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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-111/OA/2020 DIN : 20220264WT000001509E

आदेश की तारीख़ / Date of Order : 15.02.2022

जारी करने की तारीख़ / Date of Issue : 16.02.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–61 & 62/2021-22

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-111/OA/2020 dated 21.10.2020 and SCN No. GADT/TECH/SCN/ST/9/2021-TECH and LEGAL dated 19.04.2021 issued to M/s. Aakash Oil field Services Pvt. Ltd., C-1203, Titanium Square, Thaltej Cross Road, S.G. Highway, Ahmedabad 380054

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-61&62/2021-22

M/s. Aakash Oil field Services Pvt. Ltd. *(hereinafter referred to as the 'assessee' for sake of brevity)*, C-1203, Titanium Square, Thaltej Cross Road, S.G. Highway, Ahmedabad 380054, were issued SCN No. STC/15-111/OA/2020 dated 21.10.2020 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad and SCN No. GADT/TECH/SCN/ST/9/2021-TECH and LEGAL dated 19.04.2021 by the Additional Commissioner, Central GST, Audit, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCNs ISSUED TO M/S AAKASH OIL FIELD SERVICES PVT. LTD ARE AS FOLLOWS:

1. SCN No. STC/15-111/OA/2020 dated 21.10.2020

M/s. Aakash Oil field Services Pvt. Ltd (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services, and are holding Service Tax Registration No. AADCA4550DST001.

1.1. 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" in respect of M/s. Aakash Oil field Services Pvt. Ltd., was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17 , and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

1.2. 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 and 2016-17 the total sales of service (Value from ITR/ Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 and 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 and 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 and 2016-17. The difference in value as observed for FY 2015-16 and 2016-17 was as under:

Sr. No.	F.Y.	Total Gross Value provided (STR)	Sale of services (ITR)	Total Value for TDS (including) 194C, 194Ia, 194Ib, 194J, 194H	Higher Value (Value difference in ITR & STR) OR (Value Difference in TDS & STR)	Rate of duty (including Cess)	Resultant Service Tax short paid (including cess)
1	2015-16	31,08,46,205	40,05,19,122	37,59,88,129	8,96,72,917	14.5 %	1,30,02,572
2	2016-17	31,88,46,425	42,56,76,985	39,01,05,641	10,68,30,560	15 %	1,60,24,584
					19,65,03,477		2,90,27,156

1.3 Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 2,90,27,156/- (including Cess) on the differential value of Rs. 19,65,03,477/-.

A letter dated 06.10.2020 and summons dated 14.10.2020 were issued to the assessee to explain the difference and to submit documents in support thereof viz. Balance Sheet, Profit and Loss Account, Income Tax Return, Form 26AS, etc. However,

the assessee neither submitted the details nor submitted explanation. Therefore, the service tax liability of the assessee was worked out on the basis of income mentioned in ITR /Form 26AS, which were shared by Income tax Department. The said income was considered as the Total Taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

1.4 As per Section 68 of the Finance Act, 1994 every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994. Therefore, it appeared that the assessee had short paid the service tax as tabulated above.

1.5. As per the provisions of Section 70 (Furnishing of Returns) 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 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."

1.6. 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.

1.7. 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 the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

1.8. 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. 2,90,27,156/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year FY 2015-16 & 2016-17 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. 2,90,27,156/- (including Cess) worked out on value of Rs. 19,65,03,477/- 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.

1.9 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 2016-17; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (vi) made themselves 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) also contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

1.10. 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 & 2016-17. 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, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,90,27,156/-. 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 which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

1.11. 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. 2,90,27,156/- 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.

1.12. No data was shared by the CBDT, for the period FY 2017-18 (upto June-2017) and the assessee had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period FY 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

1.13. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the FY 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The assessee had also failed to provide the required information even after the issuance of letters and summons from the Department and,the assessable value for the FY 2017-18 (upto June-2017) was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said 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, in as much as the Service Tax liability arising in future, for the FY 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

1.14. 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 Service Tax amounting to Rs. 2,90,27,156/- (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.

1.15. 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 also appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Finance Act.

1.16. 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 thus rendering them liable for penalty under Section 78 of the Finance Act,1994.

1.17. Therefore, Show Cause Notice dated 21.10.2020 was issued to the assessee asking them as to why:

(i) Service Tax of Rs. 2,90,27,156/- short/ not paid, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.

