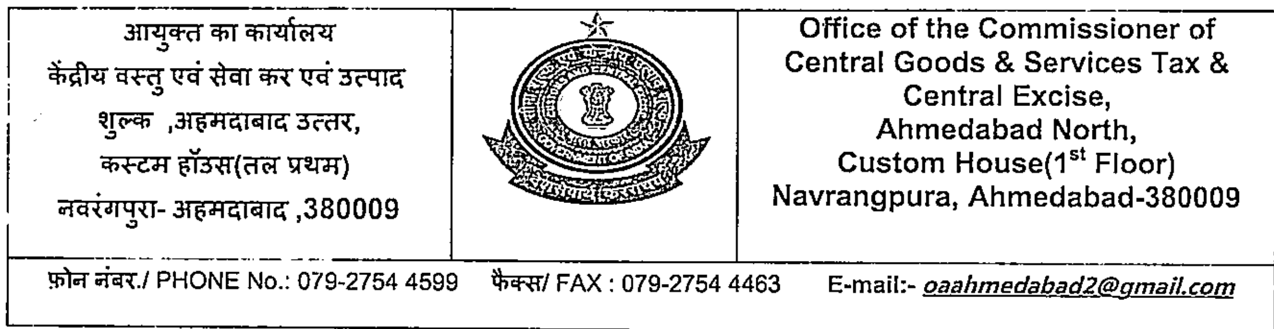


<u>निबन्धित पावती डाक द्वारा / By REGISTERED POST AD</u>

फा .सं/. STC/15-119/OA/2020 **DIN-20211164WT000000ACFA**

आदेश की तारीख़ / Date of Order : 23.11.2021

जारी करने की तारीख़ / Date of Issue : 23.11.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / **UPENDRA SINGH YADAV**

आयुक्त / **COMMISSIONER**

<u>मूल आदेश संख्या / AHM-EXCUS-002-COMMR–30/2021-22</u>

<u>ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–30/2021-22</u>

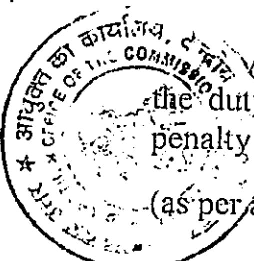
जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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 00.1रूपया 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 00.4 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

विषयः -कारण बताओ सूचनाःP

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-49/OA/2020 dated 21.10.2020 issued to M/s. RACHNA INFRASTRUCTURE LTD, situated at B-405, ANGEL COMPLEX, RAILWAY CROSSING, OPP OLD HIGH COURT, AHMEDABAD:380009.

BRIEF FACTS OF THE CASE:

M/s. RACHNA INFRASTRUCTURE LTD, situated at B-405, ANGEL COMPLEX, RAILWAY CROSSING, OPP OLD HIGH COURT, AHMEDABAD:380009-GUJARAT, (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services and are holding Service Tax Registration No.AABCR9791FSD001.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central of Direct Taxes (CBDT) for the F.Y. 2015-16, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

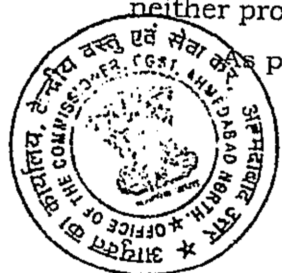
3. As per the records available with the divisional office of Division-VII and on going through the Third party Data provided by CBDT of the said assessee for the F.Y.2015-16, the total sales of service (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for the F.Y. 2015-16. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16. The difference in value as observed for FY 2015-16 was as under:

(Amount in Rs.)

Sr No	F. Y.	Total Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	329113563/-	7162276/-	406919617/-	399757341/-	57964814/-

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. Rs.5,79,64,814/- (including Cess) on the differential value of Rs.39,97,57,341/-.

4. The assessee were requested to provide explanation for such difference vide letter dated 07.10.2020 for difference in value shown in ST-3 Returns vis-à-vis that shown in Income Tax return filed for FY 2015-16. It was also requested to furnish the documents viz. Audited Balance Sheet/ Profit and Loss Account, Gross Trial Balance, Ledger, Invoices, Form 26AS, ITR and ST-3 Returns for FY 2015-16. But, the assessee neither produced any documentary evidences nor submitted any reply in the matter. As per the provisions of Section 70 of the Finance Act,1994,



F.NO.STC/15-119/OA/2020

(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

If any person, liable to pay Service Tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

5. As per the provisions of *Section 73(1)* of the Finance Act,1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

6. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

7. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 5,79,64,814/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 5,79,64,814/- (including Cess) worked out on value of Rs.39,97,57,341/- and therefore, Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

