


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/ F.NO.STC/15-74/OA/2020

DIN-20220164WT000000BAC

आदेश की तारीख / Date of Order : 28.12.2021
जारी करने की तारीख / Date of Issue: 06.01.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या / AHM-EXCUS-002-COMMR- 47 /2021-22

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 47/2021-22

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

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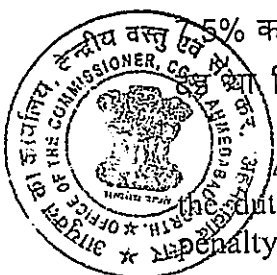
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर 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 हैं चार प्रतियाँ 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 संलग्न की जाएंगी म 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.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. F.NO.STC/15-74/OA/2020 dated 09.2020 issued to M/s PMP Infratech Pvt. Ltd., Harivilla Appartment, 7, Opp. Kargil Petrol Pump, Sola Road, Ahmedabad-380 091



M/s. PMP Infratech Private Limited, Harivilla Appartment, 7, Opp. Kargil Petrol Pump, Sola Road, AHMEDABAD- 380 091, GUJARAT , were issued SCN dated 29.09.2020 by the department for demand of Service Tax.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/s. PMP Infratech Private Limited, Harivilla Appartment, 7, Opp. Kargil Petrol Pump, Sola Road, AHMEDABAD- 380 091, GUJARAT, are as follows:

BRIEF FACTS OF THE CASE:

M/s. PMP Infratech Private Limited, Harivilla Appartment, 7, Opp. Kargil Petrol Pump, Sola Road, Ahmedabad- 380 091, Gujarat (hereinafter referred to as the 'Assessee' for the sake of brevity) engaged in providing taxable services are holding Service Tax Registration No.AAHCP3926GSD001.

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" pertaining to the assessee was undertaken by the Central of Direct Taxes (CBDT) for the F.Y.2014-15, 2015-16 & 2016-17, 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-VI, Ahmedabad North and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y. 2014-15, 2015-16 & 2016-17, the total sales of service (Value from ITR) were found to not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2014-15, 2015-16 & 2016-17. 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. 2014-15, 2015-16 & 2016-17. The difference in value as observed for FY 2014-15, 2015-16 & 2016-17 was as under:

FY	Difference Between Value of Services from ITR and Gross Value in Service Tax Provided	Duty at the rate of 12%	Education Cess at the rate of 2% on duty	Higher Edu Cess at the rate of 1% on duty	Total(Duty+ Edu cess+ Higher Edu Cess)
2014-15	106303938	12756473	255130	127565	13139167



FY	Difference Between Value of Services from ITR/TDS and Gross Value in Service Tax Provided	Service Tax from 01.04.15 to 31.05.15	Service Tax from 01.06.15 to 31.03.16	Education cess 2% of S Tax from 01.04.15 to 31.05.15	Sec Higher Education Cess 1% of S Tax from 01.04.15 to 31.05.15	Swachh Bharat Cess from 15.11.15 to 31.03.16	Total Duty FY1516
2015-16	603270729	12098471	70574411	241969.41	120984.7	1140429.59	84176266

	Difference in value FY1617	Service Tax from 01.04.16 to 31.03.17	Swachh Bharat Cess from 01.04.16 to 31.03.17	Krishi Kalyan Cess from 01.06.16 to 31.03.17	Total Duty FY1617	
FY 2016-17	0	0	0	0	0	0

FY	Difference Between Value of Services from ITR/TDS and Gross Value in Service Tax Provided	Service Tax	Education cess 2% of S Tax from 01.04.15 to 31.05.15	Sec Higher Education Cess 1% of S Tax from 01.04.15 to 31.05.15	Swachh Bharat Cess from 15.11.15 to 31.03.16	Krishi Kalyan Cess from 01.06.16 to 31.03.17	GRAND TOTAL(FY14-15, FY15-16, FY16-17)
FY 2014-15 to FY 2016-17	709574667	95429355	497099.4	248549.70	1140430	0	97315434

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. Rs.9,73,15,434/- (including Cess) on the differential taxable value of Rs. 70,95,74,667/-.

4. The assessee were requested to provide explanation for such difference through mail dated 26.02.2018 on mail id roshanpatel4@gmail.com for difference in value shown in ST-3 Returns vis-à-vis that shown in Income Tax Return filed for FY 2014-15, 2015-16 & 2016-17. 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. The assessee however neither produced any documentary evidences nor submitted any reply in the matter.

As per the provisions of Section 70 of the Finance Act, 1994,

(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 70 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.

