detailed calculation charts are attached herewith as ANNEXURE-3 (COLLY). As per the main summary of this annexure, the aforesaid total receipt of Rs. 147,73,30,545/- has been grouped in their consolidated ledger of debtors maintained in Tally Accounting Software as Rs. 126,44,36,874/- received from their City Center-1 Project and Rs. 21,28,93,671/- from Shahibaug Project. Now, as per the project-wise summary attached to this annexure, the said Rs. 126,44,36,874/- received from CC-1 Project has a bifurcation of Rs. 36,74,45,019/- as the value of sale recognized under percentage method and sale deed done during the year; Rs. 10,07,616/- being service tax payable and the service tax reversal due to cancellation debited to debtors' ledger; Rs. 0 towards other sales income; Rs. 35,638/- towards kasar round off; Rs. 2,41,061/- being internal account transfer; leaving the net receipts from the clients as Rs. 89,57,07,539/-. As per Page-1 of the reconciliation sheet attached to the annexure for the same CC-1 Project, the said Rs. 89,57,07,539/- included Rs. 18,53,79,627/- received from the clients after the BU permission received in October, 2014 thus leaving the taxable receipts as Rs. 71,03,27,912/-. Again, out of this, a sum of Rs. 22,85,76,327/- is deductible against cancellation and cheque return from previous receipts worked out as per the rate of service tax prevailed during the respective periods, thus leaving the net receipt as Rs. 48,17,51,585/-. Page-2 of the reconciliation sheet attached to the annexure for the same CC-1 Project, reflects the comparison of the figures appearing as per books of account and as per the ST-3 returns filed for the corresponding month. The Gross Receipt appearing in this page is the amount shown as taxable receipt less cancellation amount with the same prevailing ST rate and cheque return amounts, both of which appearing in Page-1. Similarly, value shown as Rule 6(3) reversal is the sum of ST reversed on cancellation at earlier prevailing ST rate. This page shows the difference where they declared a higher ST-3 value of Rs. 2,63,980/- with excess ST payment of Rs. 9,473/-.

41.3.3. Similar, consolidated summary chart, project summary chart, Page-1 and Page-2 of reconciliation chart have been prepared for Shahibaug Project, which also form part of the same Annexure-2. As per consolidated summary, Shahibaug Project had a total receipt of Rs. 21,28,93,671/-. As per project summary chart, no sales recognized with sales deed done, no service tax payable or reversible, no other income etc., the net receipt for this project is the same as Rs. 21,28,93,671/-. While Page-1 of the reconciliation chart shows the break-up of receipts, cancellation, cheque return, etc., Page-2 of the project reconciliation chart shows no difference between the taxable value declared in their books of account and ST-3 returns. Further, consolidated reconciliation sheet has also been similarly prepared in two pages, which

also form part of the same Annexure-2, showing the same aforesaid excess declared value of Rs. 2,63,980/- with excess ST payment of Rs. 9,473/-.

41.3.4. To sum up, they stated that the aforesaid bifurcation and reconciliation charts attached as Annexure-3 (Colly) irrefutably establish the fact that the amount of Rs. 147,73,30,545/- shown in the SCN dated 13.09.2019 towards receipt as sundry debtors for the FY 2015-16 are fully and diligently accounted for in their official books of account, and they have properly and assiduously discharged their service tax liability on whatever the amounts received by them towards provision of taxable services to their clients, besides filed ST-3 returns in respect of all such payments, in accordance with the provisions of Finance Act, 1994 and the rules framed thereunder. Thus, the above facts which are brought out from their official accounts conclusively prove that there is absolutely no substance in the aforesaid demand of service tax as they have already discharged the same as stated by their director during the course of recording his statement by the investigating officers. They, therefore, requested to drop the above demand for the FY 2015-16 also.

41.4.1. *Sundry Debtors: 2016-17*:- They stated that the DGCEI SCN dated 16.02.2017 and Commissioner's SCN dated 13.09.2019 were issued for the FYs 2013-14 and 2014-15, respectively on the basis of IT Assessment Orders referred supra. Apart from the postulation presented by the IT Assessment Officers that some figures were required to be included into their taxable income, there was absolutely no evidence to demand any service tax. Even the so-called Assessment Orders were summarily struck down by the appellate authorities for two FYs, 2012-13 and 2013-14, and hence no demand will survive on such orders already declared null and void. Now, coming to FY, 2016-17, they submitted that the service tax officers had called for the details of advance receipts received by them from their clients, and accordingly theyhave provided them the data. During the course of recording the statement of their director on 20.05.2019, he had categorically stated before the investigating officers that they have properly discharged service tax on all such advances received from their clients/members. Nevertheless, the officers have not found it necessary to verify the records to ascertain their claim regarding payment of service tax, and instead mischievously forced upon them the aforesaid SCN seeking recovery of huge amounts of service tax. They state that the SCN deserves to be dropped on these grounds of alone.

41.4.2. They also invited attention to Para-19 of the SCN dated 13.09.2019 which quotes a letter F.No. ACIT/Cir.2(1)(2)/Jas Infra Space/2019-20 dated 11.04.2019 from Assistant Commissioner of Income Tax, Ahmedabad stating that the Assessment Order for the AY 2017-18 (FY 2016-17) would be issued on 31.12.2019. They also invited attention to Para 43(v) of the SCN which seeks recovery of any additional service tax in pursuance of the assessment orders that would be passed by the Income Tax department in due course. On the

one hand, they submitted that such imaginary demand or fictional tax liability can never survive under the law. On this ground alone, the demand becomes illegal and needs to be dropped. Meanwhile, they submitted a copy of the Assessment Order No. ITBA/AST/S/143(3)/2019-20/1023339901(1) dated 28.12.2019 passed by the Income Tax department, as ANNEXURE-4, wherein no additions have been proposed, but accepted the returns filed by them. Since the entire demand has been constructed by the department on a nullified Assessment Order dated 23.12.2016, and since the department is not in possession of any other evidence to levy service tax on any amounts of their receipts, they requested to drop the demand *in limine*.

41.4.3. Without prejudice to the above submissions, they stated that they have already discharged the service tax, wherever applicable, on such advances received from their members during the FY 2016-17. As per the SCN dated 13.09.2019, their receipts from sundry debtors during 2016-17 was Rs. 110,99,90,408/- whereupon service tax liability of Rs. 4,99,49,568/- has been proposed. In this regard, their detailed calculation charts are attached as ANNEXURE-5 (COLLY). As per the consolidated summary of this annexure, the aforesaid total receipt of Rs. 110,99,90,408/- has been grouped in their consolidated ledger of debtors maintained in Tally Accounting Software as Rs. 84,31,44,238/- received from their City Center-1 Project and Rs. 26,68,46,169/- from Shahibaug Project. Now, as per the project-wise summary attached to this annexure, the said Rs. 84,31,44,238/- received from CC-1 Project has a bifurcation of Rs. 21,89,51,442/- as the value of sale recognized under percentage method and sale deed done during the year; Rs. 0 towards other sales income; Rs. 15,804/- towards kasar round off; Rs. 9,06,862/- being internal account transfers; leaving the net receipts from the clients as Rs. 62,41,76,992/-. As per Page-1 of the reconciliation sheet attached to the annexure for the same CC-1 Project, the said Rs. 62,41,76,992/- included Rs. 25,23,51,511/- received from the clients after the BU permission received in October, 2014 thus leaving the taxable receipts as Rs. 37,03,60,557/-. Again, out of this, a sum of Rs. 19,64,84,745/- is deductible against cancellation and cheque return from previous receipts worked out as per the rate of service tax prevailed during the respective periods, thus leaving the net receipt as Rs. 18,59,80,039/-. Page-2 of the reconciliation sheet attached to the annexure for the same CC-1 Project, reflects the comparison of the figures appearing as per their books of account and as per the ST-3 returns filed by them for the corresponding month. The Gross Receipt appearing in this page is the amount shown as taxable receipt less cancellation amount with the same prevailing ST rate and cheque return amounts, both of which appearing in Page-1. Similarly, value shown as Rule 6(3) reversal is the sum of ST reversed on cancellation at earlier prevailing ST rate. The final comparison shows the difference of a meagre Rs. 671/- declared less in the ST-3 return involving short payment of service tax of just Rs. 30/-.

41.4.4. Similar, consolidated summary chart, project summary chart, Page-1 and Page-2 of reconciliation chart have been prepared for Shahibaug Project, which also form part of the

same Annexure-5. As per consolidated summary, Shahibaug Project had a total receipt of Rs. 26,68,46,169/-. As per the project-wise summary attached to this annexure, the said Rs. 26,68,46,169/- received from Shahibaug Project has a bifurcation of Rs. 12,44,00,000/- as the value of sale recognized under percentage method and sale deed done during the year; Rs. 138122/- towards other sales income; leaving the net receipts from the clients as Rs. 14,25,84,291/-. As per the month-wise reconciliation of gross receipts, non-taxable receipts after BU permission, deductions on account of cheque returns and cancellations, reversal of pro-rata service tax against cancellation payments, etc., the net difference of value declared in their official books of account and the ST-3 returns make no difference at all. Thus, the consolidated difference of value and service tax declared in books of account and ST-3 returns remained the aforesaid Rs. 671/- and Rs. 30/- respectively only.

41.4.5. To sum up, they stated and submitted that the aforesaid bifurcation and reconciliation charts attached as Annexure-5 (Colly) irrefutably establish the fact that the amount of Rs. 110,99,90,408/- shown in the SCN dated 13.09.2019 towards receipt as sundry debtors for the FY 2016-17 are fully and diligently accounted for in their official books of account, and they have properly and assiduously discharged their service tax liability on whatever the amounts received by them towards provision of taxable services to their clients, besides filed ST-3 returns in respect of all such payments, in accordance with the provisions of Finance Act, 1994 and the rules framed thereunder. Thus, the above facts which are brought out from their official accounts conclusively prove that there is absolutely no substance in the aforesaid demand of service tax as they have already discharged the same as stated by their director during the course of recording his statement by the investigating officers. They, therefore, requested to drop the above demand *per se* for the FY 2016-17 also.

41.5.1. *Sundry Debtors: 2017-18*:- They submitted that based on the aforesaid DGCEI SCN dated 16.02.2017 and the IT Assessment Order dated 29.12.2016 (now struck down by the CIT-Appeals), jurisdictional officers had called for details of similar advances and receipts during the subsequent FYs from the IT Department. Para-6 of the SCN states that the Assistant Commissioner of Income Tax, Circular 1(1)(2), Ahmedabad vide his letter No. ACIT/Cir.2(1)(2)/Jas Infra Space/2019-20 dated 11.04.2019 had informed the service tax department that the CASS cycle has not been run for the AY 2018-19 (FY 2017-18) and therefore, it is not known whether their case for FY 2017-18 would be selected or otherwise. The SCN states that in the absence of such AO, department has sought for similar details of advances from them, which they have provided on 07.05.2019, 28.05.2019 and 29.05.2019. Thus, it is a fact on record that there was no inputs or assessment orders from Income Tax for FY 2017-18 and the subject demand was raised purely on the basis of details supplied by them to the department. They submitted that since the original action has been evidently initiated against them on the basis of an addition of income ordered by the IT department for the FY

2013-14 and 2014-15 (though such orders for FYs 2012-13 and 2013-14 were subsequently struck down by CIT-A), and since the said IT department has not reported any issues, scrutiny or objections towards similar further receipts reported in their books of account during the FY 2017-18, there is no reason for the department to artificially construct a fake service tax liability on the basis of hypothesis or presumptions. On this ground alone, the demand for the FY 2017-18 will not sustain.

41.5.2. Without prejudice to the above submissions, they stated that they have already discharged the service tax, wherever applicable, on such advances received from their members during the FY 2017-18. As per the SCN dated 13.09.2019, their receipts from sundry debtors during the first three months of FY 2016-17 was Rs. 85,98,23,675/- whereupon service tax liability of Rs. 3,86,92,065/- has been proposed. In this regard, their detailed calculation charts are attached as ANNEXURE-6 (COLLY). As per the consolidated summary of this annexure, the aforesaid total receipt of Rs. 85,98,23,675/- has been grouped in their consolidated ledger of debtors maintained in Tally Accounting Software as Rs. 32,62,86,759/- received from their City Center-1 Project and Rs. 53,35,36,916/- from Shahibaug Project. Now, as per the project-wise summary attached to this annexure, the said Rs. 32,62,86,759/- received from CC-1 Project has a bifurcation of Rs. 6,35,44,540/- as the value of sale recognized under percentage method and sale deed done during the year; Rs. 2,128/- towards kasar round off; leaving the net receipts from the clients as Rs. 26,27,40,090/-. Similarly, the project-wise summary of Shahibaug Project has a bifurcation of Rs. 35,10,00,000/-, leaving the net receipts from the clients as Rs. 18,25,36,916/-. The reconciliation chart of gross receipts, non-taxable receipts after BU permission, cancellation and cheque return, gross service tax receipts and service tax payments as per books of account and as per ST-3 returns etc. are also worked out in the same aforesaid manner, which shows a nominal difference of Rs. 6,61,627/- and Rs. 29,773/- towards taxable value and service tax amount, respectively. If these debit differences are set off against the excess payment of service tax made during the previous FYs, even this meagre difference will be wiped off.

41.5.3. To sum up, they submitted that the aforesaid bifurcation and reconciliation charts attached as Annexure-6 (Colly) irrefutably establish the fact that the amount of Rs. 85,98,23,675/- shown in the SCN dated 13.09.2019 towards receipt as sundry debtors for the FY 2017-18 are fully and diligently accounted for in their official books of account, and they have properly and assiduously discharged their service tax liability on whatever the amounts received by them towards provision of taxable services to their clients, besides filed ST-3 returns in respect of all such payments, in accordance with the provisions of Finance Act, 1994 and the rules framed thereunder. Thus, the above facts which are brought out from their official accounts conclusively prove that there is absolutely no substance in the aforesaid demand of service tax as they have already discharged the same as stated by their director during the

course of recording his statement by the investigating officers. They, therefore, requested to drop the above demand *per se* for the FY 2017-18 (till June, 2017) also.