8. Therefore, it appeared that the said assessee had (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them 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 Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16 to 2017-18 (upto June-2017); (iv) All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appeared to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (vi) The said assessee was also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vii) contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

9. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table herein below and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs.5,79,64,814/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

TABLE

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax Payable (in Rs.)
01	2015-16	39,97,57,341/-	5,79,64,814/-

10. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such

crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs.5,79,64,814/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act,1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

11. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the said amount of Service Tax amounting to Rs. 5,79,64,814/- (inclusive of Cess) not paid was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

12 All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Finance Act.

13. In addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax rendering them liable for penalty under Section 78 of the Finance Act,1994.

14. Therefore, a Show Cause Notice No. STC/15-119/OA/2020 dated 21.10.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s Rachna Infrastructure Ltd., B-405, Angel Complex, Railway Crossing, Opp. Old High Court, Ahmedaba-380 008 asking them as to why;

(i) The Service Tax to the extent of Rs. 57964814/- (Rupees Five Crore Seventy Nine lakh Sixty Four Thousand Eight Hundred Fourteen Only)

short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;

(ii) Service Tax liability not paid during the financial year 2016-17 and 2017-18 (upto June-2017),ascertained in future, as per paras no. 7 and 8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.

(iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.

(v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

15. DEFENCE REPLY:

The assessee vide letter dated 23.11.2020 submitted their written submission. The assessee submitted that they are engaged in the business of construction of road which is being used by general public and the same is exempted vide entry (a) of clause 13 of the mega exemption notification no.25/12 dated 20.06.2012, that they had also given an immovable property on lease to educational institute on which Service Tax had been discharged. Further, they submitted the copy of income tax returns, copy of Form 26AS, Copy of VAT/Sales Tax returns, Sales Ledger, Copy of contract/agreements, Copy of Audited Balance Sheet and Profit & Loss Account, Reconciliation statement of income reflected in service tax returns and the returns filed with income tax, Copy of ST3 returns for period under consideration. They submitted that as per submitted documents, they had duly paid all the Service Tax dues and nothing was short paid or unpaid, therefore, the demand for service tax fails to sustain and was required to be dropped. They submitted that demand itself being wrong, question of charging interest and paying penalty under Section 78 of Finance Act,1994 did not arise. They further submitted that the show cause notice was time barred and bad in law and therefore was required to be quashed as it was issued after the time limit prescribed under Section 73 of the Finance Act,1994.

The assessee further vide letter dated 28.09.2021 submitted that M/s Rachana Infrastructure Limited is a public limited company having registered office at B-405, Angel Complex, Railway Crossing, Opp. Old High Court, Ahmedabad - 380009 engaged in the business of construction of road which is being used by general public and the same is exempted vide entry (a) of clause 13 of the mega exemption notification 25/12 dated 20.06.2012, that they have also given an immovable property on lease to an educational institution on which service tax is duly discharged by them. They submitted that, assessee is an approved government contractor primarily engaged in road construction services which is being used by general public. The same

is exempted vide entry (a) of clause 13 of the mega exemption notification 25/12 dated 20.06.2012.

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;"

They submitted that, therefore, no service tax was leviable on the services provided in connection with the construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of road being used by public at large.

They, submitted that they had also provided renting of immovable property services to an educational institution on which service tax was duly discharged. The same was duly reflected in the service tax returns filed and income tax return filed as well.

They further submitted that the impugned show cause notice was issued due to lack of details and documents on services provided by the assessee. They submitted that difference between the values appearing in the ST-3 returns filed and appearing in the income tax return and 26AS, were on account of the fact that, the assessee was engaged in road construction services which is being used by general public. The same was exempted vide entry (a) of clause 13 of the mega exemption notification 25/12 dated 20.06.2012. There being no tax liability on the above services, assessee was not showing the same in the service tax returns. The complete reconciliation of the values appearing in ST-3 vis-a-vis ITR & 26AS & Audit Report is as below;

Sl. No.	Particulars	As per 26AS Amt.(RS.)	As per Audit Report Amt. (Rs.)	Showin in ST3 Amt.(Rs.
1	Exempted Services Vide Sl.no.13(a) of 25/2012 (Road Construction Service			
	Various Road construction services	2725,72,993	2725,72,963	Being services were exempt and not leviable to service tax, the same were not shown in ST3
	District Panchayat Gandhinagar	100,24,988	134,46,015	
	Ranjit Buildicon Limited (WIP-Income)	--	165,61,157	
	Ranjit Buildicon Limited (Mobilization advance)- Note 1.	897,68,706	--	
	Shreeji Infraspace Private Limited	263,92,930	250,16,720	
	Chiloda Word- Note 2	--	15,16,709	
	Total Services as per ITR	3897,59,617	3291,13,564	
	Taxable Services			
	Renting of immovable property (Basic rent amount)	71,62,276	71,62,276	71,62,276
	Service Tax on renting of immovable property- Note 3	9,97,724		
	Total	4069,19,617	3362,75,840	71,62,276