(ii) Service tax liability for the FY 2017-18 (upto June 2017) to be ascertained, 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 Section 75 of the Finance Act,1994;

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

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

2. SCN No. GADT/TECH/SCN/ST/9/2021-TECH and LEGAL dated 19.04.2021

M/s. Aakash Oil field Services Pvt. Ltd. *(hereinafter referred to as the 'assessee' for sake of brevity) was* engaged in providing services of Mining of Mineral Oil or Gas, Erection, Commissioning and Installation, Works Contract Service, and Maintenance & Repair Services. The assessee is holding Service Tax Registration No.AADCA4550DST001.

2.1. Audit of the assessee, for October 2015 to June 2017 was conducted and the Final Audit Report No. CE/ST-1112/20-21 dated 9.4.2021 was issued by the Deputy Commissioner, Circle-VIII, Central GST Audit, Ahmedabad.

2.2. On verification of records/ledgers during audit, it was noticed that the assessee had booked non taxable services provided by them, under the head *"Sales A/c Non-Taxable Services"* for the period October 2015 to June 2017. On inquiry by the Audit team, it was learnt that the assessee had split a portion of the value of the contracts entered into with M/s. Oil and Natural Gas Corporation Ltd ('M/s. ONGC') which was reflected in the ledger '*Sales of non-taxable services*'. The extract of *'Sales A/c non taxable services'* pertaining to services provided by the assessee to M/s. ONGC, was taken out as per annexure to the SCN. The assessee had treated the non-taxable services provided to M/s. ONGC as services of transportation. The assessee had

issued invoices to M/s. ONGC for transportation on which M/s. ONGC had discharged service tax under Reverse Charge Mechanism by availing abatement under Notification No. 26/2012-ST. dated 20.6.2012.

2.3. The assessee had entered into several contracts with M/s. ONGC. Tenders were floated by M/s. ONGC against which the contracts were awarded to the assessee.

2.4. The contracts/Work Orders/Letters of Award were examined during audit. Two of the Contract Agreements are discussed hereinbelow :

A. A Contract Agreement No. AMD/MM/ASSET/SC/03/2015-16 dated 22.4.2016 **(RUD-04)** has been entered into by the assessee with M/s. ONGC for *"hiring services of Turnkey Transportation of work over Rigs"*. Annexure –B of the said Agreement defines 'Scope of Contract'. Para 2.03 of the *Scope of the Work, Technical Specifications and Special Conditions of the Contract* is reproduced below :

2.03 Scope of work includes services to be rendered by the Contractor for carrying out following jobs on turnkey-basis within the stipulated time-frame and as per operational requirement/instructions of ONGC :

- rig-dismantling at old site by providing of cranes with perators/slingers/helpers
- transportation of all rig material from old site to new site; and
-rig building at new location alongwith proper placement of rig material/equipment by providing o f crane with operators / slingers / helpers.

Contractor shall be responsible for arranging safe and proper loading, transportation and unloading of rig and all its associated material/ equipment and their proper placement / alignment at the new locations.

2.04 Contractor shall mobilize requisite resources, both manpower resources (i.e. field supervisors/operator/drivers/slingers/helpers etc.) as well as material resources (i.e. cranes, trailers, trucks and other required equipment) in sufficient quantity, so as to complete the job within the given time limit.

2.05 Contractor shall be required to undertake the jobs relating to a specific rig movement in one single continual manner. One such complete operation shall be deemed as one service, as defined in the contract.

Para 9 of the above Agreement refers to Rates. Para 9.03 refers to service tax and which reads as under :

9.03 The Contractor, unless specified otherwise in the contract shall pay all tax liabilities, duties, Govt. levies, etc. including SERVICE TAX, Customs duty, Corporate and Personnel taxes levied or imposed on the Contractor on account of payments received by it from ONGC for the work done under this contract. It shall be the responsibility of the Contractor to submit to the concerned authorities, the returns and all other concerned documents required for this purpose and to comply in all respects with the requirements of the laws in this regard, in time.

It must be clearly understood that ONGC shall make the payment of agreed hire charges and reimburse the service tax, as specified in the Schedule of Rate.

No claim on account of penalties, interest, etc, if any levied by statutory authorities on account of non-compliance of provision of service tax shall be entertained. The contract should possess / obtain certificate of Registration of Service Tax. The notarized copy of registration certificate should be submitted before submission of first invoice or bill.The service tax registration / service tax code and accounting code must be mentioned on each invoice / bill.