42. *Addition of Income towards Unsecured Loans*: They stated that while the major part of the demand was built upon the aforesaid surmises of receipts from sundry debtors, which has no truth or substance, the next big issue on which substantial amount service tax demand has been worked out in the subject SCNs is on the receipts declared by them in their books of account as 'Unsecured Loans". As already mentioned earlier, the demand for FY 2013-14 covered under SCN dated 16.02.2017 has also been worked out on the basis of Income Tax Assessment Order dated 23.12.2016 for the Assessment Year 2014-15 (FY 2013-14) and the subsequent demand for FY 2014-15 has been similarly worked out as per another Income Tax Assessment Order dated 29.12.2017 for AY 2015-16 (FY 2014-15), whereupon the Income Tax department had made certain additions to their taxable income solely for the purpose of the levy of Income Tax. It is stated that since they have already explained the factual and legal error committed by the department in determining service tax liability under Finance Act, 1994 merely on the basis of assessment orders issued under IT Act, 1961 and that too without any corroborative evidence or factual verification, etc., they are not repeating the same here for the sake of brevity, and therefore, they would discuss as to why service tax cannot be demanded on the addition ordered by the IT department.

42.1.1. *Unsecured Loan: 2013-14*: - DGCEI SCN dated 16.02.2017 seeks to recover service tax amounting to Rs. 53,50,290/- on an addition of Rs. 14,42,90,465/- ordered under IT Assessment Order dated 23.12.2016. This is the aggregate of the amount declared by them as unsecured loan from following five parties: -

Sl	Name of party (M/s.)	Amount of unsecured loan
1	Hannah Enterprises P. Ltd.	Rs. 14,14,291
2	Boaston Tradelinks P. Ltd.	Rs. 2,87,50,414
3	Biraj Maniplex P Ltd.	Rs. 2,64,81,455
4	Vansh Glass Industries P. Ltd.	Rs. 3,36,84,947
5	Sawaca Business Machines Ltd.	Rs. 5,39,59,358
Total		Rs. 14,42,90,465

42.1.2. They stated that a simple perusal of the aforesaid AO dated 23.12.2016 would reveal the reasons for adding the above income. As per Para-6 of the AO, it is evidently clear that they had declared a total unsecured loan of Rs. 168,91,44,279/- during the AY 2014-15 (FY 2013-14) from various parties which included inter-corporate deposits, shareholders and relatives. Out of this, AO ordered addition of only Rs. 14,42,90,465/-, viz. merely 8.5% of the total unsecured loan declared by them. Further perusal of the AO would indicate that the said addition was made on the sole reason that they could not prove the identity of the person, genuineness of transaction and credit worthiness of the depositor. They further submitted that

they had filed an appeal against the AO before CIT (Appeals) who vide order dated 11.12.2017 (referred supra) upheld the assessment order on the sole ground that the capacity of the lender is not proved in these cases. Based on these observations and additions, DGCEI SCN proposed to levy service tax on the said amount of Rs. 14,42,90,465/- solely on the ground mentioned in Para 5.6.2 that this amount is nothing but the advances from their prospective customers which they accounted as unsecured loans to avoid service tax liability. They strongly refuted this allegation and asked as to why the department has considered only this 8.5% of the total loan amount as their "mis-declared taxable receipt from the clients" and why the remaining 91.5% of the unsecured loan amounts were considered as genuine loans? One the one hand, Para 5.8 of the SCN says that their only source of income is receipt of advance from customers towards construction service and hence they are bound to discharge service tax on all additions ordered by Income Tax department. Here again, they repeatedthe question as to why the department did not consider the remaining 91.5% of the loan amount as "receipt of advance from their customers towards construction service"? Theystated that their submission would expose the fabricated nature of the demand of service tax.

42.1.3. Further, they stated and submitted that except drawing an irrational and imaginary logic, DGCEI has not attempted to conduct any investigation to ascertain whether the addition ordered by the Income Tax authorities under IT Act, 1961 would actually qualify to be the taxable income in terms of the Finance Act, 1994 or otherwise. It is needless to state that service tax could be levied only on the gross receipt flowing from the recipient of the taxable service to the provider of such service as a consideration towards the provision of such taxable service. In the instant case, SCN does not name any service recipients who have allegedly paid such amounts in the guise of unsecured loans. Since they are providing construction service which is tangible and involves sale and transfer of immovable property, etc. department ought to have examined their records to investigate any additional receipts by the from their clients. They stated that the SCN and the demand issued without any such investigation into the basic tenets of taxability under Finance Act, 1994 cannot stand the test of law and hence deserves to be dropped.

42.2.1. *Unsecured Loan: 2014-15*: - M/s. Jas state that on the basis of the aforesaid DGCEI SCN dated 16.02.2017 and taking shelter of a further Income Tax Assessment Order dated 29.12.2017 passed in respect of AY 2015-16 (FY 2014-15), department issued a subsequent SCN dated 13.09.2019 seeking recovery of service tax of Rs. 1,79,39,045/- on their declared receipt of Rs. 48,37,93,014/- declared as unsecured loans for FY 2014-15. Here again, both the AO and SCN categorically states that during the FY 2014-15, they had received total unsecured loan of Rs. 149.66 Crores, out of which the AO ordered addition of only Rs. 48,37,93,014/- which is nearly 32% or one-third of the total loan amount. Out of this, Rs. 18,01,93,895/- is attributed towards 14 companies listed in Table-1 of the SCN while Rs.

26,47,15,579/- involves the total amount of loans from the same 05 parties who were named in the previous AO dated 23.12.2016 for AY 2014-15 (FY 2013-14; SCN dated 16.02.2017). Out of the remaining amount, a sum of Rs. 3,84,64,133/- is attributed towards IT addition as the interest on the above loan amounts (Rs. 93,12,893/- + Rs. 2,91,51,240/-) and the balance Rs. 4,19,407/- is attributed towards IT addition as the interest on delayed payment of TDS.

42.2.2. First of all, they stated that the SCN was issued without application of mind or even the basic examination regarding applicability of service tax. The SCN utterly fails to explain as to how service tax is leviable on the IT additions in the form of interest paid on unsecured loans or on the interest on delayed payment of TDS. They, therefore, stated that out of the aforesaid total addition of Rs. 48,37,93,014/-, the interest components on loan and TDS involving total Rs. 3,88,83,540/- will outright fall outside the purview of service tax law.

42.2.3. Out of the balance amount, a sum of Rs. 18,01,93,895/- was added by IT department on the ground that these amounts were received from 14 different companies which were declared by Govt. of India as shell companies, besides they could not prove their identity and authenticity of transaction before IT department. As already stated above, this amount is part of the total unsecured loan of Rs. 149.66 Crores received by them from various sources during FY 2014-15. They stated that the term "shell companies" has relevance only for the Income Tax and Money-Laundering Act, and it has nothing to do with service tax law. No law can infer that all transactions carried out by a shell company will be illegitimate. In other words, shell companies are being used for both legitimate and illegitimate transactions during the course of layering and laundering of black money. In their case, they stated that they have produced all necessary records before IT authorities to prove that theyhad genuinely received loan from the said 14 companies through account payee cheques and that theyhad also paid them applicable interest amounts. Irrespective of whether the IT authorities accept or reject their submission, they stated that such decision has no impact over their liability to service tax under Finance Act, 1994. Since the SCN does not state about any evidence even remotely to connect these unsecured loan receipts with any taxable services provided by them, or they received the same as taxable income from their service recipients towards provision of any taxable services, etc., there is no valid or legal grounds to demand service tax on such additions.

42.2.4. Similarly, a sum of Rs. 26,47,15,579/- was added by IT AO as these amounts were shown to have received from the same 05 parties against whom addition was ordered in the previous FY 2013-14 as covered in SCN dated 16.02.2017. Therefore, they reiterated the same submissions here which they have made in the foregoing para, in reply to SCN dated 16.02.2017 and stated that for the sake of brevity, they are not repeating the same submissions at length.

42.2.5. In view of the above factual and legal position, they requested to drop the entire demand of service tax on the aforesaid amount of Rs. 48,37,93,014/- for the FY 2014-15 which involves unsecured loan from the 14 companies and 05 old parties besides interest paid against such unsecured loans and the interest paid on delayed payment of TDS.

42.3. *Unsecured Loan: 2015-16*: - They stated that the SCN dated 13.09.2019 seeks recovery of service tax of Rs. 3,83,08,672/- on the unsecured loan amount of Rs. 88,06,59,148/- declared in their books of accounts. They stated that the aforesaid demands for 2013-14 and 2014-15 was exclusively based on the two IT Assessment Orders dated 23.12.2016 and 29.12.2017 as discussed above. However, Para-6 of the SCN states that the Assistant Commissioner of Income Tax, Circular 1(1)(2), Ahmedabad vide his letter No. ACIT/Cir.2(1)(2)/Jas Infra Space/2019-20 dated 11.04.2019 had informed the service tax department that their case was not selected for scrutiny for the AY 2016-17 (FY 2015-16) and therefore, no assessment order was passed during this year. The SCN states that in the absence of such AO, department has sought for similar details of unsecured loan from them, which they have provided on 07.05.2019, 28.05.2019 and 29.05.2019. Thus, it is a fact on record that the IT department had no objections or scrutiny of their accounts for the FY 2015-16 and the subject demand was raised purely on the basis of details supplied by them to the department. They submitted that since the original action has been evidently initiated against them on the basis of an addition of income ordered by the IT department for the FY 2013-14 and 2014-15, and since the said IT department has no issues, scrutiny or objections towards similar further receipts reported in their books of account during the FY 2015-16, there is no reason for the department to artificially construct a fake service tax liability on the basis of hypothesis or presumptions. They claimed that on this ground alone, the demand for the FY 2015-16 will not sustain. Since the amounts declared in their books of account as unsecured loan for 2015-16 have not been disputed by IT department, and since SCN dated 13.09.2019 does not speak about even any remote evidences to establish any link between such unsecured loan amount towards any taxable services, taxable income or service recipients, etc. they requested to drop the said demand for 2015-16.

42.4. *Unsecured Loan: 2016-17*: SCN dated 13.09.2019 seeks recovery of service tax of Rs. 1,79,19,450/- on the unsecured loan amount of Rs. 39,82,09,994/- declared in their books of accounts. They invited attention to Para-19 of the SCN dated 13.09.2019 which quotes a letter F.No. ACIT/Cir.2(1)(2)/Jas Infra Space/2019-20 dated 11.04.2019 from Assistant Commissioner of Income Tax, Ahmedabad stating that the Assessment Order for the AY 2017-18 (FY 2016-17) would be issued on 31.12.2019. They also invited attention to Para 43(v) of the SCN which seeks recovery of any additional service tax in pursuance of the assessment orders that would be passed by the Income Tax department in due course. On the one hand, they submitted that such imaginary demand or fictional tax liability can never survive under the

law, and on this ground alone, the demand becomes illegal and needs to be dropped. Meanwhile, as per the Assessment Order No. ITBA/AST/S/143(3)/2019-20/1023339901(1) dated 28.12.2019 passed by the Income Tax department, already enclosed as Annexure-3 above, wherein no additions have been proposed, but accepted the returns filed by them. Since the amounts declared in their books of account as unsecured loan for 2016-17 have not been disputed by IT department, and since SCN dated 13.09.2019 does not speak about even any remote evidences to establish any link between such unsecured loan amount towards any taxable services, taxable income or service recipients, etc. they requested to drop the said demand for 2016-17.

42.5. *Unsecured Loan: 2017-18*: SCN dated 13.09.2019 seeks recovery of service tax of Rs. 7,03,698/- on the unsecured loan amount of Rs. 1,56,37,740/- declared in their books of accounts. They submitted that based on the aforesaid DGCEI SCN dated 16.02.2017 and the IT Assessment Orders dated 29.12.2016, jurisdictional officers had called for details of similar unsecured loans during the subsequent FYs from the IT Department. Para-6 of the SCN states that the Assistant Commissioner of Income Tax, Circular 1(1)(2), Ahmedabad vide his letter No. ACIT/Cir.2(1)(2)/Jas Infra Space/2019-20 dated 11.04.2019 had informed the service tax department that the CASS cycle has not been run for the AY 2018-19 (FY 2017-18) and therefore, it is not known whether their case for FY 2017-18 would be selected or otherwise. The SCN states that in the absence of such AO, department has sought for similar details of advances from them, which they have provided on 07.05.2019, 28.05.2019 and 29.05.2019. Thus, it is a fact on record that there was no inputs or assessment orders from Income Tax for FY 2017-18 and the subject demand was raised purely on the basis of details supplied by them to the department. They submitted that since the original action has been evidently initiated against them on the basis of an addition of income ordered by the IT department for the FY 2013-14 and 2014-15, and since the said IT department has not reported any issues, scrutiny or objections towards similar further receipts reported in their books of account during the FY 2017-18, there is no reason for the department to artificially construct a fake service tax liability on the basis of hypothesis or presumptions, and claimed that on this ground alone, the demand for the FY 2017-18 will not sustain.

43. *Unaccounted investment in WIP (Work in Progress)*: They stated that the next issue on which substantial amount service tax demand has been worked out in the subject SCNs is on the addition made by IT department towards unaccounted investment in WIP; that as already mentioned earlier, the demand for FY 2013-14 covered under SCN dated 16.02.2017 has also been worked out on the basis of Income Tax Assessment Order dated 23.12.2016 for the Assessment Year 2014-15 (FY 2013-14) and the subsequent demand for FY 2014-15 has been similarly worked out as per another Income Tax Assessment Order dated 29.12.2017 for AY 2015-16 (FY 2014-15); that sincethey have already explained the factual and legal error

committed by the department in determining service tax liability under Finance Act, 1994 merely on the basis of assessment orders issued under IT Act, 1961 and that too without any corroborative evidence or factual verification, etc., they are not repeating the same for the sake of brevity; that nevertheless, they strongly stated that the concept of WIP for service industry and stock in process for manufacturing industry are the concepts applicable to Income Tax assessment purpose, but these concepts have nothing to do with Service Tax levy or liability. They stated that in fact, WIP is the term indicating the value of work/investment made in respect of the unsold units as on the closure date of financial year. WIP is a production and supply-chain management term describing partially finished units awaiting completion. It is a component of the inventory asset account shown in the balance sheet. Subsequently, these costs are transferred to the finished goods accounts and recognized to the costs of sales. On the other hand, service tax is leviable/payable on the day when sales are made/booked fully or partially. In other words, there is no situation where they collect any taxable receipts from their clients and declare such receipts as WIP without payment of service tax. This crucial aspect is conveniently ignored while issuing the subject SCNs on this aspect, and hence they would discuss as to why service tax cannot be demanded on the addition ordered by the IT department.