Note 1 : Ranjit Buildcon Limited - Mobilization Advance
Ranjit Buildcon Limited (RBL), principal contractor had awarded a road construction work to them and the said contract amount was not leviable to service tax vide entry No.13(a) of mega exemption notification 25/2012 dated 20.06.2012 . During the year 2015-16, RBL had given amount of Rs.8,97,68,706/- as a mobilization advance on which TDS was deducted by them. It is a monetary payment made by the RBL to them for initial working capital and was in no way connected to the services rendered. Basically it reduced their need for working capital. It was adjusted against the running bills raised by them over the period of time. Therefore the mobilization advance did not become part of income unless the running bill was issued.

Note 2- Chiloda Work:
They were given a contract of supplying quarry material by Office of Exe. Engineer, Gandhinagar. Hence it was a tender for supply of quarry material only. However, inadvertently, it was shown under the Sale of Services in the Sch. 3.17 of the Audit Report. The same amount was liable for VAT and therefore TDS was also not deducted by the payer. Therefore the department was requested to consider the same as supply of goods liable for VAT instead of supply of services. Copy of ledger of the party along with work order has been attached herewith for perusal.

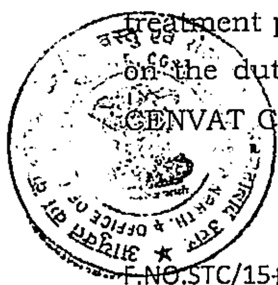
Note 3: Renting of immovable property - TDS on service tax amount.
They had given an immovable property on lease to an educational institute on which service tax was duly paid. During the year 2015-16, they had charged rent of Rs.71,62,276/- on which service tax of Rs.9,97,724/- was charged and paid also. However the payer inadvertently deducted TDS amount on total bill including amount of service tax. The amount of rent income is also appearing in schedule 3.18 - Other Income of the audit report furnished vide the submission. So the difference in the 26AS and ST-3 is of service tax amount only.

The assessee submitted that on the basis of the above, it is very much clear that there was a procedural lapse only on the part of the assessee by not showing the exempt services in the service tax return. However, there was no evasion of service tax by not showing the value of services in the service tax return filed.

The assessee relied on the following gist of decisions;

- Commissioner of Central Excise vs. Dashion Ltd Tax Appeal No. 415 of 2013 & 662 of 2014 (Gujarat High Court)

In the case of Dashion Ltd., the assessee was engaged in manufacture of water treatment plant and other connected items and was availing benefit of CENVAT credit on the duty paid on inputs, capital goods and input services as permissible under CENVAT Credit Rules, 2004. The assessee had five manufacturing units and had its



registered office at Vatva, Ahmedabad. The assessee was also providing several taxable services such as erection and commissioning, repairing and maintenance of water treatment plant, etc.

The revenue authorities, during scrutiny of the records of the assessee, noticed that it was availing the credit of service tax paid for various services by one unit for the purpose of clearance of other unit.

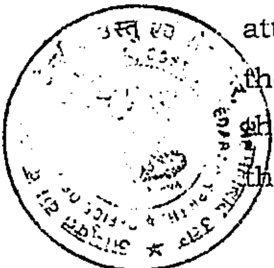
After gathering details from the assessee, the adjudicating authority had issued show cause notice calling upon the assessee as to why the CENVAT credit of service tax on input service should not be recovered with interest and penalties. In the show cause notice itself, the adjudicating authority had referred to sub-rule (3) of Rule 15 of the Rules of 2004 as basis for such proposal. Two primary objections of the Department were that the assessee had not registered itself under the Service Tax (Registration of Special Category of Persons), Rules 2005 and that the tax credit from one unit was utilized for discharging tax liability of another unit instead of pro rata distribution amongst different units. The adjudicating authority had confirmed the duty demands with interest and penalties.

Therefore, the points of law examined were that the assessee had utilized credit from one unit for the purpose of duty liability of its other unit without pro rata distribution by the input service distributor and further the assessee had not registered itself under the Service Tax (Registration of Special Category of Persons), Rules 2005.