Para D of Notification of Award (NOA) issued from No.AMD/MM/ASSET/P-7/SC/03/2015-16 dated 31.12.2015, for hiring services of Turnkey transportation of work over rigs, prescribes separate rates for (a) Cost components for Crane services and (b) Cost component of material transportation services

- On cost components for crane services it is mentioned that the quoted rate shall be inclusive of service tax @14.5% as per supply of tangible goods for use. It is further mentioned that the contractor shall be liable to pay service tax to the authorities which will be reimbursed by ONGC on submission of documentary evidence.

- On the quoted cost component for material transportation services for transportation of rig, the quoted rate will be exclusive of service tax @4.2% as per Goods Transport Agency. ONGC shall bear and deposit the requisite service tax to the authorities.

2.5 An examination of the subject contract agreement revealed that the service provided by the assessee had involved Dismantling of Rig, Handling, loading of rigs and its accessories, Transportation of Rig and its accessories, handling, unloading at new site and Erection, installation and commissioning of rig at new site.

2.6. The above services of rig-dismantling at old site with the assistance of cranes, the transportation of rig material from old site to new site; and rig building at new location alongwith proper placement of rig-material/equipment and providing manpower in the form of crane operators / slingers / helpers, **appeared to a single service provided by the assessee.** There appeared no justification for the breakup of rates into two separate categories and no reasons had been provided by the assessee. Hence, the breakup of the services into two components merely for the purpose of payment of service tax appeared to be unjustified and appeared to have done by the parties to discharge a lower rate of service tax, by availing abatement on Goods Transport Agency services.

B. The assessee had entered into another contract with ONGC vide contract agreement no. AMDIWSS/MM/TCST/97/2014-15 (SAP OA NO. 9010021732) for the period 05.05.2015 **(RUD-05)** to 04.05.2018 for *"Hiring Services for transportation and Cleaning of WSS steel Tanks on Call basis"*. Para 3 of the Agreement refers to *Scope of Service and Service Requirement* and is reproduced hereinbelow:

3.1 The scope of service involved: -

a. Complete emptying and loading of Steel Tank(s) from the given loading site / base.

b. Transportation of Steel Tank(s) from loading site / base to unloading site / base with utmost care and delivery of same in original condition without any damage / loss.

c. Unloading & proper placement of Steel Tank(s) at the given unloading site / base.

d. Tank cleaning:

i. The cleaning process will involve the following:

a) Emptying of the left out fluids of the tanks.

b) Manual scrapping and removal of the twigs, branches, leaves etc. and gel inside the tanks using shovel and bucket.

c) Thorough cleaning of the inside of the tanks with fresh water to remove gel traces.

d) Final emptying of water from the tanks.

ii. After unloading of tank(s) at designated well site as per work order, the tank(s) should be cleaned thoroughly at the unloading site before filling of water.

iii. ONGC representative will periodically check about satisfactory cleaning, prior to water filling. In this regard, decision of ONGC representative will be final and binding.

iv. If the cleaning is found to be unsatisfactory, contractor will have to reclean the tanks, on the same day, without any extra cost to ONGC.

v. The left over gel in the tanks after HF job is carried out is a biodegradable natural guar product. The tank(s) should be emptied completely at the well site / waste pit prior to loading & transportation of the tank(s) to the designated site.

vi. There should not be any leftover liquid, dry leaves, tree branches etc. in the tank at unloading point, which will be checked by ONGC representative randomly after the cleaning job is completed.

vii. For tank cleaning, crew should be equipped with appropriate personal protective equipment.

e. The above components of work (a), (b), (c) and (d) shall constitute a single service against a single work order.

Para 2 of Notification of Award (NOA) issued from No.AMD/WSS/MM/TCST/97/2014-15 dated 24.04.2015, for hiring services for transportation and cleaning of WSS Steel Tanks on call basis, prescribes separate rates for (a) Tank Transportation and (b) Tank Cleaning. Para 3 of the above NOA refers to service tax and states that (a) Service tax as applicable for transportation of tanks will be borne by ONGC and will be paid directly by ONGC to the concerned authorities and that (b) Service tax as applicable for tank cleaning will be borne by the contractor and will be paid by contractor to the concerned authorities.

Therefore, it appeared that the Services provided by the assessee under the above Contract, had involved the following components:

a) Complete emptying, Manual scrapping, and thorough cleaning of the inside of the tanks

b loading of Steel Tank(s) from the given loading site

c Transportation of Steel Tank(s) from loading site / base to unloading site

d Unloading & proper placement of Steel Tank(s) at new site.