44.1.1. *Investment in WIP: 2013-14*: DGCEI SCN dated 16.02.2017 seeks to recover service tax amounting to Rs. 3,14,54,342/- on a total value of Rs. 84,82,83,218/-. This value was adopted from the IT Assessment Order dated 23.12.2016. As per the AO, IT department conducted a survey at their premises on 17.10.2013 wherein they impounded a diary showing investment of Rs. 90,63,11,765/- in construction, as against the WIP recorded as on date was Rs. 49,02,35,276/-. Their director had admitted that the balance Rs. 41,60,76,489/- was their unaccounted income during the year. However, while filing their return for AY 2014-15 (FY 2013-14) they offered Rs. 15,88,86,558/- as their income worked out on percentage completion method. On the other hand; AO observed that total revenue/sale was Rs. 267,94,01,400/- and the profit @ 10.21% is Rs. 27,37,58,452/-. Accordingly, AO worked out the WIP as on 31.03.2014 as Rs. 155.61 Crores as against the WIP declared by them as Rs. 71,58,16,790/-, hence the difference of Rs. 84,82,83,218/- was considered as the suppressed investment in WIP.

44.1.2. They stated that however, CIT (Appeals) vide his appellate order dated 11.12.2017 referred supra, had observed that the reverse calculation made by the AO was incorrect; and that the actual difference of WIP was Rs. 41,60,76,489/- which is the difference between the WIP worked from impounded records and the WIP as on the date of survey. A simple perusal of the Assessment Order and Appellate Order would make it abundantly clear that the addition of Rs. 84,82,83,218/- was merely a hypothetic calculation, which had no logical backing. When the CIT (Appeals) has struck down the assessment order by holding that the actual WIP difference was only Rs. 41,60,76,489/-, there is no reason or legal justification for the DGCEI to adopt the nullified value as the taxable value for service tax. Thus, even by

assuming, without admitting, that the unaccounted investment in WIP included unaccounted cash receipts towards advances received from their prospective buyers, as stated by theirDirector before DGCEI on 29.01,2014, then the total demand on this issue should have been limited to the amount of service tax which they had already paid during the investigation as shown in Para 3 of the DGCEI SCN, and therefore they stated that no further service tax is required to be paid by them on this issue and hence request to close the matter.

44.2. *Investment in WIP: 2014-15*: As per Annexure-B to SCN dated 13.09.2019, there is no demand for service tax on this issue for the FY 2014-15.

44.3. *Investment in WIP: 2015-16*: SCN dated 13.09.2019 seeks recovery of service tax of Rs. 50,45,395/- on WIP investment of Rs. 11,59,86,091/- declared in their books of accounts during FY 2015-16. Meanwhile, they stated that the aforesaid demands for 2013-14 was exclusively based on the IT Assessment Order dated 23.12.2016 as discussed above. However, Para-6 of the SCN states that the Assistant Commissioner of Income Tax, Circular 1(1)(2), Ahmedabad vide his letter No. ACIT/Cir.2(1)(2)/Jas Infra Space/2019-20 dated 11.04.2019 had informed the service tax department that their case was not selected for scrutiny for the AY 2016-17 (FY 2015-16) and therefore, no assessment order was passed during this year. The SCN states that in the absence of such AO, department has sought for similar details of unsecured loan from they, which they have provided on 07.05.2019, 28.05.2019 and 29.05.2019. Thus, it is a fact on record that the IT department had no objections or scrutiny of their accounts for the FY 2015-16 and the subject demand was raised purely on the basis of details supplied by them to the department. They submitted that since the original action has been evidently initiated against them on the basis of an addition of income ordered by the IT department for the FY 2013-14, and since the said IT department has no issues, scrutiny or objections towards similar further receipts reported in their books of account during the FY 2015-16, there is no reason for the department to artificially construct a fake service tax liability on the basis of hypothesis or presumptions, and on this ground alone, the demand for the FY 2015-16 will not sustain. Since the amounts declared in their books of account as WIP investment for 2015-16 have not been disputed by IT department, and since SCN dated 13.09.2019 does not speak about even any remote evidences to establish any link between such WIP investment amount towards any taxable services, taxable income or service recipients, etc. they requested to drop the said demand for 2015-16.

44.4. *Investment in WIP: 2016-17*: SCN dated 13.09.2019 seeks recovery of service tax of Rs. 24,07,329/- on the WIP investment of Rs. 5,34,96,210/- declared in their books of accounts during FY 2016-17. They invited attention to Para-19 of the SCN dated 13.09.2019 which quotes a letter F.No. ACIT/Cir.2(1)(2)/Jas Infra Space/2019-20 dated 11.04.2019 from Assistant Commissioner of Income Tax, Ahmedabad stating that the Assessment Order for the

AY 2017-18 (FY 2016-17) would be issued on 31.12.2019. They also invited kind attention to Para 43(v) of the SCN which seeks recovery of any additional service tax in pursuance of the assessment orders that would be passed by the Income Tax department in due course. On the one hand, they submitted that such imaginary demand or fictional tax liability can never survive under the law, and on this ground alone, the demand becomes illegal and needs to be dropped. Meanwhile, as per the Assessment Order No. ITBA/AST/S/143(3)/2019-20/1023339901(1) dated 28.12.2019 passed by the Income Tax department, already enclosed earlier above, wherein no additions have been proposed, but accepted the returns filed by them. Since the amounts declared in their books of account as WIP investment for 2016-17 have not been disputed by IT department, and since SCN dated 13.09.2019 does not speak about even any remote evidences to establish any link between such unsecured loan amount towards any taxable services, taxable income or service recipients, etc. they requested to drop the said demand for 2016-17.

44.5. *Investment in WIP: 2017-18*: As per Annexure-B to SCN dated 13.09.2019, there is no demand for service tax on this issue for the FY 2014-15.

45. *Short-payment of ST on members' advance*: - They pointed out that the DGCEI SCN dated 16.02.2017 seeks to recover Service Tax of Rs. 1,62,021/- being the amount short-paid by them during the period from April, 2014 to September, 2015 worked out on reconciliation of the figures reported by them in the corresponding ST-3 returns vis-à-vis the details of members' advance amounts furnished by their director while recording his statement by the investigating officers. In this connection, they stated that a simple perusal of the calculation charts available in Para 6.4 and 9.2 of the said SCN would show that the alleged difference was a sequel to the aggregate ST payments made by them during the period from April, 2013 to March, 2016. Further, they invited attention to the reconciliation charts attached to Para-7 of this submission wherein month-wise reconciliation of the service tax payments and the gross/net taxable receipts were submitted. If these detailed charts for the various FYs are considered, the net effect is that they have in fact made excess service tax payment of Rs. 61,000/-. They stated that even such excess/shortage difference is attributed to various bonafide practical reasons such as the reversal of service tax made due to cheque return and cancellation of bookings by their clients with corresponding transactions pertained to different periods when different rates of service tax was prevailing, rounding-off figures of calculation, percentage method of working out sales figures for official books of account, etc. all of which are beyond the human control and, therefore, requested to consider these facts while dealing with this demand.

46.1 *Reversal of Cenvat Credit under Rule 6(3)(i):* - M/s. Jas stated that the next issue involved in the SCN is a demand of service tax in lieu of reversal of Cenvat Credit under Rule

6(3)(i) against common inputs/input services utilized by them for providing taxable and exempted output services. They stated that they had two projects carried out during the relevant period, viz. Citi Centre Project-1 and Shahibaug Project. While they received BU on CC-1 project in October, 2014, BU for Shahibaug project was received in October, 2016. In this connection, the DGCEI SCN dated 16.02.2017 seeks recovery of service tax totalling Rs. 1,39,20,639/- on a total value of Rs. 20,48,22,067/- received by them during the period from November, 2014 to March, 2016 in respect of CC-1 project being the rate of service tax applicable under Rule 6(3)(b)(i) of CCR, 2004. Similarly, SCN dated 03.10.2019 issued by the Additional Commissioner, CGST Ahmedabad-North seeks recovery of service tax of Rs. 1,50,16,656/- on a total value of Rs. 21,45,23,662/- received by them during 2016-17 and 2017-18 (Till June, 2017) in respect of both CC-1 (Rs. 21,07,23,662/-) and Shahibaug Projects (Rs. 38,00,000). Thus the total demand of service tax under Rule 6(3)(i) is for Rs. 2,89,37,295/-.

46.2. In this connection, they requested attention to the provisions of Rule 6(3)(b)(i) which reads as: -

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

46.3. Since the aforesaid amend was brought into CCR on 01.04.2016 vide Notification No. 23/2016-CE(NT) dated 01.04.2016, they have worked out the maximum amount payable in this regard, i.e. the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period, which is attached as ANNEXURE-7which covers the period mentioned in SCN dated 03.10.2019. As per this annexure, the opening balance as on 01.04.2016 was NIL in their accounts and the total input credit availed during the FY 2016-17 was only total Rs. 3,63,054/-. Thus, in terms of the aforesaid provisions of Rule 6(3)(b)(i) of CCR, 2004 they have to pay only Rs. 3,63,054/- for 2016-17 which is the maximum limit prescribed under the rules. Similarly, during the FY 2017-18 they had an opening balance of Rs. 3,63,054/- plus credit availment of Rs. 20,095/-.

46.4. As regards the period prior to 2016-17 as covered in DGCEI SCN dated 16.02.2017, they stated that the cenvat rules allow them to reverse the proportionate amount of credit involved in exempted services by working out the same in terms of the formula prescribed under Rule 6(3A) of CCR, 2004. Accordingly, they have worked out such details which is attached as ANNEXURE-8 which indicate that the total cenvat credit availed involved on theirexempted services during this period was only Rs. 8,02,119/-. In this connection, they brought to notice that maintaining separate records for taxable and exempted services, as

provided under Rule 6(3) is impossible for construction services in view of the fact that till the receipt of BU permission, there are no exempted services in their case. Exempted services will come into picture only when they receive BU permission. Since the date of BU permission and the quantum of services/sales to be effected after such BU cannot be foreseen till the BU date, they have no other option left but to avail all input credit on goods and services. Therefore, in order to comply with the provisions of reversal under Rule 6(3), the only option left to them is to compute proportionate amount of service tax involved in such exempted services after provision of such service. Accordingly, they have worked out such proportionate amount as shown in the annexure.

46.5. In this connection, they stated and various appellate authorities including the Hon'ble Apex Court have settled the principle of law that the reversal of ineligible cenvat credit would be the same as non-availment of cenvat credit, and cite a few of such decisions below: -

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

47. <u>*Case Citations*</u>:- Meanwhile, they invited attention to the following case laws which irrefutably support their aforesaid defence submissions and categorically nullify the demands raised on the basis of income tax assessment orders.

(i) In the case of *Deltax Enterprises cited at 2018 (10) GSTL 392 (Tri Del)*, Hon'ble Tribunal held that service tax liability cannot be fastened on unidentified service for unidentified service recipient. Tribunal has observed in this case as:

> *"4.....We note that the appellants categorically asserted that they did not provide any other service other than those, the details of which have been submitted to the lower authorities. The Revenue also could not point out excess receipt on these contracts or the taxable service which gave them the consideration escaping the tax. In the absence of specific allegation with reference to the nature of service or the service recipient it is not tenable to hold an income of the appellant even if it is admitted to be an actual income, as consideration for a taxable service. The minimum requirement to tax an assessee for service tax is to identify the nature of their taxable service along with the recipient of such service. In the present case all identified contracts for the identified service recipients have been examined and concluded by the lower authority. No service tax liability can be fastened on unidentified service for unidentified service recipient. There is no provision for such summary assumption even under Section 72 of the Finance Act, 1994. Admittedly, the said*

section provides for arriving at the taxable value to be based on the Assessing Officer's best judgment in case where the appellant fails to furnish return under Section 70 or fails to assess the tax in accordance with Finance Act, 1994. In the present case the appellants did file returns under Section 70 and also made available all the contracts on which service tax liability will arise for them. As such, we find application of Section 72 cannot be extended based solely on the income tax return without identifying the specific taxable service or service recipient.

(ii) In the case of *Synergy Audio Visual Workshop P. Ltd. – 2008 (10) STR 578 (Tri Bang)* it is observed that no demand of service tax can be worked out on the basis of figures reported in income tax returns. Vide Para 5.1 of this decision, Hon'ble Tribunal held that: "*The other ground is for confirming demands is that the appellants had shown certain amounts due from the parties in their Income Tax returns and Revenue has proceeded to demand Service Tax on this amount shown in the Balance Sheet. The appellants have relied on large number of judgments which has settled the issue that amounts shown in the Income Tax returns or Balance Sheet are not liable for Service Tax. In view of these judgments, the appellant succeed on this ground also. The impugned order is set aside and the appeal is allowed*". Several judgments cited and relied by the Tribunal in the said decision finally settles this principle of law.

(iii) The same view has been held by Tribunal in the case of *Alpa Management Consultants P Ltd – 2007 (6) STR 181 (Tri.Bang)* that the figures reported in income tax returns cannot be considered basis for demanding service tax as both laws requires different types of compliance procedures.