Hon'ble High Court dismissed the department's appeal holding that such view was not sustainable as there was no previous restriction of this nature under Rule 7 of the CENVAT Credit Rules, 2004. Further non-registration of ISD is only a procedural irregularity for which substantial benefit of CENVAT credit cannot be denied when all the necessary records have been maintained by the respondent.

- The same was also accepted by the CBEC and circular in respect of this decision was issued vide Circular-No-1063-02-2018-CX dated 16.02.2018.

- Mangalore Chemicals & Fertilizers Ltd. Vs. Dy. Commissioner; 1991(55)ELT 437 (SC) Hon. Supreme Court has laid down that "there are conditions, some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve." There is no dispute that lapse is there on the part of the Appellant but it is merely procedural lapse and due to that substantive benefit of Cenvat Credit cannot be denied to the Appellant.



"Rule 14 of the Cenvat Credit Rules, 2004 provides for recovery of Cenvat credit wrongly taken. Since in view of the decisions cited above, I am of the view that the Appellant is entitle for input credit, therefore the said Rule 14 is not applicable on the facts of the case. So far as the finding of the Id. Commissioner in the were ST /87577 /2018 required to register the premises as "Input Service Distributor" (ISD) under the provisions of the Service Tax (Registration of Special Category of Persons) Rules, 2005, the same is undoubtedly beyond the scope of show cause notice, since there was no allegation regarding the violation of not taking registration as ISD either in the audit report or in the show cause notice".

- Commissioner Central Excise Commissionerate Vs M/s Indian Oil Corporation Ltd (Punjab and Haryana High Court)

In the case of Commissioner Central Excise vs M/S Indian Oil Corporation Ltd, it was held by Punjab and Haryana High Court that substantive benefits provided by a notification cannot be denied on account of procedural lapses by the assessee.

The Hon'ble Court further stated that the judgment relied upon by the appellant Department in the case of Eagle Flask Industries Ltd. (supra) would not be applicable in the present case. In the said case, the manufacturers had failed to comply with the requirement of submitting the declaration and to give the undertaking as per the form annexed and accordingly, it was held that it was not an empty formality and it was the foundation for availing the benefits under the notification and the procedural requirements could not be held to be without any consequences which would normally deny the benefit of the notification. The authorities below had concurrently found against the assessee and the said order was, thus, upheld by the Apex Court and therefore, reliance upon the same is of no avail to the appellant. (SIC).

In view of the above, the appeal was dismissed.

M/s. Rachna Infrastructure Limited requested to allow the procedural lapse being amount of exempt services not leviable to service tax not shown in the ST-3 returns and drop the impugned show cause notice.

16. PERSONAL HEARING:

Personal hearing on the matter was fixed on 14.10.2021. Shri Ankit Chokshi, CA and Shri Virag Kapadia, CA, appeared for personal hearing on behalf of the assessee. They reiterated their written submission dated 28.09.2021 and requested to drop the proceedings as their activity viz. road construction on behalf of the State Government is exempt from the levy of Service Tax. They also provided documents pertaining to the F.Y.

2016-17 to substantiate their contention.

17. DISCUSSION AND FINDINGS:

17.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 23.11.2020, 28.09.2021 and documents submitted by the assessee.

17.2 On going through the SCN, I find that basically the essence of the case is that data of Sales /Gross receipt from services were shared by the CBDT with CBIC for FY 2015-16, which was then compared with the gross value declared in ST-3 Returns filed for F.Y.2015-16 by the assessee. The difference in value of services to the extent of Rs.39,97,57,341/- was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs. 39,97,57,341/- under proviso to section 73(1) of Finance Act, 1944 or not.

17.3 I find that the assessee in their reply dated 28.09.2021 has stated that SCN has been issued due to lack of details and documents provided by the them. They have stated that primary discrepancy had been found due to difference between the values appearing in the ST3 returns, income tax returns and 26AS. They have stated that they were engaged in road construction services which is being used by general public and the same is exempted vide entry (a) of clause 13 of Mega Exemption Notification No.25/2012 dated 20.06.2012. There being no tax liability on the above service, assessee had not shown the same in Service Tax returns. They have also submitted that immovable property had been given on rent by them to an educational institution on which Service Tax payment had been made and the same was reflected in the Service Tax returns and the Income Tax returns filed.