2.7. The above services of emptying, scrapping, cleaning of tanks, the transportation of tanks from old site to new site; and unloading and proper placement of tanks at new location appears to a single service provided by the assessee. There appeared no justification for the breakup of rates into two separate categories and no reasons had been provided by the assessee. Hence, the breakup of the services into two components merely for the purpose of payment of service tax appeared to be unjustified and appeared to have done by the parties to discharge a lower rate of service tax, by availing abatement, on Goods Transport Agency Services.

C. Apart from the above two contracts, several other contracts had also been entered into by the assessee with ONGC. Some are briefly discussed below:

(i) As per Notification of Award No.AMD/MM/ASSET/P-7/SC/07/2014-15 dated 21.3.2016, a Contract Agreement No.AMD/MM/ASSET/P-7/SC/07/2015-16 for *hiring the services of 02 nos of Mobile Pumping Units (MPU) alongwith Operating Crew* for a period of five years had been entered into between the assessee and ONGC

(ii) Further, as per Letter of Award No.ANK/MM/P4/08/2014-15/A16NC14004 dated 30.1.2015, a contract had been entered into for *hiring services for maintenance management of SRP Units (Sucker Rod Pumping) Units* for a period of three years. The scope of work includes maintenance management of SRP Surface Unit including but not limited to deployment of maintenance teams and supply of consumables, stores and spares material handling transportation of man and material, painting of SRPs, PMS Jobs, establishment of base office and workshop facilities and all applicable taxes, duties and levies, etc.

(iii) As per the Note No.2 of Notification of Award No.AMD/MM/ASSET/SC/73/2011-12/AOS dated 9/4/2014, for *hiring of services of 02 nos of fluid tankers for a period of thirty months*, it would be the sole responsibility of the contractor to deposit the SERVICE TAX to the concerned authorities. ONGC shall make the payment of agreed hire charges and reimburse service tax subject to submission of documentary proof.

(iv) Similarly, vide Notification of Award No.AMD/MM/ASSET/SC/39/2012-13/P-7(A) dated 18.4.2014, a contract for *'hiring of services for transportation, erection, dismantling & allied jobs of SRP related items'* has been entered into for a period of three years.

2.8. It appeared from the records maintained by the assessee, that M/s.ONGC had paid service tax on the cost incurred on transportation under various contracts, under Reverse Charge Mechanism, after availing abatement under Notification No. 26/2012-ST dated 20.6.2012. The assessee had discharged service tax under forward charge on the remaining portion of the value. The major share of value portion was given the benefit of abatement of 70% under Notification No. 26/2012-ST dated 20.6.2012 and treated as GTA and tax paid by M/s. ONGC.

2.9. A query memo dated 5.3.2021 was issued to the assessee. The assessee vide their letter dated 15th March, 2021 had replied that as per the tender documents of ONGC they

were required to pay service tax for the activity of providing cranes and other activities connected therewith. It was also clarified by the assessee that ONCG was to pay tax based on reverse charge mechanism for transportation of material through trailers / trucks. The assessee therefore, had stated that there was no intention of considering the two services as one service on the part of ONGC or them. The assessee had further stated that the two parties had decided to treat all services separately even for the purpose of payment of tax; that there was no intention to treat it as one service; that there were two separate and distinct services for which distinct amounts to be paid were separately mentioned and therefore, even if there was one contract, it cannot be called bundle of services. The main activity under Contract Agreement No. AMD/MM/ASSET/SC/03/2015-16 dated 22.4.2016 was transportation; and that the installation of the rig was only incidental to the main activity of transportation. The assessee also contended that the main activity was be carried out contract for hiring of services of turnkey transportation of work over rigs was transportation and not of assembling; that for the contract of hiring of services for transportation and cleaning of WSS steel tanks on call on basis was of transportation and not of cleaning and for the contract for hiring of services for transportation, erection, commissioning, dismantling and other allied work for SRP was transportation not of assembling. Lastly, it was contended by the assessee that the tax on transportation was to be paid by ONGC.