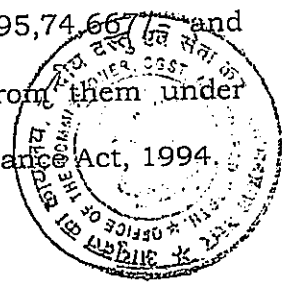


If any person, liable to pay Service Tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which 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 had 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. 9,73,15,434/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2014-15, 2015-16 & 2016-17 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with an intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 9,73,15,434/- (including Cess) worked out on value of Rs. 70,95,74,667/- 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.



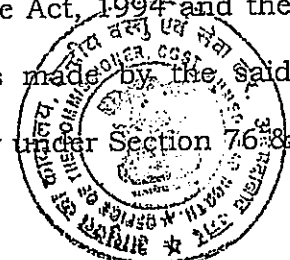
TABLE

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax Payable (in Rs.)
01	2014-15 to 2016-17	709574667/-	9,73,15,434/-

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 (at 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. 9,73,15,434/- 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. 9,73,15,434/- (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/15-74/OA/2020 dated 29.09.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s PMP Infratech Private Limited, Harivilla Apartment 7, Opp. Kargil Petrol Pump, Sola Road, Ahmedabad-380 061 asking them as to why;

- (i) The Service Tax to the extent of Rs. 9,73,15,434/- (Rupees Nine Crore Seventy Three lakh Fifteen Thousand Four Hundred Thirty Four Only) not paid, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

15. DEFENCE REPLY:

The assessee had not submitted any defence reply in response to the SCN dated 29.09.2020.

16. PERSONAL HEARING:

Personal Hearing in the matter was granted to the noticee on 28.09.2021, 13.10.2021, 16.11.2021 & 15.12.2021. On 15.12.2021 Shri Mitesh Patel, Chartered Accountant & Shri Parag Prajapati, Chartered Accountant appeared for personal hearing on behalf the noticee. They filed a written reply dated 15.12.2021 during Personal Hearing. They have submitted that they have provided services which were covered by the Mega Exemption Notification as the service are coming under infrastructure development. They have paid their entire service tax due wherever applicable. They have stated that inadvertently they had failed to file their ST3 returns. They have requested to condone the same and decide the issue on merit and sympathetically and do justice to them.

17. DISCUSSION AND FINDINGS:

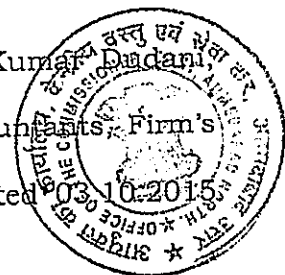
17.1 I have carefully gone through the facts of the case and records available in the case file, which includes the SCN, documents submitted on the date of personal hearing and oral submission made during the personal hearing by the assessee.

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 the CBIC for

FY 2014-15, 2015-16 & 2016-17, wherein the assessee had shown less/not shown substantial income of Rs.70,95,74,667/- in their ST3 returns for the financial year 2014-15, 2015-16 & 2016-17 for providing the taxable services. Therefore, in view of the differential values the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee was liable to pay service tax on the taxable value of Rs. 70,95,74,667/- for the financial year 2014-15, 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

17.3 I find that the assessee have submitted reply dated 15.12.2021 during personal hearing; they have stated that they are engaged in business of construction, erection, infrastructure, turn key project to Government, semi Government, Public Sector Units (PSUs) etc. They have submitted that they had provided services for betterment of nation especially pertaining to turn key related projects. They have submitted that in their case business cycle took too much time to generate cash and they had to wait for enormous time for the sake of their liquidity. They have submitted that they had paid service tax for the SCN period, further, due to lack of liquidity in their business they had sometimes faced issues which had caused panic to their business. That there was no malafide or *mensrea* involved in their case. They have submitted reconciliation statement with form 26AS. They have submitted that service receiver booked expenses in their respective accounts as per accrual bases, however, they were providing running bills. As and when complete portion of service was entitled, they used to book revenue. They have submitted that they were accounting their revenue as per 26AS income. They have submitted that service tax was being paid in consecutive time period as and when service was fully entitled. They have submitted that they had provided services to Western Railway, ONGS, IOC, NTPC, Narmada Canal, GSPC, BHEL, Central Warehousing etc. They have submitted sample bills, work orders etc. They have submitted that service was paid as per form 3CD on various date, which was clearly evident from 3CD.