17.4 The assessee has also submitted the Independent Auditors' Reports for F.Y. 2015-16. I find that the Independent Auditor is appointed by the Company under Section 139 of the Company Act, and auditor has to make a report, in accordance with Section 143 of Company Act, to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143(11) and to the best of his information and knowledge, the said accounts,

financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

17.5 The assessee has also submitted the copies of Income Tax Returns in Form ITR-6 for Assessment Year 2016-17 (F.Y.2015-16) filed with Income Tax Department as required under Section 11 of the Income Tax Act. On perusing these returns, I observe that the information about "the nature of company and its business" provided in the returns is shown as "Contractors".

17.6 I find that assessee had been awarded the following works during the F.Y.2015-2016;

i) Construction of Road in Bhat-Sughad-Babhoi, TP Scheme No.238, 239 & 80 by the AUDA, Ahmedabad.

ii) Widening and Strengthening of various roads in Dahegam Taluka by the Executive Engineer, Panchayat, Road & Building, District Panchayat, Gandhinagar.

iii) Construction of widening and reconstruction of Madhya Pradesh District Connectivity Section Project by Ranjit Buildcon Limited.

iv) Development of Jhabua-Jobat-Zeerpanya-Bagh Kulshi Road on BOT basis by Shreeji Infraspec Pvt. Ltd.

v) Quarry material supply at Chiloda Hot Mix Plant.

17.7 I find that the Notification No. 25/2012 -ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of Service Tax on services rendered by them being Construction of Road for use by the General Public, the noticee has claimed the exemption from levy of service tax under Sr. No. 13 (a) of Notification No. 25/2012-ST dated 20.06.2012. I therefore would like to reproduce the said Sr. No. 13 (a) of Notification No.25/2012-St dated 20.06.2012 ibid hereinunder:

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

As discussed hereinabove, the assessee is a contractor and had provided the services for construction, erection, commissioning, installation, completion, fitting out, repair ,maintenance, renovation or alteration of road as per work orders received by them and is rightly covered under the Sr. No. 13(a) of the Mega Exemption Notification No.25/2012-ST.

17.8 Further, I find assessee had supplied the quarry material of Rs.15,16,709/- for Hot Mix Plant at Chiloda, since the same is supply of Goods, the same does not fall under the purview of Service Tax, so the question of demanding Service Tax on the same does not arise as the same is supply of goods.

17.9 Further, I also find that assessee had provided taxable services for renting of immovable property and they had paid the Service Tax of Rs.9,97,721/- for the F.Y.2015-16 on taxable income under renting of immovable property of Rs.71,62,276/- and filed the ST-3 returns for the respective period.

17.10. Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee were squarely covered under the Sr. No. 13(a) of the Notification No. 25/2012-ST dated 20.06.2012 and find that the exemption is quite clearly available to the assessee as claimed by them. Since I am convinced with the arguments put forth by the assessee, therefore I hold that no service tax is payable by the assessee as demanded in the subject SCN for F.Y.2015-16.

18. I find that the SCN shows the difference in value to the tune of Rs.39,97,57,341/- for FY 2015-16 when value of sales/gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further para 6 of the SCN states that the levy of service tax for FY 2016-17 and FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability [illegible] be recoverable from the assessee accordingly.

OFFICE OF THE COMMISSIONER, CGST, AHMEDABAD

18.1 During the personal hearing, assessee has also submitted the relevant documents for the F.Y.2016-17 i.e. Copy of ITR, Copy of 26AS, Audited Account, sample copies of work orders of road construction, copy of ST3 returns for F.Y.2016-17, copy of circular no.1063/2/2018-CS, copy of decision of Commissioner of Central Excise Vs. M/s. IOCL. I am therefore deciding the Service Tax liability for the F.Y.2016-17 as demanded in SCN as well.

18.2 On going through the ST-3 returns for FY 2015-16 & 2016-17, it is noticed that the assessee had declared service tax liability to be discharged under Renting of Immovable property and RCM. As per ITRs filed by the assessee, Revenue from operations for F.Y. 2015-16 and 2016-17 booked are as under:

	FY 2015-16	FY 2016-17
Sale of Services	32,91,13,563/-	77,12,15,343/-
Sale of products/goods	20,58,62,982/-	11,21,05,256/-

The assessee had also provide the taxable services of Rs.71,62,276/- for F.Y.2015-16 and Rs.81,60,000/- for F.Y.2016-17 under renting of immovable property and paid the Service Tax thereon.

During the year 2016-17 they had been awarded the following works;

i) Widening and Strengthening of Salal Sonasan Fatepur Nikoda Road, Taluka Prantij by Executive Engineer, Sabarkantha Distric, Road and Building Division, Himantnagar.

ii) Site leveling work of extension of Jabalpur Pooling Station by Power Grid Corporation of India limited (A Government of India Limited).

iii) Widening and reconstruction of Madhya Pradesh District Connectivity Sector Project Roads by Ranjit Buildcon Limited.

iv) Development of Jhabua-Jobat-Zeerpanya-Bagh Kulshi Road on BOT basis by Shreeji Infraspec Pvt. Ltd.