48.1 <u>*SCN Time-Barred*</u>: Further, M/s. Jas submitted that the present SCN cannot survive as it has been wrongly issued by invoking extended period of limitation of five years. In fact, Para 4.1 of the DGCEI SCN dated 16.02.2017 categorically states that during the searches conducted at their office on 29.01.2014, nothing incriminating has been found except their official records. Further, the discussion held in the aforesaid paras clearly brings out the fact that each and every value based on which demand has been worked out in the three SCNs were documented/recorded by them in their official books of account and/or ST-3 returns filed during the relevant period. Thus, it is a fact on record that they have been scrupulously maintaining records in respect of all the taxable services provided by them and were also declaring all such details in their periodical ST-3 Returns. The SCN does not explain, nor does it even remotely indicate any allegations as to how they have suppressed any information from the knowledge of the department or how they have mis-declared or mis-stated any facts with intent to evade service tax. In the absence of any such essential ingredients they stated and submitted that the SCN is absolutely illegal and requires to be dropped per se. They submitted that various judicial authorities including Hon'ble Apex Court and High Courts have repeatedly examined the question of suppression of facts and settled the principles of law by providing clear guidelines in this regard, some of which are cited in the following paras.

48.2. In the case of Bhagwati Spherocast Pvt. Ltd. cited at 2019 (368) ELT 308 (Guj), Hon'ble High Court of Gujarat held that:

> *"6. The law about invocation of extended period of limitation is well settled. Only in a case where the assessee knew that certain information was required to be disclosed and yet the assessee deliberately did not disclose such information, the case would be that of suppression of facts. When the Excise Officers called or certain information and the assessee did not disclose the same or deliberately disclosed wrong information that would be a case of wilful misstatement. Even in cases where certain information was not disclosed as the assessee was under a bona fide impression that it was not duty bound to disclose such information, it would not be a case of suppression of facts as held by the Supreme Court in the well-known cases of Padmini Products and Chemphar Drugs & Liniments reported in 1989 (43) E.L.T. 195 (S.C.) and 1989 (40) E.L.T. 276 (S.C.), respectively.*
>
> *6.1 What is "suppression" has been considered by the Supreme Court in the case of Continental Foundation Jt. Venture v. CCE, Chandigarh reported in 2007 (216) E.L.T. 177 (S.C.), and it is held by the Hon'ble Supreme Court with regard to the proviso to Section 11A of the Central Excise Act, 1944, that mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty. In the previous case like Messrs Jaiprakash Industries Ltd. reported in 2002 (146) E.L.T. 481 (S.C.) also, the Supreme Court has held that a bona fide doubt as to non-dutiablility of goods was sufficient for the assessee to challenge the demand on the point of imitation. However, mere failure in giving correct information would not be a case where the Revenue can invoke extended period of limitation."*

48.3. In the case of *Asian Tubes Ltd. – 2011 (21) ELT 58 (Tri.Ahd),* Hon'ble Tribunal held that when details of availment of credit has been reported in periodical monthly return, there cannot be a suppression of facts for the purpose of invoking extended period. In the matter of *Parul Associates Interiors Pvt. Ltd. reported in 2016 (46) STR 373 (Tri.Bang)* it is held that the extended period cannot be invoked and the appellants cannot be found fault with if they claimed a *bona fide* belief that what they were doing was correct. The appellants had taken the registration themselves; were paying Service Tax regularly; filing returns regularly and hence they cannot have suppressed any information. In the case of Zee Media Corporation Ltd. – 2018 (18) GSTL 32 (Allh), Hon'ble High Court held that when the show cause notice itself states that the assessee has maintaining all records they cannot be considered to have suppressed any information and hence extended period not invocable. In the case of *Savira Industries cited at 2016 (331) ELT 504 (Tri Chennai)* it is held that bonafide doubt regarding excisability of goods cannot be a valid ground for invoking extended period.

48.4. Hon'ble Supreme Court has categorically ordered in the case of HMM Ltd. – 1995 (76) ELT 497 (SC) that extended period cannot be invoked unless the SCN puts the noticee specifically as to which of the commissions or omissions has been committed by them. The judgement says as follows: -

> *".....Now in order to attract the proviso it must be shown that the excise duty escaped payment by reason of fraud, collusion or wilful mis-statement or suppression of fact or contravention of any provision of the Act or of the Rules made thereunder with intent to evade payment of duty. In that case the period of six months would stand extended to 5 years as provided by the said proviso. Therefore, in order to attract the proviso to Section 11A(1) it must be alleged in the show cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or wilful mis-statement or*

suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been noticed or that the assessee was guilty of wilful mis-statement or suppression of fact. In the absence of such averments in the show cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11A(1) of the Act."

48.5. They stated that if the judicial pronouncements on the subject matter is examined, there are thousands of judgments delivered by Hon'ble Supreme Court and almost all the High Courts of the Country which incontrovertibly states that the extended period of limitation cannot be invoked where the department is unable to pinpoint the misdeclaration, mis-statement or suppression of facts with intent to evade duty/tax by the assessee.

49. M/s. Jas recapitulated that in their case, they have declared each and every aspects of their business activities in the ST-3 returns, issued taxable invoices for all services, maintained computerized records showing the value of exempted and taxable services provided by them, submitted all such information and details as and when called for by the department, etc. Therefore, there is not even a remote attempt or intent on their part to evade any tax. In view of these facts, they requested to drop the demand and vacate the SCN.

50. Thereafter, M/s. Jas submitted another letter dated 21.09.2020 along with a calculation chart and copies of DRC-03 Challan No. DC2409200330342 dated 23.09.2020 evidencing payment of Rs. 8,02,119/- towards the cenvat credit involved in the exempted output services which were availed by them during the period prior to 01.04.2016, as stated in Para 13.4 of their defence reply, along with interest amounting to Rs. 8,76,777/- totalling Rs. 16,78,896/-. They have also requested for another personal hearing in this regard.

51. Accordingly, another opportunity for PH was offered to them on 30.09.2020 wherein Shri Gaurav Kumar ShriramKatyal, CA appeared on their behalf and submitted an additional submission with regard to the original submission dated 13.08.2020, along with copy of tax payment working of tax liability under Rule 6(3A) and the interest applicable thereon. He also referred to some judgments mentioned in Para 13.5 of their submission dated 13.08.2020 and copies of DRC-03 form as proof of discharge of tax liability under rule 6(3A). He requested to decide the matter considering the aforesaid submissions.

DISCUSSION AND FINDINGS

52. Having carefully gone through the records of the case as well as the written and oral submissions made by M/s. Jas, I find that the three SCNs involvemultipleissues for

determination, each of which has been vehemently contested by the assessee on merits as well as on limitation. Since the three SCNs were issued as a sequel to the investigation carried out by DGCEI and involve identical issues for demanding service tax, I have taken up them together for adjudication. I find that the facts and figures as specified in the SCNs have not been disputed by the assessee, and their entire defence is built upon the leviability of service tax on the value cited in the SCNs as their receipts towards provision of taxable services.

53.1. Before taking up the issues involved in the three SCNs for determination of taxability, I have examined the argument put forth by the assessee against levy of service tax on the value worked out from IT Returns or AOs. They have cited the case of *Deltax Enterprises* reported at *2018 (10) GSTL 392 (Tri Del)*, wherein Hon'ble Tribunal held that service tax liability cannot be fastened on unidentified service for unidentified service recipient, and observed as: -

> *"4.....We note that the appellants categorically asserted that they did not provide any other service other than those, the details of which have been submitted to the lower authorities. The Revenue also could not point out excess receipt on these contracts or the taxable service which gave them the consideration escaping the tax. In the absence of specific allegation with reference to the nature of service or the service recipient it is not tenable to hold an income of the appellant even if it is admitted to be an actual income, as consideration for a taxable service. The minimum requirement to tax an assessee for service tax is to identify the nature of their taxable service along with the recipient of such service. In the present case all identified contracts for the identified service recipients have been examined and concluded by the lower authority. No service tax liability can be fastened on unidentified service for unidentified service recipient. There is no provision for such summary assumption even under Section 72 of the Finance Act, 1994. Admittedly, the said section provides for arriving at the taxable value to be based on the Assessing Officer's best judgment in case where the appellant fails to furnish return under Section 70 or fails to assess the tax in accordance with Finance Act, 1994. In the present case the appellants did file returns under Section 70 and also made available all the contracts on which service tax liability will arise for them. As such, we find application of Section 72 cannot be extended based solely on the income tax return without identifying the specific taxable service or service recipient.*

53.2. They have also placed reliance in the case of *Synergy Audio Visual Workshop P. Ltd. – 2008 (10) STR 578 (Tri Bang)*which stated that no demand of service tax can be worked out on the basis of figures reported in IT Returns. Vide Para 5.1 of this decision, Hon'ble Tribunal held that: "*The other ground is for confirming demands is that the appellants had shown certain amounts due from the parties in their Income Tax returns and Revenue has proceeded to demand Service Tax on this amount shown in the Balance Sheet. The appellants have relied on large number of judgments which has settled the issue that amounts shown in the Income Tax returns or Balance Sheet are not liable for Service Tax. In view of these judgments, the appellant succeed on this ground also. The impugned order is set aside and the appeal is allowed*". They claimed that the several judgments cited and relied by the Tribunal in the said decision finally settled this principle of law. It is also their argument that the same view has been held by Tribunal in the case of *Alpa Management Consultants P Ltd – 2007 (6) STR 181 (Tri.Bang)* that the figures reported in income tax returns cannot be considered basis for

demanding service tax as both laws requires different types of compliance procedures. I fully agree that any value based on which service tax is levied should qualify as a taxable value for the purpose of section 67 of the Finance Act, 1994 and that such taxable value should have been received by the service provider from their service recipients as consideration towards provision of taxable services in the manner as provided under the said Finance Act. Based on this principles of law settled by various High Courts and theTribunal in a host of decisions, including the aforesaid case laws cited by the assessee, I find that all the receipts and additions which form part of the income tax returns filed by an assessee or such details stated in their AOswould not form part of the taxable value for the purpose of levy of service tax, unless such receipts are proved to be the considerations received by the assessee towards provision of taxable services to their clients. In the instant case, the SCNs state that since the assessee is engaged in providing construction services of building commercial shops and residential units and selling them to their buyers, their only income can be the receipts from their buyers which would form part of taxable value for the purpose of levy of service tax. I am of the view that such a blanket general perception would go against the principles of jurisprudence and therefore, I would discuss each of the issues involved in the subject SCNs separately on the basis of evidences available on records regarding taxability under Finance Act, 1994, by keeping in mind the aforesaid decisions of Hon'ble Tribunal.

54.1. *Unaccounted investment in WIP (Work in Progress):*The first issue discussed in the DGCEI SCN dated 16.02.2017 is the unaccounted investments made by M/s. Jas in their projects and declared in the books of account under the head WIP (Work in Progress) during FY 2013-14. The said SCN was issued on the basis of investigation conducted from the Income Tax Assessment Order(IT AO)dated 23.12.2016. I have examined the said Assessment Order and find that during the initial survey conducted on 17.10.2013 by the Income Tax under Section 133A of the Income Tax Act, 1961, incriminating documentin the form of a diary was recovered from the assessee which revealed their actual investment in WIP as of Rs. 90,63,11,765/- as against the WIP investment declared in their books of account as Rs. 49,02,35,276/-, as on the date of survey. Thus the survey revealed that the unaccounted or suppressed investment in WIP was Rs. 41,60,76,489/-on the said date. The same is duly discussed and elaborated in the AO alongwith the scanned images of the documentary evidences recovered from the assessee. Meanwhile, the assessee has not disputed the facts stated in Para 3.2.1 of the DGCEI SCN that statements dated 17/18.10.2013 were recorded by IT department under section 131 of IT Act wherein they had admitted the unaccounted investment of Rs. 41,60,76,489/- without disclosing the source thereof. Thereafter, during the course of recording statement on 29.01.2014 by the DGCEI officers under section 83 of the Finance Act, 1944, Shri Alin Shah, Director of M/s. Jas admitted that the said unaccounted investment in WIP was the unaccounted cash receipts from their clients. He, however, claimed that such unaccounted investment was only Rs. 36,81,79,388/- [and not Rs. 41,60,76,489/- as

worked out by IT] whereupon they have paid service tax of Rs. 1,36,52,092/-. However, while issuing the order, the Assessment Officer had estimated the WIP as Rs. 155.61 Crores as against WIP in books at Rs. 71.58 Crores both as on 31.03.2014, and ordered addition of differential value of Rs. 84,82,83,218/- for the tax period. In fact,Assessment Officer had computed total WIP of Rs. 155.61 Crores by reverse computation on the net profit shown in their books of Rs. 15.88 Crores, by presuming the net profit at 10.21% of total revenue computed the WIP as on 31.03.2014 on the net profit of Rs. 15.48 Crores as 15.48 / 10.21 x 100 thus arriving at figure of Rs. 155.61 Crores. While issuing the SCN dated 16.02.2017, DGCEI considered the total value of WIP investment of Rs. 84,82,83,218/- for the purpose of working out the taxable value, which is the differential value of the estimated WIP investment of Rs. 155.61 Crores and the WIP recorded in their books as on 31.03.2014.