17.4 I find that the assessee has been audited by Dinesh Kumar Dandani Partner M. No. 106875 of M. Bhansali & Associates, Chartered Accountants, Firm's Registration No.116632W and they had issued Tax Audit report dated 03-10-2015



under Section 44AB of the Income Tax Act, 1961 for F.Y.2014-15, Tax Audit report dated 17.10.2016 under Section 44AB of the Income Tax Act, 1961 for F.Y.2015-16 and Tax Audit report dated 07.11.2017 under Section 44AB of the Income Tax Act, 1961 for F.Y.2016-17. Section 44AB of Income Tax, Act,1961 is reproduced herein below for ease of ready reference;

SECTION - 44AB, INCOME-TAX ACT, 1961-2021

Audit of accounts of certain persons carrying on business or profession.

44AB. ⁶Every person,—

- (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year ¹[***]:

²[Provided that in the case of a person whose—

- (a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

- (b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment:

²[Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash,]

this clause shall have effect as if for the words "one crore rupees", the words "¹⁰[ten] crore rupees" had been substituted; or]

- (b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

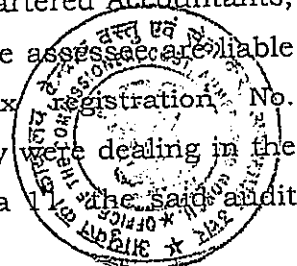
- (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

- (d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

- (e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

I find that in Form No.3CD in Para 4 issued by the auditor Dinesh Kumar Dudani, Partner M. No. 106875 of M. Bhansali & Associates, Chartered Accountants, Firm's Registration No.116632W, it has been established that the assessee is liable to pay Service Tax and they are holding Service Tax registration No. AAHCP3926GSD001. Para 10 of the audit report states that they were dealing in the business of Civil Contractors & other Contractors services, para



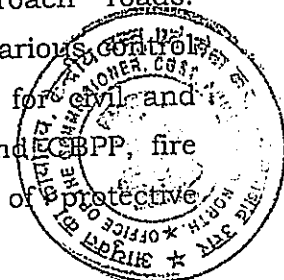
report states that Cash Book, Bank Book, Ledger, Journal Book have been examined to the best of their information and knowledge, that the said accounts, read with notes thereon financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed. I find that the assessee has submitted the copy of Audit Report under Section 44AB of the Income Tax Act, 1961 for F.Y. 2014-15, 2015-16 and 2016-17 alongwith Profit & Loss Accounts including all Annexure.

17.5 I find that the aforementioned records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by assessee during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

18 I find that assessee had submitted that they were engaged in providing services to Western Railway, ONGS, IOC, NTPC, Narmada Canal, GSPC, BHEL, Central Warehousing etc.

19. I find that assessee had been awarded the following works during the F.Y. 2014-15, 2015-16 & 2016-17 as submitted by the assessee;

- i. ONGC had awarded the works i.e. One year rate contract for construction of exploratory D/S Ahmedabad assets. Three year rate contract for civil works at installation of area-III, Ahmedabad assets. One year rate contract for construction of development and exploratory drill site, Ahmedabad assets, area-I. Hiring services of bush/grass cutting at ONGC installations, well sites and approach roads. Replacement of damaged false flooring and false ceiling at various rooms at ONGC Hazira Plant. Three year rate contract for civil and electrical works of surface installation in Area-I & III and station and store at Saij Kalol. Supply and apply of protective