18.3 I find that site leveling work of extension of Jabalpur Pooling station is not covered/does not fall under construction of road, hence, the exemption of Sr.No.13(a) of Notification No.25/2012-ST dated 20.06.2012 appears to be not applicable for the said work. The assessee had provided the service of Rs.2,89,55,393/- which had been shown in Form 26AS (F.Y.2016-17) to M/s. Power Grid Corporation of India Limited, Vadodara, which also

does not appear to fall/covered under the Mega Exemption Notification No.25/2012, Sr.No.13(a) as the assessee had been allotted work for Site Levelling Work of Extension of Jabalpur Pooling Station as mentioned in the intimation letter issued by the Asstt. GM (C&M), Ref. No. WRTS-II/C&M/VG/30176/JBP-SL/2016/LOI dated 04.04.2016. Hence, assessee appears to be not entitled for exemption as claimed by them of Mega Exemption Notification NO.25/2012-ST dated 20.06.2012, Sr.NO.13 (a) for work done for M/s. Power Grid Corporation of India Limited. Accordingly, assessee appears to be eligible only for exemption for taxable value of Rs.74,22,59,950/- (F.Y.2016-17) under Mega Exemption Notification No.25/2012, Sr.No.13(a) and appears to be liable to pay Service Tax on remaining amount as taxable value of Service Tax Rs.2,89,55,393/-(F.Y.2016-17), for the leveling work of extension of Jabalpur Pooling Station.

18.4 It appears that the activity carried out by the assessee of leveling work of extension of Jabalpur Pooling Station falls within the meaning of 'service' as defined under the provisions of Section 65B(44) of the Act. The relevant text to Section 65B (44) of the Finance Act, 1994 ('Act') reads as under:

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

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

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

It appears from the letter of intimation issued by M/s. Power Grid Corporation of India Limited to the assessee, the service provided by the assessee to M/s. Power Grid Corporation of India falls under works contract service, Section 65B(54) of the Finance Act,1994. Clause 54 of Section of Finance Act,1994, defines the "works-contract" as under:

"works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

Thus from the above definition, it is crystal clear that there should be transfer of property in goods involved in the execution of such contract, and

such transfer of property in goods is leviable to tax as sale of goods (such as sales tax, VAT or WTC, etc.). Thus it can be concluded that work contract is the composite/single contract for providing (a) transfer of property in goods and (b) provision of service. The assessee had provided works contract services to M/s.Power Grid Corporation of India Limited and the same are not exempted service. I do not find any merit in the argument of the assessee in respect of work done by them for M/s. Power Grid Corporation of India, in terms of entry no.13 (a) of the notification no.25/2012-ST dated 20.06.2012 that they are eligible for exemption.

18.5 In light of the above findings, I find the Service Tax demand on taxable amount of Rs. 2,89,55,393/-(F.Y.2016-17) for the leveling work of extension of Jabalpur Pooling Station to be classified under "works contract service" and the assessee are liable to pay the service tax on the same.

18.6 I find that the assessee has rendered taxable service namely "Works Contract Service" and had not paid the service tax during the year 2016-17 and thereby violated the provision of Section 68 read with Rule 6 of the Service Tax Rules. It is also noticed that the same had come to the notice of the department after the submission of the documents by the assessee during the PH. I therefore find that the said service tax not paid is required to be demanded and recovered along with interest from them under the proviso to Section 73(1) of the Finance Act,1994 by invoking extended period of five years and the demand sustainable on above ground shall be recovered under Section 75 of the Finance Act,1994 for the delayed payment.

18.7 Further, the assessee are body corporate liability for payment of Service Tax has been shifted to them as per Sr.No.I(A)(v) of RCM Notification NO.30/2012-ST dated 20.06.2012 for works contract. Assessee being a service provider are liable to pay 100% Service Tax on the taxable value of service provided by them. Sr. No. I (A) (v), which are reproduce below;

> (v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose (or security services) or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

18.8 Further, the assessed had not provided copy of any contract/agreement showing the details of rates, terms & conditions with M/s. Power Grid Corporation of

India Limited, determination of value of service portion in the execution of works contract cannot be determined, hence, assessee is liable for payment of Service Tax on forty percent of total amount charged for works contract as per Sr. No. 2 A (ii) Service Tax (Determination of Value) Rules,2006 are reproduced below;