54.2. Meanwhile,I have gone through the Appellate Order dated 11.12.2017 passed by Commissioner of IT(Appeals)-2 in respect of the above AO dated 23.12.2016, a copy of which was submitted by the assessee while filing their defence reply, and find that the appellate authority has not accepted the aforesaid hypothetical reverse computation of WIP as Rs. 155.61 Crores as on 31.03.2014. The CIT(Appeals)-2has upheld the documentary evidences impounded from the assessee during the survey conducted on 17.10.2013 which revealed the actual WIP of Rs. 90,28,11,765/- as against the WIP recorded in their books on the date as Rs. 49,02,35,276/-, and accordingly held the unaccounted suppressed WIP as Rs. 41,60,76,489/-. I find that there is no dispute by the assessee with regard to the unaccounted advance receipt of Rs. 41,60,76,489/- from their clients towards the cost of taxable services to be rendered by them. Besides this, the SCN also states that they have already accepted this fact and even paid service tax amount of Rs. 1,36,52,092/- involved thereon. In his statement recorded by DGCEI on 29.01.2014, Shri Alin Shah, Director of M/s. Jas had categorically admitted that the aforesaid unaccounted investment in the WIP was the unaccounted cash receipt towards advances from their prospective buyers. In fact, Para 11.1.1 and 11.1.2 of their defence reply specifically state that their director had admitted that the differential amount of Rs. 41,60,76,489/-was their unaccounted income during the year on which they have already discharged service tax, and that the demand on the issue of unaccounted investment in WIP should be limited to the aforesaid unaccounted cash receipts and not on the hypothetical calculation made in the IT assessment order. Therefore, I find no dispute by the assessee that they had collected unaccounted cash amounts of Rs. 41,60,76,489/- from their clients towards advance consideration for providing taxable services, which they have not recorded in their books of account and on which they have not paid service tax until DGCEI conducting search operation on 29.01.2014 and recording the statement of their director on the same day. Accordingly, I hold that the said assessee is liable to pay service tax on the unaccounted cash receipt of Rs. 41,60,76,489/- from their clients towards advance payment against taxable services during the FY 2013-14, as worked out from the seized documents and admitted by

their director. Since they have already deposited service tax of Rs. 1,36,52,092/- as discussed in the SCN dated 16.02.2017, the same is required to be appropriated towards the demand. Meanwhile, I find that this deposit of Rs. 1,36,52,092/- was made by the assessee on the basis of their initial statement given before the IT department that the actual unaccounted receipt was only Rs. 36,81,79,388/- and not Rs. 41,60,76,489/-. However, subsequent statements of the director as well as their defence reply referred above categorically specified the actual receipt as Rs. 41,60,76,489/- and hence differential amount of service tax of Rs. 17,76,024/- as shown in the following chart is required to be confirmed and recovered from them along with applicable interest.

Unaccounted Receipt Rs.	Abatement @ 70% Rs.	Taxable value Rs.	ST payable @ 12.36% Rs.	ST paid before SCN Rs.	Balance ST payable Rs.
41,60,76,489	29,12,53,542	12,48,22,947	1,54,28,116	1,36,52,092	17,76,024

54.3. Theassessee has argued that the terms like WIP for service industry and Stock in Process (SIP) for manufacturing industry are the concepts applicable to Income Tax assessment purpose, but these concepts have nothing to do with Service Tax levy; that WIP is the term indicating the value of work/investment made in respect of the unsold units as on the closure date of financial year as a component of the inventory asset account shown in the balance sheet; that eventually the WIP cost is transferred to the finished goods account and recognized to the costs of sales; and that since service tax is leviable/payable on the day when sales are made/booked fully or partially, there cannot be a situation where they collected any taxable receipts from their clients and declare such receipts as WIP in the accounts without payment of service tax. I am convinced by this argument of the assessee. In accounting, a work in progress (WIP) account is an inventory account that includes goods that are in the process of being produced but are not yet finished. This account represents the costs of resources used but not yet turned into completed products. It is one of the inventory accounts commonly used to track the flow of costs in a production process. Other common inventory accounts include raw materials and finished goods. Inventory accounts are reported as current assets on the company's balance sheet. Companies generally use these accounts for internal analysis as well as external financial reporting. As per Rule 3 of the Point of Taxation Rules, 2011, service tax is leviable at the time of issuance of invoices or at the time of receiving payment towards providing taxable services, whichever comes earlier. As per this rule, service tax is required to be paid at the time of receiving advance payments, if any, from the clients towards provision of taxable services. Therefore, I am of the opinion that there cannot be a situation where an assessee receivingadvance payments from their clients towards providing taxable services; recording such receipts in their books of accounts under any heads including investment in WIP; yet not discharging service tax on such payments received from the clients. In other words, unless otherwise proved for short-payment or non-payment of service tax on any payments received by the service provider from the service recipients details of which are

recorded in their books of account, service tax is deemed to have been paid by the service provider on advance payments received by them at the time of such receipts from the clients. In the present case, I have no doubt that the assessee is liable to pay service tax on the sums they have received as advance payments from buyers towards the cost of taxable services, irrespective of whether such receipts are recorded in their accounts towards WIP investments or otherwise.

54.4. Except for non-payment of service tax on the unaccounted cash receipts worked out from the seized documents, as discussed above,the SCN does not mention about any specific evidence that the assesseehad not discharged service tax on the advance payments received from their clients and recorded as WIP investments in their books of account. In fact, I find no logic or reason to believe that the entire amount shown as WIP investment in the books of the said assessee would cover only the advance payments received by them from their clients towards taxable services to be provided to them, as such investment can also very well include the funds that are already available with the assessee, or the secured or unsecured loans, advances and deposits received by them from other persons or financial institutions, etc. In other words, merely because an amount is declared as WIP investment does not mean that the same would cover only advance receipts towards taxable services. What is required is to ascertain whether service tax is actually paid on all advances received by an assessee from their clients against taxable services to be provided later. While the costs of resources used for the incomplete goods and services and the inventory accounts reported as current assets in the balance sheet are relevant for determining the actual income earned by an assessee for the purpose of levy of income tax, such income has nothing to do with the taxable value for levy of service tax. From service tax angle, any such amounts recorded in the books of accounts as receipts from the clients have already suffered service tax even if it is shown as WIP, unless otherwise proved for non-payment or short-payment. Becauseeventually, such WIP cost are to be transferred to the finished goods accounts and recognized to the costs of sales. Therefore, the AO determining the cost of actual investment in WIP without supportingany evidences showing unaccounted receipts by the service provider from their service recipients towards provision of taxable services, has no relevance for the purpose of levy of service tax.

54.5. Although the SCN does not provide any leads regarding the service tax paid by M/s. Jas on their advance receipts, I have examined this aspect to ascertain whether they have actually paid service tax on such advance receipts which are recorded in their books of account. Accordingly, I find that while recording his statement by the DGCEI officers on 10.02.2017 Shri Alin Shah, Director had submitted a chart showing details regarding members' advances received by M/s. Jas during each FY. This chart which is appended to his statement indicates that they have received total taxable amount (after abatement of 70%) of Rs. 36,93,28,987/- as members' advances during FY 2013-14 whereupon they have paid service tax of Rs.

1,36,94,718/-. It is evidently clear from the chart produced at Para 6.4 of the SCN dated 16.02.2017 that DGCEI had reconciled the details of such members' advances vis-à-vis the ST-3 returns filed by M/s. Jas during the two HYs of 2013-14 and found that service tax has been appropriately paid on the entire advance amounts. Thus, in the absence of any evidences of non-payment or short-payment of service tax on the advance amounts received by the assessee from their clients towards providing taxable services and which are recorded in their books of account towards cost of WIP, I find no reason to demand service tax on such total WIP investment value. Therefore, I hold that no service tax can be demanded or confirmed on the remaining amount of WIP investment shown in the said SCN dated 16.02.2017 for the FY 2013-14 as worked out from the IT AO dated 23.12.2016 (AY 2014-15) but subsequently dropped by CIT (Appeals) vide appellate order dated 11.12.2017.

54.6. Having discussed about the applicability of service tax on WIP investment appearing in the balance sheet under the head of current assets, I would now turn towards the subsequent periodical SCN dated 13.09.2019 issued to M/s. Jascovering the FYs 2015-16 and 2016-17. No demand of service tax has been made on the WIP investment for the FYs 2014-15 and 2017-18 (Q1). The said SCN dated 13.09.2019 was issued on the basis of an IT AO dated 29.12.2017 for FY 2014-15 (AY 2015-16) and on the basis of the books of accounts produced by the assessee during the investigation conducted by the jurisdictional officers. It appears that no demand of service tax has been made on WIP investment for FY 2014-15 as the said AO dated 29.12.2017 has not proposed any addition of income on this ground. Similarly, no demand on WIP has been made for Q1 of FY 2017-18 as WIP is calculated at the end of the FY as current assets to be reflected in the balance sheet. I find from Para 6 and 19 of the SCN that the IT department had informed the jurisdictional officers that the case of M/s. Jas was not selected for scrutiny during the FY 2015-16 while AO for FY 2016-17 would be issued before 31.12.2019. Therefore, the jurisdictional officer had called for the value of investment in WIP and the demand has been made on the basis of such value as reflected in the books of accounts for these two FYs. I find from the statement of Shri Alin Shah, Director recorded on 20.05.2019 and discussed in Para 9 of the SCN that he has repeatedly stated that service tax cannot be levied on WIP value as the construction expenses incurred in respect of the units which are not sold/booked are credited into the P&L account as investment in WIP and such funds do not include the advances received from the clients. However, SCN does not discuss as to how the value of investment in WIP for FYs 2015-16 and 2016-17 would attract levy of service tax especially since the IT department has not made any addition of income on this ground. Meanwhile, I have already discussed in the aforesaid para that service tax cannot be demanded *per se*on the entire WIP value without proper evidences establishing that such value was received from the clients towards provision of taxable services and on which no service tax was actually paid by the assesseein contravention of the provisions of Point of Taxation Rules.

54.7. Notwithstanding the above factual and legal provisions regarding applicability of service tax, I find that the DGCEI SCN was issued on the basis of AO dated 23.12.2016 for the FY 2013-14. However, AO dated 29.12.2017 for FY 2014-15 carried no objection regarding WIP and no addition has been made on this ground. Similarly, IT department has not taken up the case of FY 2015-16 for scrutiny which indicates no objection for the WIP declared by the assessee. Similarly, AO dated 28.12.2019 passed for the FY 2016-17, a copy of which was submitted by the assessee while filing their defence reply, also does not raise any issue with regard to WIP. In short, I find that except for the unaccounted/suppressed income earned by M/s. Jas out of the cash receipts from their buyers during FY 2013-14, details of which were seized during the IT survey in the form of incriminating documents and upheld by CIT (Appeals) vide appellate order dated 11.12.2017, the IT department has not made any objections or additions on WIP value of investment as declared by them in their books of accounts. In the absence of any evidences showing non-payment or short-payment of service tax by M/s. Jas on the amounts received by them from their service recipients towards provision of taxable services and such value forming part of the WIP investment as declared in their books of account, I hold that no demand of service tax can be made on the entire WIP investment value available in the balance sheet. Therefore, I am constrained to drop the demand of service tax made under the SCN dated 13.09.2019 on WIP investment value for the FYs 2015-16 and 2016-17.

55.1. *Addition of Income in the guise of Unsecured Loans*:The next issue involved in the DGCEI SCN dated 16.02.2017 is the addition of income ordered by Income Tax department under AO dated 23.12.2016 on the unsecured loans, genuineness of which could not be substantiated by the assessee. The AO indicates that during the FY 2013-14, M/s. Jas had shown receipt of unsecured loans of total Rs. 168.91 Crores from various parties which included inter-corporate deposits, shareholders and relatives. Out of these, addition of total income of Rs. 14,42,90,465/- was ordered under the AO on the ground that the assessee could not produce five depositors in person whose accounts were squared up during the same FY 2013-14, nor could prove their identity, genuineness of the transaction and their creditworthiness. These five depositors are: M/s. Hanna Enterprises Pvt. Ltd. (Rs. 14,14,291/-), M/s. Boaston Tradelinks P. Ltd. (Rs. 2,87,50,414/-), M/s. Brijman Impex P Ltd. (Rs. 2,64,81,455/-), M/s. Vansh Glass Industries P. Ltd. (Rs. 3,36,84,947/-) and M/s. Sawaca Business Machines Ltd. (Rs. 14,42,90,465/-) with total amount of Rs. 14,42,90,465/-. I find that the AO was also upheld by CIT (Appeals)-2 vide his appellate order dated 11.12.2017 (supra) by observing that the said five depositors had loaned amounts more than that of their total income as well as their share capital and thus the capacity of the lenders are not proved. While dismissing the appeal filed by M/s. Jas, CIT (Appeals)-2 observed that the onus is always on the assessee to prove the cash credit entry found in the books of account of the assessee; that in the landmark cases like *Kale Khan Mohammad Hanif Vs. CIT – [1963] 50 ITR 1 (SC),* and *Roshan*

Di Hatti Vs. CIT [1977] 107 ITR (SC), it has been held that the law is well settled that the onus of proving the source of a sum of money found to have received by an assessee, is on him; and that where the nature and source thereof cannot be explained satisfactorily, it is open to the revenue to hold that it is the income of the assessee and no further burden is on the revenue to show that the income is from any particular source. DGCEI had considered the above addition of Rs. 14,42,90,465/- for demanding service tax vide SCN dated 16.02.2017 on the ground that the said addition amount forms part of the gross receipts of the assessee towards provision of taxable service, as their only source of income is the advances received from their clients towards construction services.

55.2. In their defence reply, M/s. Jas stated that they had received a total unsecured loan amount of Rs. 168.91 Crores during the FY 2013-14, out of which only 8.5% has been arbitrarily considered as addition of income. Their argument is that when the department has considered 91.5% of the amount as genuine loans, there is no reason to deny the facility for just 8.5%. However, the AO specifically mentions that the aforesaid five depositors were those whose accounts were squared up by the assessee during the same FY without revealing their identity, genuineness of transaction and creditworthiness. The appellate order also specify that the capacity of the five lenders were not proved as the loan amounts shown in their names exceeded their total income and even their total share capital. I find that during the income tax proceedings as well as during the investigation by DGCEI, the said assessee was given enough opportunities to prove their bonafides with regard to the aforesaid unsecured loans, which they failed to do. During this adjudication proceedings also, they could not provide any satisfactory reply except questioning the manner of denying 8.5% of the unsecured loans while accepting the remaining 91.5%. They have not provided any answer to the crucial observation that the loan amounts shown in the name of five depositors exceeded their total income and even their total share capital. Even when the SCN categorically stated that their only source of income is the receipts from their customers towards providing construction service, they failed to disprove the same nor could provide any reasonable explanation that the amount formed part of any alternative income that is not leviable to service tax. Therefore, I am inclined to believe that the said amount of Rs. 14,42,90,465/- is nothing but the unaccounted cash amounts received by the said assessee from their clients towards providing taxable services during the FY 2013-14 which they have camouflaged into unsecured loans in the name of persons who had no capacity to lend such sums with deliberate intent to escape service tax liability. Therefore, I hold that the said assessee is liable to discharge service tax liability on the said amount of Rs. 14,42,90,465/- as demanded in the DGCEI SCN dated 16.02.2017.