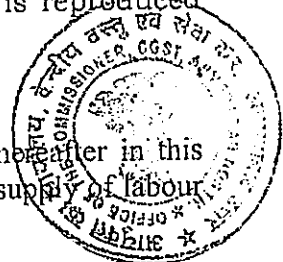
- maintenance coating at various installations of ONGC Ahmedabad Asset for a period of three years.
- ii. Western railway had awarded the works i.e. Construction of Goods Platform, Goods office, object control office etc. on PANSAR-PALANPUR section and Sanand-Goraghuma. Execution of balance work like Pit Lines, RCC Flooring, Apron, Roofing of shed & other incidental work in connection with setting up of Mega DEMU project at Sabarmati. Earthwork in Bank, Earthwork in cutting, supplying & spreading blanketing material, construction retaining wall etc in station yards and its approaches at Unjha Station. Balance work of construction of PeB shed contains column, trusses, rafters, roofing, louvers, wall cladding and minor works at Gandhidnam in connection with routine over hauling depot. Infrastructural upgradation of enhancing capacity of fabrication of steel bridge girder at Sabarmati. Supply of 50mm machine crushed stone ballast in stacks between station Sanaosara to Naliya in connection with gauge conversion from Meter Gauge to Broad Gauge. Construction of passenger platform, boundary wall duty bunks, development of circulating area and other platform amenities work at Sanand and Goraghuma stations. Construction of Goods platform, Goods office, object control office, platform covering shed & extension of FOBs at Mehsana station. Construction of station building, passenger platform, retaining wall for platform, platform boundary wall and other passenger amenities work at Unjha station. Construction of various offices, toilet block, water hut, PF boundary wall, Circulating area and other passenger amenities work at Palanpur & Siddhpur stations. Earth work in bank, earthwork in cutting, supplying & spreading blanketing materials, construction of retaining wall etc. in station yards and its approaches at Unjha Station. Construction of side drains, catch water drains and protection walls etc. in connection with Bhuj Naliya Gauge conversion project. Construction of ACOS building, rewinding shop and miscellaneous work in loco shed at Valsad. Earth work in bank/cutting for formation in connection with gauge conversion of Sanawad-Khandwa section. Execution of balance work like pit lines, RCC flooring, Apron, Roofing of Shed, OH water tank & other incidental work at Sabarmati.
- iii. Botad Nagar Palika for construction work of cement concrete roads.
- iv. Amul Fed (Mother Dairy) for design, supply, installation, testing, commissioning and documentation of MS structure Bridge and Galvalume profiled sheet for conveying system for production house to automated warehouse (SIC).
- v. Narmada Project Canal Division No.9 Sanand for Maintenance and repairs of Sanand Branch Canal.
- vi. BHEL for civil works of 400kV yards and control room building etc.



- vii. GAIL (India Ltd.) for civil works for preparation of well sites in Block CB-ONN-2010/11 in Distt. Ahmedabad & Anand. Hiring for collecting, transportation & disposal of drilling waste pits at well site locations of GAIL of Ahmedabad & Anand.
- viii. SCC JV PMP Infratech, Ahmedabad for construction of all civil work like earth work in cutting & filling for formation, construction of minor/major bridges, ROB/RUBs building works, electrical works & all P. Way works such as supply of stone ballast, transportation of P. Way materials, laying and linking of BG track & all other misc. work between Thaiyat-Hamira-Sanu section, New BG line project (SIC). Original work had been allotted to M/s. SCC JV PMP Infratech, Ahmedabad by the North Western Railway, Jaipur.
- ix. Indian Oil Corporation Limited for provision of civil engineering services for IOCL block CB-ONN-2005/07. Site restoration after completion of exploratory drilling.
- x. Bharat Electronics Limited for infrastructure works for EACS system in ONGC (Civil and Electrical) at Gujarat Package.
- xi. Bharat Petro Resources Limited for Hiring of waste management services for exploratory drilling in Block CB-ON-2010/8, Cambay Basin.
- xii. Gujarat State Petroleum Corporation Ltd., for disposal of mud waste from well site PK-1 in Ahmedabad Block
- xiii. Gujarat University for water proofing for different building hostel & department at Gujarat University Campus, Ahmedabad
- xiv. IFFCO for minor modification in Ammonia & Urea control rooms by providing false flooring.
- xv. NTPC Limited for civil work & approach roads package for Oil/Gas exploration block CB-ONN-2009/5. Drilling waste disposal services package for cambay basin Oil/Gas Exploration at Ahmedabad & Mehsana Districts.
- xvi. OILEX Limited for disposal of C77H drill cutting from C77H and mud from GGS sites to registered disposal agency site.
- xvii. ASAP Fluids Pvt. Ltd., Mumbai for supply and operate of mobile ETP Plant.

19.1. I find that assessee had not submitted copy of works contract awarded by GETCO Ltd., RBI, Sopan O & M Co. Pvt. Ltd., AMC, L.R. Patel, PAN India Pvt. Limited, Essar Oil, Rati Eng. I find that in form 26AS TDS had been deducted under Section 194C of the Income Tax Act. Section 194C of the Income Tax is reproduced herein below:

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour



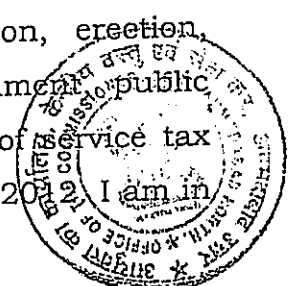
for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

- (i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;
- (ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family, of such sum as income-tax on income comprised therein.