> *(ii) Where the Value has not been determined under clause(i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-*
>
> *(A) in case of works contract entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;*

18.9 In view of the above findings, the assessee are liable to pay Service Tax on income received towards works contract service as calculated below:

Year	Exemption claim by the assessee	Eligible for exemption on service provided for Road	Taxable Income for works contract	Abatement (60%)	Taxable income	Service Tax to be paid (including cess)
a	b	c	d	e	F	G
16-17	771215343	742259950	28955393	17373236	11582157	1737324

In view of the above calculation, Service Tax of Rs.17,37,327/- is demanded, confirmed and is to be recovered from the assessee under Section 73 of the Finance Act,1994 for works contract service provided by them to M/s. Power Grid Corporation of India Limited.

19 I find that the Assessee has submitted that they had committed a procedural lapse only by not showing the exempt services in the service tax returns. However, there was no evasion of service tax by not showing the value of services in the service tax returns filed. They have relied upon the following judgments/orders/decisions;

i. Commissioner of Central Excise Vs. Dashion Ltd. Tax Appeal No.415 of 2013 & 662 of 2014 (Gujarat High Court).

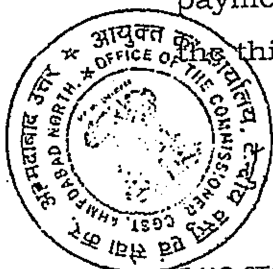
ii. Mangalore Chemicals & Fertilizers Ltd., Vs. Dy. Commissioner 1991(55)ELT437(SC).

I find that the above citation submitted by the assessee are not relevant to the present case as the facts and circumstances of the subject case are totally different from the above cited cases.

20. In view of the above discussions and findings, the invoking of extended period of limitation under Section 73 of the Finance Act, 1994 is sustainable and the plea of the assessee that the show cause notice is time barred is not acceptable.

21. I find that invoking extended period of limitation has been discussed in the SCN at length and the same has been contested by the said assessee in their submissions. It is my considered view that the Government has, from the very beginning, put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service providers/ taxpayers and accordingly, measures such as self-assessment etc., based on mutual trust and confidence have been put in place. In the spirit of mutuality of trust and transparent tax administration with reduced compliance burden vis-à-vis rules & procedures the government has consciously promoted the industries interest. Further, a manufacturer/ supplier of goods/ service provider/ taxpayer is not required to maintain any statutory or separate records under the provisions of the Finance Act, 1994 and Rules made thereunder, as considerable amount of trust is placed on them and private records maintained by them, for their normal business purposes, are accepted, practically for all the purposes. All these operate on the basis of expectation of honesty, truthfulness and due diligence on the part of the assessee. Therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences, it is observed that the assessee had knowingly suppressed the fact of receiving income under works contract service. This deliberate act of suppressing income under Finance Act, 1994 is in utter disregard to the requirements of law and breach of trust reposed on them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

22. Further, it is observed that the assessee was fully aware about the fact that they were receiving such income which was chargeable to Service Tax. However, in spite of knowing the facts; they chose not to pay the said applicable dues related to Service Tax. This appears to have been done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, but for the third party data received from CBDT. These acts on the part of the assessee



tantamounts to willful suppression, concealment and mis-statement of facts, with intent to evade the payment of dues related to Service Tax.

23 In view of the above discussions and findings, invoking of extended period of limitation under Section 73 of the Finance Act, 1994 appears to be correct and sustainable and the plea of the assessee that the show cause notice is time barred is not acceptable.

24. Since in the instant case, suppression of material facts have been established beyond doubt as discussed in the aforementioned paras, I consider this as a fit case for imposition of penalty under Section 78 of the Finance Act, 1994 which reads as under:

"SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —

(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii)the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

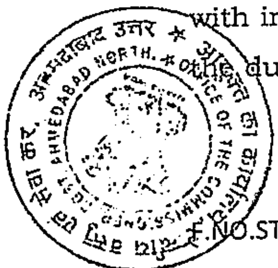
Explanation. — For the purposes of this sub-section, "specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the

invoices recorded by the assessee in the books of accounts shall be considered as the specified records."