55.3. The aforesaid DGCEI SCN covered demand for FY 2013-14 whereas demand of service tax for subsequent FYs 2014-15 to 2017-18 (Q1) was made under SCN dated 13.09.2019 (supra). Even this SCN has two parts, i.e. demand for FY 2014-15 was made on the

basis of IT AO dated 29.12.2017 while the demand for FYs 2015-16 to 2017-18 (Q1) was calculated on the basis of the books of accounts produced by the assessee. First, I would discuss the demand for FY 2014-15. I have examined the said AO dated 29.12.2017 and find that a total addition of Rs. 48,33,73,607/- was ordered for the FY 2014-15 on the ground that unsecured loan amount of Rs. 18,01,93,895/- along with paid out interest amount of Rs. 93,12,893/- declared in the name of 14 different depositors listed in the order, and Rs. 26,47,15,579/- along with paid out interest of Rs. 2,91,51,240/- declared in the name of the same five depositors involved in the previous year (FY 2013-14), could not be substantiated by M/s. Jas by producing the identity and capacity of lenders, and genuineness and creditworthiness of the transactions. Apart from the above, AO also ordered an addition of income of Rs. 4,19,407/- being the interest on late payment of TDS. The SCN considered all these amounts totalling Rs. 48,37,93,014/- to demand service tax for the FY 2014-15.

55.4. The SCN statesthe same reasons as discussed in the AO that all the 14 specified depositors are declared by the Govt. as "*shell companies*" and hence transactions carried out in their names cannot be considered as genuine, especially since the said assessee could not submit confirmation of account, bank statement and copy of the ITR to prove genuineness of the transactions and creditworthiness of the lenders. In their defence reply, M/s. Jas submitted that there is no reason to deny 32% of the unsecured loans declared in their books while considering the remaining two-thirds as genuine transactions. They have also argued that the term shell companies do not mean that all their transactions are fictitious, which I am not inclined to accept. Shell companies are generally created to form a web of fictitious transactions for layering and rotating black money during the illegal process of money-laundering. Except for providing entries to business entities to camouflage their dubious transactions, these shell companies do not carry out any genuine business transactions. In the present case, M/s. Jas could not produce the persons and their confirmation of account, bank statement, ITR etc. before the IT assessment officers in respect of the 14 shell companies to substantiate their creditworthiness and genuineness of transactions. Even during the present proceedings, they could not submit any documentary evidences to show that these transactions are genuine. Therefore, I have reasons to believe that the said amount of Rs. 18,01,93,895/- declared as unsecured loans in the name of the 14 lenders listed in the SCN is nothing but unaccounted cash amounts received by the said assessee from their clients towards providing taxable services during the FY 2014-15 which they have disguised as unsecured loans in the name of shell companies having no genuine business transactions, with deliberate intent to escape service tax liability. Therefore, I hold that the said assessee is liable to discharge service tax liability on the said amount of Rs. 18,01,93,895/- as demanded in the SCN dated 13.09.2019.

55.5. As already stated above, the SCN also seeks to demand service tax on Rs. 26,47,15,579/- which was declared as Unsecured Loan during FY 2014-15 in the name of the

same five depositors involved in the previous year, i.e. M/s. Hanna Enterprises Pvt. Ltd. (Rs. 1,68,53,233/-), M/s. Boaston Tradelinks P. Ltd. (Rs. 7,31,46,797/-), M/s. Brijman Impex P Ltd. (Rs. 11,76,28,202/-), M/s. Vansh Glass Industries P. Ltd. (Rs. 5,27,16,639/-) and M/s. Sawaca Business Machines Ltd. (Rs. 43,70,708/-), on the ground that M/s. Jas could not substantiate their identity, genuineness and creditworthiness of the transactions. AO dated 29.12.2017 ordered addition of this income on the same grounds observed during the previous AO dated 23.12.2016 that the capacity of the lenders are not proved, besides the loan amounts declared in their names are far in excess of their total income and even more than their authorized share capital. Since these facts were already discussed in the context of DGCEI SCN dated 16.02.2017, I am not repeating the same here for the sake of brevity. Therefore, I hold that the said amount of Rs. 26,47,15,579/- is nothing but unaccounted cash amounts received by the said assessee from their clients towards providing taxable services during the FY 2014-15 which they have mis-declared as unsecured loans in the name of persons who had no capacity to lend such sums with deliberate intent to escape service tax liability, hence the said assessee is liable to discharge service tax liability on the said amount of Rs. 26,47,15,579/- as demanded in the SCN dated 13.09.2019.

55.6. Meanwhile, I find that the SCN also seeks to demand service tax on the addition of income ordered by IT department on the interest amount paid by the said assessee on the aforesaid fictitious *'unsecured loans'* (Rs. 3,84,64,133/-) and on the interest on late payment of TDS (Rs. 4,19,407/-). Although such interest amounts would be relevantfor the IT assessment, I find no reason to include the same for calculating service tax liability, nor the SCN indicates any specific grounds in this regard. Accordingly, I hold that the demand of service tax on the gross receipts of Rs. 48,37,93,014/- as proposed in the SCN for 2014-15, is required to be reduced to the above extent as shown below: -

Unsecured loan in the guise of 14 shell companies	Unsecured loan in the guise of 5 fictitious depositors	Total gross amount	Abatement @ 70%	Taxable value	Service Tax @ 12.36%
18,01,93,895	26,47,15,579	44,49,09,474	31,14,36,632	13,34,72,842	1,64,97,243

55.7. Now, I would consider the demand of service tax for the FYs 2015-16, 2016-17 and 2017-18 (Q1) made in the SCN dated 13.09.2019. DGCEI had worked out the demand for 2013-14 on the basis of AO dated 23.12.2016, while the aforesaid demand for 2014-15 was computed on the basis of AO dated 29.12.2017, both of which carried specific grounds and allegations that the amounts declared by M/s. Jas as Unsecured Loans during these years were not genuine on various reasons. However, Para 6 and 19 of the SCN dated 13.09.2019say that the IT department had informed the jurisdictional officers that the case of M/s. Jas was not

selected for scrutiny during the FY 2015-16 while AO for FY 2016-17 would be issued before 31.12.2019. As regards FY 2017-18, it is stated that the CAS which selects scrutiny of cases has not been run by the department. Therefore, the jurisdictional officer had called for details regarding unsecured loans declared by the assessee during these years, and the demand has been worked out on the basis of such value as reflected in the books of accounts for these FYs.I find that even during the FYs 2013-14 and 2014-15, IT AO had considered only partial amount of unsecured loans declared by the assessee on the basis of specific reasons of fictitious transactions, while accepting the remaining amounts of such unsecured loans. For example, during 2013-14, only 8.5% of the total loan amount was ordered to be fictitious while during 2014-15 the percentage was only 32%. However, I find that during the subsequent FYs, service tax liability has been surprisingly computed on the entire amount of unsecured loans declared by the assessee in their financial statements, which is totally wrong. It is not the case of the department that the concept of accepting unsecured loans from various persons was illegal, or that the entire amount of unsecured loan comprised of receipts from their clients towards providing taxable service. As already stated above, the financial statements of the assessee for FY 2015-16 stand accepted by the IT department. Similarly, IT AO No. ITBA/AST/S/143(3)/2019-201023339901(1) dated 28.12.2019, a copy of which was submitted by the assessee while filing their defence reply, indicates that the financial statements for FY 2016-17 has also been accepted without any objection. Since the CAS was not reportedly run for the FY 2017-18, there is nothing on record to suspect their accounts for Q1 of FY 2017-18. In the absence of any evidences to believe that the unsecured loan amounts declared by M/s. Jas during FYs 2015-16, 2016-17 and 2017-18 (Q1) were not genuine or it comprised any receipts from their service recipients towards provision of taxable services, etc., I hold that no demand of service tax can be made on the amount declared as Unsecured Loans in their balance sheet. Therefore, I am constrained to drop the demand of service tax made under the SCN dated 13.09.2019 on their unsecured loan amounts declared during FYs 2015-16, 2016-17 and 2017-18 (Q1).

56.1. *Addition of Income in the guise ofreceipts from Sundry Debtors*:The next issue involved in the DGCEI SCN dated 16.02.2017 is the addition of income ordered by Income Tax department under AO dated 23.12.2016 on the *'advance received from sundry debtors'*. AO states that although the assessee was asked to furnish the PAN, address, confirmation from the concerned persons, etc. to substantiate their claims of receipts, they did not care to reply. Hence, IT department presumed acceptance of the objections by the assessee and ordered addition of the entire receipts of Rs. 38,69,50,307/- for the FY 2013-14. Based on the AO, DGCEI worked out demand of service tax on this amount on the ground that M/s. Jas had not declared the receipts as advance from their members but wrongly declared the same as advance from sundry debtors with intent to escape service tax liability. Meanwhile, I have examined the appellate order dated 11.12.2017 (supra) passed by CIT (Appeals)-2 which struck down the

AOby stating that the details submitted by the assessee revealed that the said Rs. 38,69,50,307/- formed part of the sale proceeds of shops; that they have recognized a revenue of Rs. 71.85 Crores on account of sale of shops; that similar issue was examined by the IT department during the previous year wherein it was ordered that advance received were not the cash credit or loan; and the receipt of Rs. 38,69,50,307/- is against the sale of shops which have been offered for taxation as per the revenue recognized. The defence reply filed by the said assessee also categorically states that the amount declared by them as advance from sundry debtors is nothing but the amounts of receipt from their members who are their service recipients and that they have actually paid service tax on all such receipts wherever service tax is leviable under the law. Thus, I find no dispute that the entire amount shown as '*advance from sundry debtors*' is declared by the said assessee in their books of account and there is no allegations of unaccounted receipts. I also find no dispute by the assessee that the entire amount forms part of their advance receipts from their clients towards sale of shops (provision of construction service). Therefore, what is required is only to examine whether M/s. Jas had actually discharged the service tax liability on such receipts during the relevant period, or otherwise.

56.2. I find from the IT appellate order dated 11.12.2017 (supra) that the assessee had filed following submissions before CIT (Appeals)-2: -

> *"6.3. It is reiterated that the ld AO wrongly invoked section 68 to make huge addition in respect of advances from members. Further please note that the same is shown as advance from members in the audited balance sheet under the head "Other Current Liabilities". A copy of said balance sheet is attached herewith. It is pertinent to submit that even in cases of such advances from members for booking, the appellant has paid service tax which is to be paid only in case of such booking advances. This proves beyond doubt that amount is not cash credit or loans as no such service tax is payable on loans per se. A working of service tax with proof of payment (challans) are attached. The AO on the same day when details were given, without any further query passed assessment order. It is settled law that section 68 is not applicable in such a case of sale advances..."*

56.3. The reason for their citing payment of service tax before IT department appears to be the nature of levy of service tax on advance payments received towards provision of taxable services as provided under Rule 3 of the Point of Taxation Rules, 2011 referred above. CIT (Appeals) had accepted their submissions while striking down the AO dated 23.12.2016. Meanwhile, Para 6.4 of DGCEI SCN shows details of ST-3 returns filed by M/s. Jas during 2013-14 wherein total taxable value (after abatement of 70%) was shown as Rs. 36,93,28,988/- with service tax payment of Rs. 1,36,94,718/-. The para also shows the same amount of taxable value and service tax payments as per the details produced by Shri Alin Shah, Director while recording his statement dated 10.02.2017. The said details in the form of a chart annexed to the statement show that these figures were taken from the members' ledger accounts, and it is evident that the ledger account of a party includes all transactions carried out with the concerned party, be itadvance receipts or salesreceipts. The SCN states that the only source of

income for M/s. Jas is their members' advances, and therefore it is clear that their service tax payment appearing inthe ST-3 returnswas made on such members' advances. Thus, the records visibly indicate that the receipt of Rs. 38,69,50,307/- mentioned in the SCN dated 16.02.2017 towards members' advances had already suffered levy of service tax. Therefore, I hold that the demand of service tax on the same amount of receipts during 2013-14 as proposed under SCN dated 16.02.2017 cannot survive.

56.4. DGCEI SCN covered demand for FY 2013-14 whereas the demand for subsequent FYs 2014-15 to 2017-18 (Q1) was made under SCN dated 13.09.2019 (supra). Even this SCN has two parts, i.e. demand for FY 2014-15 was made on the basis of IT AO dated 29.12.2017 while the demand for FYs 2015-16 to 2017-18 (Q1) was arrived at on the basis of the books of accounts produced by the assessee. First, I would discuss the demand for FY 2014-15. I have examined the said AO dated 29.12.2017 and find that the addition of Rs. 30,97,68,004/- was made mainly on two grounds; that the amount pertained to the same old debtors whose payments were added as income during the previous AO dated 23.12.2016, and that the debtors are bogus and not genuine, as the assessee had failed to prove their identity, creditworthiness and genuineness of the transactions. However, these grounds no more exist as the said AO dated 23.12.2016 was struck down by CIT (Appeals)-2 vide appellate order dated 11.12.2017 (supra), wherein the transactions were found as genuine advance receipts from their service recipients whereupon appropriate service tax was already paid. I also find from Para 5 of the SCN dated 13.09.2019 that Shri Alin Shah, Director of M/s. Jas had categorically answered to Q.12 that the amount of Rs. 30,97,68,004/- comprised of advance receipts from their members towards booking of construction units which are declared in their balance sheet as advances, and that they have already paid appropriate service tax on such advance receipts. Therefore, I have examined the submissions and supporting documents filed by the assessee vide their defence reply dated 13.08.2020, to confirm the genuineness of service tax payment on this amount.