In view of the above, I am of the opinion that the assessee had done contract work for the companies, whose works contract has not been provided by the assessee, under the Works Contract Service and the assessee had received the taxable income which was liable for payment of Service Tax under the Finance Act, 1994, and the assessee were not eligible for benefit of Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

20. Further, I find that on going through the following documents, the liability for payment of service tax had to be paid by the assessee, as the Service Tax had been shown separately in contract/bill issued by the assessee. 1st RA Bill NO.118/15-16 dated 25.03.2015 issued to ONGC, in Abstract Sheet issued to ONGC for three years rate contract for civil works, in 1st RA Bill issued to ASPA Fluids Pvt. Ltd., 1st RA bill for one year rate contract for construction of exploratory drill site issued to ONGC, Hiring services of Bush/Grass cutting at ONGC installation, well site and approach roads to ONGC, Letter of Acceptance issued by IOCL to the assessee, letter No.AMD/MM/ASSET/SC/30/2012-13/9010023622 dated 01.04.2016 issued to the assessee by ONGC, work order dated 03.06.2016 issued by Gujarat State Petroleum Corporation Ltd., IFFCO order no.1010/201004141162 dated 03.01.2014, NTPC letter Ref No.CS-8001-3222-9-CS-LOZ-6122 dated 25.02.2014, OILEX service order no.SO-CBY-1415-080 dated 28.07.2014 service tax had been shown separately,

21 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 had contested the demand of Service Tax on works contract services rendered by them being Construction, erection, infrastructure, turn key projects for government, semi government, public sector units (PSUs) etc., and claimed the exemption from levy of service tax under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.



agreement with the assessee that they were eligible for exemption benefit from the payment of Service Tax for the services provided to Railways, Narmada Canal, Botad Nagar Palika, Sujalam Suflam Division. I therefore would like to reproduce the said Sr. No. 12,13 & 14 of Notification No.25/2012-St dated 20.06.2012 ibid herein as under for ease of reference:-

"12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) ***

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) ***

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) ***

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;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12 AA of the Income Tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or

(e) a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

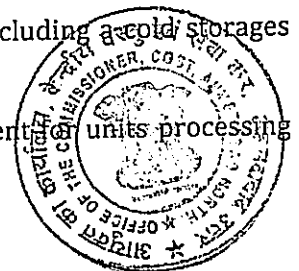
(a) railways, excluding monorail and metro; Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro;

(b) a single residential unit otherwise than as a part of a residential complex;

(c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) post- harvest storage infrastructure for agricultural produce including cold storages for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;"



22. 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, canal, railways and the same are rightly covered under the Mega Exemption Notification No.25/2012-ST and eligible for benefit of exemption notification. Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee were squarely covered under 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, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN for services provided to Railways, Narmada Canal, Botad Nagar Palika, Sujalam Suflam Division.

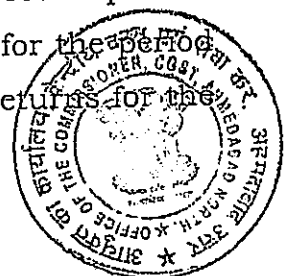
23. During the personal hearing, assessee had submitted the relevant documents for the F.Y.2014-15, 2015-16 & 2016-17 i.e. Copy of Tax Audit Report, Company Audit Report, Reconciliation statement of income with Form 26AS, Form 26AS, Sample Bill & Work order. In view of the submission of the assessee and the scrutiny of documents, I would like to discuss the liability or otherwise of Service Tax of the assessee for the F.Y.2014-15, 2015-16 & 2016-17 as demanded in SCN.

24. I find that assessee had filed ST3 returns for F.Y.2014-15 only. They had not filed ST3 returns for F.Y.2015-16 & 2016-17. I find that the assessee had submitted reconciliation statement of income with Form 26AS, but, they had not provided the reconciliation for payment of service tax with statement of income. On going through the records available in the case file, I find that the assessee had submitted 145 copies of challans in support of their argument that they had paid the service tax. Out of 145 challans submitted only 125 challans are pertaining to period 01.04.2014 to 31.03.2017 in which payment of Service Tax had been made to the tune of Rs.17861459/-. Details of the same are as under;

S.No.	Challan Date	Service Tax (including cess)	S.No.	Challan Date	Service Tax (including cess)	S.No.	Challan Date	Service Tax (including cess)
1	19.09.2015	580	43	21.07.2015	63756	85	18.12.2015	108002
2	19.09.2015	4587	44	19.05.2015	114494	86	30.03.2016	7890
3	18.09.2015	23262	45	10.06.2015	270330	87	26.02.2016	25212
4	18.09.2015	41146	46	15.07.2015	53730	88	31.12.2015	41886
5	17.07.2015	55383	47	29.07.2015	173671	89	28.01.2016	58185
6	19.09.2015	59272	48	26.11.2015	473154	90	31.12.2015	103019