24.1 Since, it is already proved that the assessee had suppressed the relevant facts from the department obviously with an intent to evade payment of legitimate service tax dues the consequences shall automatically follow. Hon'ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008(231)ELT3(SC) and has further clarified the same in the case of U.O.I. Vs. RSWM reported in 2009(238)ELT3(SC).. Hon'ble Supreme Court has said that the presence of ***malafide*** intention is not relevant for imposing penalty and *mens rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Further, Hon'ble High of Karnataka at Bangalore in the case of Motor World (2012(27)STR225(Kar.)) has held as under;

> "Section 78 applies to a case where a person has registered himself under the Act and failed to file the prescribed return and in such return filed, he has suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service.....
>
> ....Therefore, the argument that once acts of suppression, concealment and furnishing inaccurate particulars are established, the penalty follows as a matter of course or in other words is automatic, is without any substance as it runs counter to the express provision contained in Sections 78 and 80 of the Act. When once it is held that there is no reasonable cause, then the authority is empowered to impose penalty as prescribed under Section 78, for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount or service tax sought to be evaded by reason of suppression or concealment or the value of taxable service or the furnishing of inaccurate value of such taxable service.
>
> 21. When once the ingredients of Section 78 are established and there is no reasonable cause for failure. Section 80 is not attracted. Then the authority has to impose a minimum penalty of the amount or service tax sought to be evaded and the maximum is double the said amount. Here, there is no discretion, which is vested with the authority. The discretion is only confined La impose a penalty above the minimum and less than the maximum provided for under the Act....."

24.2 Thus penalty under Section 78, is attracted whenever any Service Tax has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful mis-statement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. Thus the assessee have rendered themselves liable to penalty under



Section 78 of the Finance Act,1994 as they had not paid service tax inspite of the facts that they were providing the taxable service. However, as per the second proviso to section 78, where such service tax along with interest is paid within 30 days from the date of communication of the order penalty would be further reduced to 25% of the service tax so determined. The benefit of reduced penalty shall be available only if such penalty is also paid within 30 days referred to as above.

25. Regarding penalty under Section 77, I find that the assessee has also contravened the provision of Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable services by not mentioning the same in ST3 returns; violated the provisions of Section 68 of the act read with Rule 6 of the Service Tax Rules,1994 by not paying the Service Tax during the F.Y.2016-17. Further, the assessee has not assessed the tax due on the services provided by them, as discussed above, and failed to file correct ST3 returns in time thereby violating the proviso of Section 70 of the act read with Rule 7 of the Service Tax Rules,1994. In view of the above, they are liable for imposition of appropriate penalty under Section 77 of the Finance Act,1994.

26. Further, in view of the discussion made in the forgoing paras, I hold that the assessee has failed to pay the service tax on the income received for works contract service by suppressing the facts from the department by contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax Rules, 1994. The Service Tax totally amounting to Rs. 17,37,324/- is recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

27. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

(i) I drop the proceedings demanding service tax on the short payment of service tax due to difference in revenue reconciliation on account of differences existing in the ST3 returns and the ITR for the F.Y.2015-16 amounting to Rs.5,79,64,814/- (Rupees Five Crore Seventy Nine Lakh Sixty Four Thousand Eight Hundred Fourteen Only) for F.Y.2015-16.

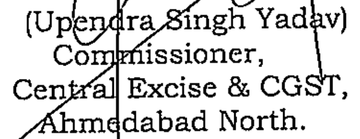
(ii) I confirm and demand of service tax of Rs. 17,37,324/- (Rupees Seventeen Lakh Thirty Seven Thousand Three Hundred Twenty Four Only), for F.Y. 2016-17 which was not ascertainable at the time of issue of SCN, which

has now been quantified, as per aforementioned para 18.9 on taxable income of Rs. 28955393/- under the category of works contract services under the proviso of Section 73(1) of the Finance Act, 1994.

(iii) I order to recover interest at the applicable rate from M/s. Rachna Infrastructure Limited, under the provisions of Section 75 of the Finance Act, 1994 on the confirmed demand at (ii) above.

(iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under section 77 of the Finance Act,1994 for failure to show correct taxable value in their ST3 returns.

(v) I impose penalty of Rs. 17,37,324/- (Rupees Seventeen Lakh Thirty Seven Thousand Three Hundred Twenty Four Only) under section 78(1) of the Finance Act, 1994. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.



(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Hand Delivery
F.No. STC/15-119/OA/2020

Date: 23.11.2021.

To
M/s.RACHNA INFRASTRUCTURE LTD,
B-405, ANGEL COMPLEX, RAILWAY CROSSING,
OPP OLD HIGH COURT, AHMEDABAD:380009.

Copy for information to:

1 The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2 The Assistant Commissioner, CGST &C.Ex., Division-VII, Ahmedabad North.
3 The Superintendent, Range-I, Division-VII, Ahmedabad North.
4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5 Guard File