56.5. The assessee has rightly pointed out that the IT AO proposed addition of only Rs. 30,97,68,004/- during the FY 2014-15 whereas their total receipt from sundry debtors was Rs. 73,58,65,102/- during the year. They have furnished detailed break-up of this amount separately for their two projects, in the form of printouts from their computerised accounting system, as discussed in Para 41 above. As per Annexure-2 to their defence reply, the said total receipt of Rs. 73,58,65,102/- included Rs. 54,37,04,041/- received from City Center-1 Project and Rs. 19,21,61,061/- received from Platinum Heights Project. They have also submitted project-wise summary charts as part of the said annexurewhich show bifurcation of the accounting entries in respect of each project towards service tax reversal entries due to cancellation debited to debtors' ledger; internal account cross entries; amounts received before and after BU permission, amounts deductible against cancellation and cheque return from

previous receipts, net receipt from the project as appearing in the books of account along withcomparison of the same with the taxable value as per the ST-3 returns filed by them for the corresponding period. Such bifurcation and reconciliation charts attached as Annexure-2 establish that the amount of Rs. 30,97,68,004/- shown in the SCN dated 13.09.2019 towards receipt as sundry debtors for the FY 2014-15 form part of the total receipts from the two projects undertaken by the assessee, and such amounts areduly accounted for in their official books of account. Comparison of these figures vis-à-vis the taxable value shown in the corresponding ST-3 return indicates that they have properly discharged service tax liability and filed ST-3 returns. Copies of the corresponding ST-3 returns are also attached as part of the annexure. Para 6.4 of the DGCEI also shows the reconciliation of the figures reported by M/s. Jas from their books of accounts and the taxable value declared in the ST-3 returns. These facts brought out from the official accounts of the assessee disprove the demand raised in the SCN for FY 2014-15and on the other hand, it supports the statement given by their director that service tax was already paid on the amounts shown as advance receipts from sundry debtors besides claiming the same in their defence reply. Therefore, I hold that the demand of service tax on this issue for the FY 2014-15 is required to be dropped.

56.6. Now, I would consider the demand of service tax for FYs 2015-16, 2016-17 and 2017-18 (Q1) made in the SCN dated 13.09.2019. DGCEI had worked out the demand for 2013-14 on the basis of AO dated 23.12.2016, while the aforesaid demand for 2014-15 was computed on the basis of AO dated 29.12.2017, both of which carried specific grounds and allegations that the amounts declared by M/s. Jas as advance from sundry debtors during these years were not genuine on various reasons. Even these grounds and allegations could not stand the test of appeal proceedings as per appellate order dated 11.12.2017 (supra). Further, Para 6 and 19 of the SCN dated 13.09.2019 say that the IT department had informed that the case of M/s. Jas was not selected for scrutiny during the FY 2015-16 while AO for FY 2016-17 would be issued before 31.12.2019. As regards FY 2017-18, it is stated that the CAS which selects scrutiny of cases had not been run by the department. Therefore, the jurisdictional officer had called for details regarding all receipts from sundry debtors declared by the assessee during these years, and service tax liability has been surprisingly computed on the entire amount of advance from sundry debtors as declared by the assessee in their financial statements, which is totally wrong. As I have discussed earlier in the case of unsecured loans, it is not the case of the department that the concept of declaringadvances from sundry debtors was illegal, or that the entire receipts from sundry debtorswere not accounted for in official records. As already stated above, the financial statements of the assessee for FY 2015-16 stand accepted by the IT department. Similarly, IT AO No. ITBA/AST/S/143(3)/2019-201023339901(1) dated 28.12.2019, a copy of which was submitted by the assessee while filing their defence reply, indicates that the financial statements for FY 2016-17 have also been accepted without any objection. Since the CAS was not reportedly run for the FY 2017-18, there is nothing on record

to suspect their accounts for Q1 of FY 2017-18. Even otherwise, I am of the opinion that the only aspect required to be examined in the present proceedings is whether service tax has been paid or otherwise on the amounts declared by the assessee as advance receipt from sundry debtors, which has no bearing on any decision taken by the IT department on this issue.

56.7. I find that thesaid assessee has furnished comprehensive details in the form of printouts from their accounting software system showingtheir project-wise receiptsfor the three FYs 2015-16, 2016-17 and 2017-18 (Q1) vide Annexures-3, 5 and 6 respectively to their defence reply dated 13.08.2020, along with its break-up of various accounting components such as value of sales recognised under sale deed done during the year, service tax reversal due to cancellation debited to debtors ledger, etc. They have also shown separately the value of sales after receipt of BU permission which is not leviable to service tax, amount deductible towards cancellation and cheque return on earlier receipts, etc., thus indicating the net taxable value as per books of account. They have also submitted reconciliation charts under the said annexures which compares such taxable value worked out from the books of account vis-à-vis the taxable value declared in the corresponding ST-3 returns for each FY. Copies of the corresponding ST-3 returns are also attached as part of the respective annexure. They have explained each of the above annexures separately for each FY while filing their defence, reply as discussed in Para 41 above, which I am not repeating here for the sake of brevity. A careful perusal of these annexures and comparison of the same with the corresponding ST-3 returns undoubtedly reveal that the assessee has already discharged service tax on such receipts. Therefore, I find no merit or substance in the demand of service tax made under the SCN dated 13.09.2019 on their entire amount of receipts from sundry debtors as declared by M/s. Jas in their books of accounts during FYs 2015-16, 2016-17 and 2017-18 (Q1).

57. *Short-payment of ST on members' advance*: - SCN dated 16.02.2017 seeks to recover service tax of Rs. 1,62,021/- on the ground thatthe assesseehad short-paid the same during the period from April, 2014 to September, 2015 as worked out from the reconciliation of the taxable value declared in their ST-3 returns vis-à-vis the details of members' advance amounts furnished Shri Alin Shah, Director while recording his statement dated 10.02.2017. The reconciliation chart is given at Para 6.4 and 9.2 of the said SCN. In their defence reply, the assessee has stated that the difference was a sequel to the aggregate ST payments made by them during the period from April, 2013 to March, 2016; that the month-wise reconciliation charts produced by them in their defence reply dated 13.08.2020 would reveal that the difference was squared up during the entire period leaving only an excess payment of Rs. 61,000/-; and that the excess/shortage difference is attributed to various bonafide reasons such as the reversal of service tax made due to cheque return and cancellation of bookings by our clients with corresponding transactions pertained to different periods when different rates of service tax was prevailing, rounding-off figures of calculation, percentage method of working out sales figures

for official books of account, etc. all of which are beyond the human control. I have examined the reconciliation chart prepared by the DGCEI officers as available in Para 6.4 and 9.2 of the SCN dated 16.02.2017 and find that the actual short-payment was taken place during FY 2014-15 (HY-2), i.e. October, 2014 to March, 2015, and not happened over a period of time as claimed by them. In fact, the actual short-payment during this period was Rs. 1,64,912/- out of which Rs. 2,891/- was reduced in the SCN due to excess payment of such amount made during the FY 2015-16 (HY-1). I am also not convinced with the explanations regarding bonafide mistakes in short-payment of such an amount while filing a single ST-3 return. Therefore, I hold that the said short-paid service tax amount of Rs. 1,62,021/- is liable to be recovered from the said assessee as demanded in the SCN dated 16.02.2017.

58.1. *Demand as per Rule 6(3)(i) of CCR, 2004* : - SCN dated 16.02.2017 issued by DGCEI and the SCN dated 03.10.2019 issued by the Additional Commissioner of CGST (supra) also carry demand of cenvat credit in terms of Rule 6(3)(i) of the Cenvat Credit Rules, 2004, as tabulated below, on the ground that M/s. Jas had not maintained separate records as required under Rule 6(2) although they had availed cenvat credit in respect of the inputs and input services which were utilized for providing both taxable and exempted services: -

SCN date	Period involved	Receipts from properties booked after BU	Amount of demand u/r 6(3)(i)	Remarks
16.02.2017	Nov-2014 to Mar-2016	20,48,22,067	1,39,20,639	Rate @ 6% upto May-2015 and 7% from Jun-2015
03.10.2019	Apr-2016 to Jun-2017	21,45,23,662	1,50,16,656	Rate @ 7%

58.2. As per the provisions of 66E(b) of the Finance Act, 1994 construction services are exempted in case where the entire consideration is received after the BU permission granted by the competent authority. In the present case, M/s. Jas had two construction projects, Citi Centre-1 and Platinum Heights, which got BU permissions on 22.10.2014 and 26.10.2016 respectively. In their defence reply, the assessee stated that Rule 6(3)(b)(i) of CCR, 2004 was amended w.e.f. 01.04.2016 vide Notification No. 23/2016-CE(NT) dated 01.04.2016 wherein demand of 6% (7% after May-2015) has been fixed subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period. Therefore, it is their argument that they are liable to pay only the amount calculated on the basis of the maximum limit prescribed under the amended rules for the period from 01.04.2016 to 30.06.2017 which is the period covered under SCN dated 03.10.2019. Accordingly, they have submitted copies of the ledger account which shows the amount payable by them for the two projects as follows: -

Project	Opening balance of the related period	Credit availed during the period	Total of Col.2 & 3 as per Rule 6(3)(b)(i)	Remarks
Citi Centre-1	9,380	10,715	20,095	Opening balance taken from the date of Not.No. 23/2016-CE(NT). Total period upto 30.06.2017
Platinum Heights	59,137	1,23,422	1,82,559	OB as on 27.10.0216 (BU date) and total period upto 30.06.2017
TOTAL	68,517	1,34,137	2,02,654	

58.3. Thus, it is their argument that the maximum amount payable by them for the two projects under Rule 6(3)(b)(i) for the period from 01.04.2016 to 30.06.2017 is only Rs. 2,02,654/-. I have gone through the ledger account submitted by the assessee and accordingly hold that in view of the aforesaid amended provisions of Rule 6(3)(b)(i) which put a cap on the maximum cenvat credit payable by the assessee, total amount payable by them for the period from 01.04.2016 to 30.06.2017 will only be Rs. 2,02,654/-. Therefore, the demand raised on this issue for the FYs 2016-17 and 2017-18 (Q1) vide SCN dated 03.10.2019 is to be reduced to this extent.

58.4. As regards the period prior to 01.04.2016, the assessee stated that maintaining separate records for taxable and exempted services, as provided under Rule 6(3) is not possible for construction services in view of the fact that till the receipt of BU permission, there exists no exempted services; that exempted services will come into picture only when the competent authority grant BU permission; that since the date of BU permission and the quantum of services/sales to be effected after such BU cannot be foreseen till the BU date, they have no other option left but to avail all input credit on goods and services; and that therefore in order to comply with the provisions of reversal under Rule 6(3), the only option left to them is to compute proportionate amount of service tax involved in such exempted services after provision of such service. They also stated that since BU permission for Platinum Heights project was received only in October-2016, the issue of reversal of cenvat credit for the period prior to 01.04.2016 arises only for City Centre-1 Project. It is their submission that the cenvat rules allow them to reverse the proportionate amount of credit involved in exempted services by working out the same in terms of the formula prescribed under Rule 6(3A) of CCR, 2004. Accordingly, they have worked out the proportionate credit taken during the period from July-2012 to March, 2016 as total Rs. 8,02,119/- as shown in the Annexure-8 attached to the defence reply. Subsequently, they have submitted a letter dated 21.09.2020 stating that they have already paid back the said amount of Rs. 8,02,119/- along with applicable interest amounting to

Rs. 8,76,777/- totalling Rs. 16,78,896/- and also submitted copy of DRC-03 Challan No. DC2409200330342 dated 23.09.2020 evidencing total payment of the said Rs. Rs. 16,78,896/-.

58.5. I agree with their submission that they are unable to maintain separate records for taxable and exempted services till the date of BU permission and hence their only option is to reverse proportionate credit as per Rule 6(3A) or to pay the amount as per Rule 6(3)(b)(i). It is a settled principle of law that service tax cannot be demanded on the gross receipts merely on the ground of non-maintenance of separate records for taxable and exempted services. This is all the more important when the assessee is unable to maintain such separate records due to the reasons stated above. In a plethora of judgments, various appellate authorities including the Hon'ble Supreme Court have held that reversal of proportionate amount of cenvat credit involved in the exempted goods and services along with applicable interest, if there is a delay in the reversal, would suffice compliance of Cenvat Credit Rules, 2004. I find that the assessee has cited a number of case laws to support their point that the reversal of ineligible cenvat credit would be the same as non-availment of cenvat credit, viz: *Commissioner Vs. Precot Meridian Ltd. — 2015 (325) E.L.T. 234 (S.C.); Hello Minerals (P) Ltd. Vs. UOI [2004 (174) E.L.T. 422 (All.)]; CCE Vs. Ashima Dyecot Ltd. [2008 (232) E.L.T. 580 (Guj.) = 2008 (12) S.T.R. 701 (Guj.)]; Chandrapur Magnet Wires Pvt. Ltd. Vs. CCE, Nagpur [1996 (81) E.L.T. 3 (S.C.)]; Franco Italian Co. Pvt. Ltd. Vs. Commissioner — 2000 (120) E.L.T. 792 (Tribunal-LB); and Omkar Textile Mills Pvt. Ltd. Vs. Commissioner — 2014 (311) E.L.T. 587 (Tribunal).*

58.6. I have examined these judgements and convinced that the ratio of the same is fully applicable in the present case, and thus, reversal of cenvat credit even at a later stage or after clearance of goods would amount to non-taking of credit on the inputs. In fact, the decision in re *Hello Minerals Water P Ltd* (*supra*) was cited by Hon'ble Gujarat High Court in the case of *Ashima Dyecot Ltd. Vs. CCE* reported in *2008 (12) STR 701 (Guj)* to decide the case in favour of the assessee, and the said case of *Ashima Dyecot Ltd.* has been maintained by the Hon'ble Supreme Court as reported in *2009 (24) ELT A41 (SC).* I have also examined the case of *Khyati Tours and Travels vs. CCE, Ahmedabad* (*supra*), wherein Hon'ble Tribunal has observed that reversal of wrongly availed credit has the effect as if no credit was availed. I quote below the relevant part of this decision: -

> *"4. It is seen that the appellant had reversed the wrongly availed Modvat credit along with interest, the same will have the effect as if no credit was availed by the appellants. The law on the above point is very clear and stands settled by various decisions of judicial as also the quasi-judicial authorities. For the sake of convenience we may refer to the order passed by Commissioner (Appeals) in the case of Om Shanti Travels, Ahmedabad being Order-in-Appeal No. 197/2010(STC)/MM/ Commr(A)/Ahd dated 9-8-2010, wherein after summarizing the entire case law, the benefit stands extended to the assessee. We reproduce the relevant paragraphs from the said order :-*
>
> > *"8. The appellant cited the case of M/s. Hello Minerals Water Private Limited v. UOI reported in 2004 (174) E.L.T. 422 (Allahabad). I have gone through this judgment. In Para 18 of this judgment it has been held by the High Court that if the exemption is*

subject to non-availment of Modvat credit on inputs, the subsequent reversal of Modvat credit amounts to non-taking of credit on inputs and the benefit of exemption notification number 15/94-C.E., is to be granted, even when reversal of credit on inputs was done at Tribunal stage.