7	18.09.2015	245958	49	22.03.2016	218665	91	31.03.2016	243128
8	19.09.2015	339784	50	17.07.2015	321966	92	06.05.2016	22091
9	19.09.2015	500001	51	17.07.2015	3369	93	10.06.2016	35200
10	22.09.2015	1000000	52	17.07.2015	3982	94	23.09.2016	9386
11	19.09.2015	597	53	17.07.2015	10686	95	23.06.2016	100540
12	19.09.2015	50800	54	01.09.2015	15291	96	13.07.2016	219683
13	18.09.2015	68469	55	15.10.2015	21120	97	06.07.2016	39238
14	28.09.2015	843408	56	02.11.2015	62930	98	23.09.2016	42383
15	23.08.2015	1000000	57	17.07.2015	67270	99	23.09.2016	106717
16	21.09.2015	1000000	58	17.07.2015	67270	100	23.09.2016	141549
17	17.07.2015	29561	59	02.09.2015	385534	101	28.07.2016	251587
18	17.07.2015	65488	60	17.07.2015	5511	102	12.07.2016	362770
19	16.10.2015	185238	61	17.07.2015	99866	103	06.05.2016	10228
20	28.01.2016	137185	62	04.11.2015	82378	104	22.07.2016	28252
21	28.01.2016	7848	63	04.11.2015	545160	105	27.04.2016	33520
22	28.01.2016	58145	64	01.10.2015	386152	106	06.05.2016	37886
23	11.02.2016	45500	65	02.04.2015	149340	107	07.07.2016	38163
24	11.02.2016	132258	66	17.04.2015	158125	108	07.07.2016	47389
25	11.02.2016	131784	67	04.11.2015	68231	109	06.05.2016	52693
26	26.02.2016	25212	68	04.11.2015	76465	110	06.07.2016	57984
27	10.03.2016	323880	69	04.11.2015	55383	111	06.07.2016	70528
28	15.03.2016	79523	70	05.11.2015	45500	112	06.07.2016	89551
29	17.03.2016	10516	71	26.11.2015	52606	113	23.06.2016	91284
30	17.03.2016	47532	72	02.04.2015	59315	114	15.06.2016	110296
31	22.03.2016	98229	73	02.04.2015	168360	115	24.05.2016	124500
32	30.03.2016	79536	74	02.04.2015	10516	116	15.06.2016	145380
33	30.03.2016	7340	75	17.06.2015	137185	117	02.09.2016	146636
34	30.03.2016	52606	76	11.02.2016	323880	118	10.06.2016	161386
35	31.03.2016	243128	77	30.03.2016	7848	119	01.09.2016	271721
36	02.04.2015	385534	78	28.12.2015	47532	120	23.06.2016	284885
37	02.04.2015	158125	79	22.12.2015	108002	121	10.06.2016	316218
38	15.03.2016	79523	80	17.03.2016	7340	122	15.07.2016	373359
39	11.02.2016	132258	81	28.01.2016	25212	123	22.04.2016	17517
40	11.02.2016	131784	82	10.03.2016	41816	124	13.07.2016	219683
41	30.03.2016	79536	83	28.01.2016	58145	125	23.07.2016	100540
42	17.07.2015	9185	84	17.03.2016	103019		TOTAL	17861459

24.1. I find that the instant Show Cause Notice had been issued on the basis of data provided by the CBDT to CBIC for F.Y.2014-15, 2015-16 & 2016-17. I find that the department had issued SCN demanding Service Tax to the tune of Rs.9,73,15,434/- for F.Y. 2014-15,2015-16 & 2016-17 on the differential value shown in ST3 and ITR vis-à-vis. I find that during personal hearing, it has been argued that they have paid the Service Tax for 2014-15,2015-16 & 2016-17 and had not filed ST3 returns for respective period. However, on going through the case file, I find that ST3 returns for the period 2014-15 has been filed by the assessee. They had not filed ST3 returns for the period 2015-16 & 2016-17.



24.2 I find that assessee has contested that they have paid service tax and there were no liability on them. However, I find that the assessee has paid Service Tax of Rs.17861459/- only through challans as submitted by the assessee in support of their claim for payment of Service Tax for 2014-15, 2015-16 & 2016-17 against the demand for service tax of Rs.9,73,15,434/-. I find that on going through the work order/bills submitted by the assessee it has been established they were liable for payment of service tax except for the services provided to Railways, Narmada Canal, Botad Nagar Palika, Sujalam Suflam Division. Further, in case of service provided to GETCO Ltd., RBI, Sopan O & M Co. Pvt. Ltd., AMC, L.R. Patel, PAN India Pvt. Limited, Essar Oil, Rati Eng., assessee has not provided any documents. I find that, there was no dispute vis-à-vis the service provided by the assessee under works contract services, but without any documents/work contracts order the issue cannot be decided as to whether assessee were entitled for benefit of Mega Exemption Notification No.25/2012-ST dated 20.06.2012 or otherwise.

25. Having gone through the reply and documents submitted by the assessee, I discern from Profit & Loss Account that the assessee's revenue from operation was Rs.32,11,81,855.31 for F.Y.2014-15, Rs.60,32,70,729.47 for F.Y.2015-16 and Rs.91,34,88,167.95 for F.Y.2016-17. I find that the service provided by the assessee falls under the category of works contract services and the same is liable for payment of service tax. I find that assessee were eligible for benefit of Mega Exemption Notification No.25/2012-ST dated 20.06.2012, only for services provided to Railways, Narmada Canal, Botad Nagar Palika, Sujalam Suflam Division and except these all services provided were to be taxable to service tax.

26. It appears from the documents submitted by the assessee that the activity carried out by the assessee of works awarded by the parties/companies 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”

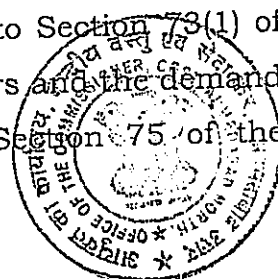
26.1 It appears from the services provided by the assessee to various parties/companies that the same fell under works contract service as discussed herein above, Section 65B(54) of the Finance Act, 1994. Clause 54 of Section of Finance Act, 1994, defines the “works-contract” as under:

“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;

26.2 Accordingly, I find that assessee are liable to pay service tax of Rs.5,96,20,061/- on the income under works contract service which were not exempted by virtue of Mega Exemption Notification No.25/2012-ST dated 20.06.2012, as per the detailed calculation herein mentioned below;

	2014-15	2015-16	2016-17
INCOME AS PER BALANCE SHEET	321181855.31	603270729.47	913488167.95
EXEMPTED INCOME (Notification No.25/2012)	25323827	178299002	276722519
TAXABLE INCOME	295858028	424971727	636765649
ABATEMENT	177514817	254983036	382059389
TAXABLE INCOME AFTER ABATMENT	118343211	169988691	254706260
S.TAX PAYABLE	14627221	24648360	38205939
TOTAL S.TAX PAYABLE (14-15,15-16 & 16-17)	77481520		
Less: S. TAX PAID BY THE ASSESSEE AS PER CHALLAN SUBMITTED FOR THE PERIOD 01.04.2014 TO 31.03.2017	17861459		
S.TAX TO BE RECOVERED	59620061		

27 I find that the assessee has rendered taxable service namely “Works Contract Service” and not paid the service tax during the year 2014-15, 2015-16 & 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 only after the submission of the documents by the assessee, which clearly proves malafide intention of the assessee. 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.

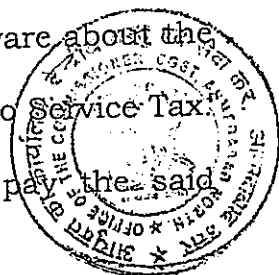


28 In view of the above findings, the assessee were liable to pay Service Tax on taxable income received towards works contract service as calculated above para 26.2, Service Tax of Rs.5,96,20,061/- is demanded and is to be recovered from the assessee under Section 73 of the Finance Act, 1994 for works contract service provided by them to various parties/companies as discussed herein above.

29. 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.

29.1 Further, 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 in them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

29.2 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

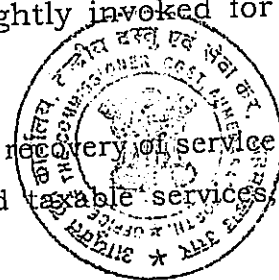


applicable dues related to Service Tax. This has been done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, if the third party data had been not 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.

30. I find that even on the opportunities arising during the adjudication process, they have not been able to prove their contentions/arguments and thus the suppression with an intent to evade payment, on part of the assessee, is proved beyond doubt and proviso to section 73(1) of the finance act, 1994 has rightly been applied in the instant case and therefore, by their such act of omission and commission, the assessee have rendered themselves liable for penalty.