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

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

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

58.7. I find that the issue has been finally settled by various appellate authorities including Hon'ble Supreme Court in *Chandrapur Magnet Wires (P) Ltd. Versus Collector of C.Ex., Nagpur* (*supra*) by considering initial availment of credit and subsequent reversal thereof as equivalent to non-availment of such credit. Hon'ble High Court of Gujarat in the case of *CCE, Ahmedabad-II v. Maize Products reported in 2009 (234) E.L.T. 431 (Guj.)* has held that the order of the Tribunal directing re-determination of credit taken on common inputs after the assessee undertook before the Tribunal to reverse the credit taken on such inputs used in non-dutiable goods is as per the statutory requirement. Thus the reversal of the credit at the Tribunal stage i.e. much after the clearances of the exempted goods from the factory, was held to be in order. This fact has also been explained by Hon'ble Tribunal in *Dr. Writer's Food Products Pvt. Ltd. Vs Commissioner of C.Ex. Pune-II* reported in *2009 (247) ELT 391 (Tri)* as under: -

"6. We also find that the Hon'ble High Court of Gujarat in the case of CCE, Ahmedabad-II v. Maize Products reported in 2009 (234) E.L.T. 431 (Guj.) has held that the order of the Tribunal directing re-determination of credit taken on common inputs after the assessee undertook before the Tribunal to reverse the credit taken on such inputs used in non-dutiable goods in as per the statutory requirement. Thus the reversal of the credit at the Tribunal stage i.e. much after the clearances of the exempted goods from the factory, was held to be in order."

58.8. As already mentioned above, the said assessee has submitted evidence that they have paid the entire amount of cenvat credit wrongly availed by them along withapplicable interest, besides produced such payment particulars. It is a settled principle of law that substantial benefits available under the law cannot be denied to the assessee merely citing technicalities. Therefore, I confirm the payment of cenvat credit of Rs. 8,02,119/- along with

applicable interest made by M/s. Jas for the period prior to 01.04.2016 as discussed above and consequently drop the demand raised on this issue vide SCN dated 16.02.2017.

59. *Late fee proposed for late filing of ST-3 Returns:* -SCNs dated 16.02.2017 and 03.10.2019 propose to impose late fee for late filing of ST-3 returns. Para 6.6 of the SCN dated 16.02.2017 shows the actual date of filing the returns for the FYs from 2011-12 to 2015-16 which is not in terms of the time limit specified in this regard. Similarly, Para 7 of the SCN dated 03.10.2019 shows the dates of filing returns for FYs 2016-17 and 2017-18 (Q1) which also indicate late filing. I find no dispute from the assessee on this issue and accordingly hold that late fee of the maximum prescribed Rs. 20,000/- is required to be imposed on them in terms of Section 70 of the Finance Act, 1994 read with Rule 7C of STR, 1994.

60. *Issue of limitation*: - Although the assessee has contested the entire demand being time-barred, I find no dispute from them about the unaccounted cash receipts of more than Rs. 41 Crores from their service recipients during the FY 2013-14, details of which were worked out from the incriminating documents seized by IT department on 17.10.2013 and the service tax demanded under SCN dated 16.02.2017 as unaccounted investment in WIP. Similarly, the facts and circumstances discussed above further revealed that they had collected cash amounts from their clients during the FYs 2013-14 and 2014-15 and infused the same to their books accounts in the guise of unsecured loans from various fictitious parties to avoid service tax liability. Further, the issues regarding non-reversal of cenvat credit involved on the exempted services is also not disputed by them. I have no doubt that such unaccounted cash receipts as well as manipulation of the books of accounts would not have been done by them without deliberate intent to evade payment of service tax. Therefore, none of the case laws cited by the said assessee in their defence reply would be of their help and accordingly, I hold that the demands of service tax under the subject SCNs are not hit by time-bar.

61.1. *Proposal to levy interest and to impose penalty*: - I find that the SCNs propose to levy interest on delayed payment of service tax under section 75 of the Finance Act, 1994 and on delayed payment of cenvat credit under Rule 14 of the Cenvat Credit Rules, 2004 which is mandatory provisions of the law hence needs no discussion. Further, the SCNs also propose to impose penalty under section 76, 77 and 78 of the Finance Act, 1994 read with Rule 15 of the Cenvat Credit Rules, 2004. The aforesaid facts regarding collection of unaccounted cash from their clients during the FYs 2013-14 and 2014-15 and its infusion into their books accounts in the guise of unsecured loans from various fictitious parties amount to deliberate suppression of facts and wilful mis-declaration of information with intent to evade payment of service tax. Further, the non-reversal of cenvat credit involved on the exempted services would not have been detected without investigation by the department due to their mis-declaration of information. These acts of omission and commission on their part have rendered M/s. Jas liable

for penalty under section 78 of the Act, read with Rule 15 of CCR, 2004. Similarly, they are also liable for a penalty under section 77 of the Finance Act, 1994 for their failure to keep and maintain their books of accounts by showing the correct information with regard to receipt of advances from their service recipients, and by filing ST-3 returns in the proper manner by showing all requisite particulars as required thereunder. However, I find no reason to impose any further penalty under section 76 as proposed under SCN dated 03.10.2019.

61.2. SCNs dated 16.02.2017 and 13.09.2019 seek to impose penalty under section 78A of the Finance Act, 1994 on Shri Alin A. Shah, Director of M/s. Jas. His statements recorded during the investigation and the information provided by him clearly indicate that he was in charge and responsible for the conduct of the said assessee company and was knowingly concerned with all the aforesaid acts of omission and commission carried out by them. He was also aware and concerned about the collection of unaccounted cash advance, manipulation of books of accounts resulting in non-payment of service tax and non-reversal of cenvat credit involved in the exempted services. Therefore, I hold that he is liable for a penalty as provided under section 78A of the said Act.

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

ORDER

(i) I confirm demand of service tax amounting to **Rs. 1,54,28,116/-** [***Rupees One Crore Fifty Four Lakhs Twenty Eight Thousand One Hundred Sixteen only***] from M/s. Jas Infra Space Pvt.Ltd., Ahmedabad which is leviable on the taxable value of Rs. 12,48,22,947/- worked out from the seized documents showing unaccounted cash receipt of Rs. 41,60,76,489/- involved in the WIP investment during the year 2013-14, as discussed in SCN dated 16.02.2017 and at Para 54.2 above, under Section 73(2) of the Finance Act, 1994. Since **M/s. Jas has already deposited Rs. 1,36,52,092/-** as stated in the SCN, I order appropriation of this amount with**recovery of the balance Rs. 17,76,024/-** in this regard ;

(ii) I drop the demand of service tax made under SCN dated 16.02.2017 on the balance amount of WIP investment shown by M/s. Jas during the FY 2013-14;

(iii) I also drop the demand of service tax made under SCN dated 13.09.2019 on WIP investment value declared by M/s. Jas during the FYs 2015-16 and 2016-17;

(iv) I confirm demand of service tax amounting to **Rs. 53,50,290/-** [***Rupees Fifty Three Lakhs Fifty Thousand Two Hundred Ninety only***] from M/s. Jas Infra Space Pvt.Ltd.,

Ahmedabad which is leviable on the taxable value of Rs. 4,32,87,140/- worked out from the gross receipt of Rs. 14,42,90,465/- declared in the guise of Unsecured Loans during the year 2013-14, as discussed in SCN dated 16.02.2017 and at Para 55.2 above, under Section 73(2) of the Finance Act, 1994;

(v) I confirm demand of service tax amounting to **Rs. 1,64,97,243/-/-** [***Rupees One Crore Sixty Four Lakhs Ninety Seven Thousand Two hundred Forty Three only***] from M/s. Jas Infra Space Pvt.Ltd., which is leviable on the taxable value of Rs. 13,34,72,842/- worked out from the gross amount of Rs. 44,49,09,474/- declared in the guise of Unsecured Loans during the year 2014-15, as discussed in SCN dated 13.09.2019 and at Para 55.4 to 55.6 above, under Section 73(2) of the Finance Act, 1994;

(vi) I drop the demand of service tax made under SCN dated 13.09.2019 on the balance amount of Unsecured Loans shown by M/s. Jas during the FY 2014-15 on the grounds discussed in Para 55.6 above;

(vii) I also drop the demand of service tax made under SCN dated 13.09.2019 on the value of Unsecured Loan amounts declared by M/s. Jas during the FYs 2015-16, 2016-17 and 2017-18 (Q1)on the grounds discussed in Para 55.7 above;

(viii) I drop the demand of service tax made under SCN dated 16.02.2017 on the amounts declared by M/s. Jas as receipts from Sundry Debtors during the FY 2013-14 on the grounds discussed in Para 56.3 above;

(ix) I also drop the demand of service tax made under SCN dated 13.09.2019 on the amounts declared by M/s. Jas as receipts from Sundry Debtors during the FYs2014-15, 2015-16, 2016-17 and 2017-2018 (Q1) on the grounds discussed in Para 56.5 to 56.7 above;

(x) I confirm demand of **Rs. 1,62,021/-** [***Rupees One Lakh Sixty Two Thousand Twenty One only***] being the amount of service tax short-paid by M/s. Jas during the FY 2014-15 as discussed in the SCN dated 16.02.2017 and at Para 57 above, under Section 73(2) of the Finance Act, 1994;

(xi) I confirm demand of **Rs. 2,02,654/-** [***Rupees Two Lakhs Two Thousand Six Hundred Fifty Four only***] from M/s. Jas under Rule 6(3)(b)(i) and Rule 14(1)(ii) of Cenvat Credit Rules, 2004 read with Section 73(2) of the Finance Act, 1994 towards the cenvat credit wrongly availed on exempted services during FY 2016-17 and 2017-18 (Q1) as demanded under SCN dated 03.10.2019;

(xii) I drop the demand of balance amount of cenvat credit made under SCN dated 03.10.2019 on the grounds discussed at Para 58.2 and 58.3 above;

(xiii) I also drop the demand of cenvat credit made under SCN dated 16.02.2017 for FY 2014-15 and 2015-16 consequent to payment/reversal of proportionate cenvat credit of Rs. 8,02,119/- along with applicable interest by M/s. Jas and on the grounds discussed at Para 58.4 to 58.8 above;

(xiv) I impose a late fee of **Rs. 20,000/-** [***Rupees Twenty Thousand only]*** on M/s. Jas in terms of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 on the grounds as discussed in Para 59 above;

(xv) I order that M/s. Jas should pay interest at the applicable rates under Section 75 of the Finance Act, 1994 on the above confirmed demands of service tax as per Para 62(i), (iv), (v) and (x) above and under Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 read with Section 75 of the Finance Act, 1994 on the confirmed demand as per Para 62(xi) above;

(xvi) I impose penalty of **Rs. 10,000/-** [***Rupees Ten Thousand only***] on M/s. Jas under Section 77(2) of the Finance Act, 1994 for their failure to properly maintain their books of accounts and to file the correct ST-3 Return showing the correct value of taxable service and the actual amount of service tax payable, etc.;

(xvii) I also impose a penalty of **Rs. 3,74,37,670/-** [***Rupees Three Crores Seventy Four Lakhs Thirty Seven Thousands Six Hundred Seventy only***] on M/s. Jas under Section 78 of the Finance Act, 1994;

(xviii) I impose a penalty of **Rs. 2,02,654/-** [***Rupees Two Lakhs Two Thousand Six Hundred Fifty Four only***]on M/s. Jas under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994;

(xix) I drop the proposal to impose penalty under Section 76 on M/s. Jas vide SCN dated 03.10.2019;

(xx) The amount of penalty imposed under Section 78 of the Finance Act, 1994 as above shall be reduced to twenty-five percent of the service tax determined under Section 73(2) as per Para 62(i), (iv), (v), (x) and (xi) above, provided such reduced penalty is also paid along with the service tax so determined and the interest as applicable, within a period of thirty days of the date of receipt of this order;

(xxi) I impose a penalty of **Rs. 1,00,000/- [*Rupees One Lakh only*]** on Shri Alin A. Shah, Director of M/s. Jas Infra Space Pvt. Ltd. under Section 78A of the Finance Act, 1994; and

(xxii) The three SCNs, viz. (i) F.No. DGCEI/AZU/36-92/2016-17 dated 16.02.2017, (ii) F.No. STC/15-04/OA/2019 dated 13.09.2019, and (iii) F.No. STC/15-11/OA/2019 dated 03.10.2019 referred above are accordingly disposed of.

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

F.NO. STC/15-04/OA/2019 **Date:09.10.2020**
BY REGD POST AD

To

1. **M/s. Jas Infra Space Private Limited,**
   202/B/4/205, City Centre, Near Idgah Gate,
   Near Asarva Bridge,
   Ahmedabad, Gujarat-380016 .

2. **Shri Alin A. Shah, Director**
   M/s. Jas Infra Space Private Limited,
   202/B/4/205, City Centre, Near Idgah Gate
   Near Asarva Bridge,
   Ahmedabad, Gujarat-380016.

Copy to: -

1. The Principal Chief Commissioner, CGST & Central Excise Zone, Ahmedabad.
2. The Additional Director General, DGGI, Ahmedabad Zonal Unit, Ahmedabad.
3. The Deputy Commissioner, CGST & C.Ex. Div-II(Naroda Road), Ahmedabad North.
4. The Superintendent, CGST & CX, AR-I, Div-II (Naroda Road), Ahmedabad North.
5. Guard File.