I rely upon the judgment in the case involving Aircel Digilink India Ltd. V/s. Commissioner of Central Excise, Jaipur, reported in 2006 (3) STR 386 (Tri.-Del) and the case involving Bharti Cellular Ltd. V/s Commissioner of Central Excise, Delhi, reported in 2006 (3) STR 423 (Tri.-Del). In both cases, the Hon'ble Tribunal upheld invocation of extended period after taking note of the fact that appellants had not disclosed certain details and mode of computation in their ST-3 details and that there was nothing on record to suggest that appellants ever approached the office of the service tax authorities to ascertain the details of their liability to pay the service tax. Similarly, in case of Insurance & Provident Fund Department V/s. Commissioner of Central Excise, Jaipur-I, 2006 (2) STR 369 (Tri.-Del.), Hon. Tribunal held that non-disclosure of full amount of premium collected would attract invocation of extended period. The ratio of the above judgments can be applied to the present case also as the assessee had not only suppressed the material facts from the department but had also failed to comply with law and procedures, including payment of service tax. In view of the above, I hold that in the facts and circumstances of the present case, proviso to section 73 (1) of finance act, 1994, is rightly invoked for raising the demand for service tax against the assessee.

31. In view of the above, I find that extended period for recovery of service tax short paid/not paid by the assessee on rendering of said taxable services,



under the proviso to section 73(1) of the finance act, 1994 was rightly invoked and the SCN is sustainable on limitation. Therefore, the service tax amount of Rs. 5,96,20,061/- is recoverable from the assessee along with interest as provided in proviso to section 73(1) of the finance act, 1994 read with section 75 of the act *ibid*.

32. Since in the instant case, suppression of material facts have been established beyond doubt after discussions in the paras supra, 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. —

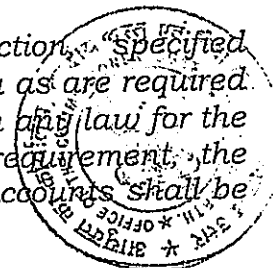
(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent 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.”



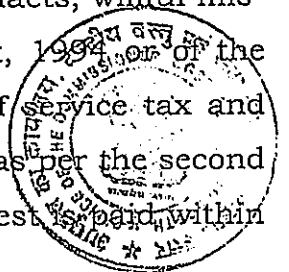
32.1 Since, it is already proved that the assessee had suppressed the facts, the consequences shall automatically follow. Hon'ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008(231)ELT3(SC) and further clarified in the case of U.O.I. Vs. RSWM 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 that;

"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 to impose a penalty above the minimum and less than the maximum provided for under the Act....."

32.2 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 misstatement 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. 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 along with interest is also paid within 30 days from the date of receipt of the order. Thus the assessee have rendered themselves liable to penalty under Section 78 of the Finance Act, 1994 as they were not paying service tax in spite of the facts that they were providing the taxable service.

33. Further, in view of the discussion made in the foregoing paras, I hold that the assessee has failed to pay the service tax on the income received for "works contract services" 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. 5,96,20,061/- 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.

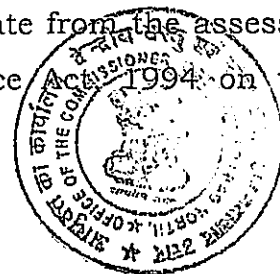
34. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

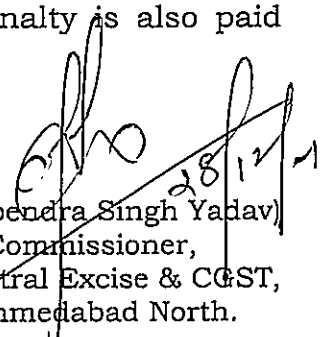
(i) I confirm the demand and order recovery of Service Tax of Rs. 5,96,20,061/- (Rs. Five Crore Ninety Six Thousand Twenty Thousand Sixty Only) including cess (as per para 26.2) from the assessee under the provision of Section 73 of the Finance Act, 1994.

(ii) I drop the demand of Rs. 3,76,95,373/- out of the total demand of Rs. 9,73,15,434/- .

(iii) I order to recover interest at the applicable rate from the assessee under the provisions of Section 75 of the Finance Act, 1994 on the demand at (i) above.



(iv) I impose penalty of Rs. 5,96,20,061/- (Rs. Five Crore Ninety Six Thousand Twenty Thousand Sixty Only) under section 78 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/15-74/OA/2020

Date:28.12.2021

To
 M/s. PMP Infratech Private Limited,
 Harivilla Appartment, 7,
 Opp. Kargil Petrol Pump,
 Sola Road,
 Ahmedabad- 380 091.

Copy for information to:

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