2.10. On examination of the contract agreement AMD/MM/ASSET/SC/03/2015-16 dated 22.4.2016 for *'hiring the services of turnkey transportation of work over rigs'*, entered into by the assessee with M/s. ONGC, it appeared that the scope of work had included several different service components to be rendered by the contractor for carrying out the job, *viz.*, rig dismantling at old site by providing cranes with operators/slingers/helpers, supply of manpower, transportation of all rig material and finally, erection and commissioning of rig at new location. As per the agreement, the contractor was responsible for mobilizing requisite resources and was required to undertake the job relating to a specific rig movement in one single continual manner and one such complete operation would be deemed to be one service. From the activities carried out by the assessee for ONGC as per the terms of various contracts, it appeared that the assessee had provided bundled services. Para 9.2. of Taxation of Services – An Education Guide dated 20.06.2012 provides the following example of bundled service –

> *Service provided in relation to air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board is a bundle of two services. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.*

2.11. The phrase *'bundled services'* is defined in Explanation to Section 66F of the Finance Act, 1994 to mean *a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.* Principles for interpretation and taxability of bundled services have been laid down in Section 66F of the Finance Act, 1994 reproduced below :

> ***"SECTION 66F. Principles of interpretation of specified descriptions of services or bundled services. —***

(1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.

'Illustration

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax.

(2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely :—

(a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation. *— For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services"*

2.12 Further, Section 66F(3) provides the principles for determining the method of tax liability. Two rules have been prescribed for determining the taxability of such services in clause (3) of Section 66F of the Act. These rules, which are explained below, are subject to the provisions of the rule contained in sub section (2) of Section 66F, viz., a specific description will be preferred over a general description. Section 66F(3) divides bundled services in two categories:

2.13 **Naturally Bundled:** Where the services are naturally bundled in ordinary course of business, *i.e.*, service cannot be performed individually and all the services should be performed together. For Example an airline company provides services of air transport along with catering service in the flight, and no separate fee is charged for such service, then in that case, both services are naturally bundled. Sub section 3(a) of Section 66F provides that a naturally bundled service should be taxed on the basis of that service which gives it its essential characteristics. It means that without performance of that service other services cannot be performed. Thus, ignoring all other services, the main service should be considered for levy of Service Tax.

2.14 **Not Naturally Bundled:** Where services are not naturally bundled but an arrangement is made in such a form that it becomes bundled service. Sub section 3(b) of Section 66F provides that if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax. Thus a service which is not naturally bundled would be taxed at the highest rate Hence, even if a service which is provided in the bundle of services falls under the negative list or exemption list or is eligible for abatement, such a service would also be leviable to tax at the highest rate. All the services included in the arrangement would be treated as a single service and the highest rate shall be applied to the entire transaction.

2.15 Para 9.2.2.of Taxation of Services – An Education Guide dated 20.06.2012 provides the following example to clarify the concept:

> *A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property.*

2.16. On examination of the subject contract agreement, it appeared from the terms of the contact and the scope of work outlined in various contracts, that the assessee was required to complete several activities under a particular contract. E.g., Service provided by the assessee in relation to *Turnkey Transportation of work over Rigs*, had included an element of dismantling of rigs, transportation of rigs to new location along with loading/unloading of rig and their proper placement /alignment at the new locations. The work under the said contract had involved activities such as hiring of cranes/ trailer, manpower supply, loading and unloading, transportation of rigs to the new location, dismantling and again erection and commissioning of the said rigs. Such activities/services provided by the assessee under a single contract were not naturally bundled in the ordinary course of the business and involves elements of various services but an arrangement had been made under the contract so that they were bundled together. It also appeared that the different elements of the service provided by the assessee relating to *Turnkey Transportation of work over Rigs*, were not integral to one overall service and if one or more services provided by the assessee are removed, the nature of the service would not be affected. Section 66F(3)(b) states that if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

2.17 Further, M/s. ONGC is engaged in petroleum exploration and the main asset of M/s ONGC is rig. It appeared that the movement of rigs from one location to another, had involved various services such as dismantling of rig, handling & loading of rigs and its accessories, transportation, handling and unloading at new site, erection, installation and commissioning of the rig at new site in order to make the rig functional. The primary motive of the contract was the erection and commissioning of rig at its new location in order to enable M/s. ONGC to commence

extraction of oil from the field. It appeared that the essential character of the contract was erection and commissioning of rig and all other activities are ancillaries to that essential service. Hence, it appeared that services provided by the assessee under various contracts appeared to be appropriately classifiable under Section 66F(3)(b) and will be chargeable at the highest rate of service tax @ 14.5 %.

2.18. Similarly, the contract agreement No. AMDIWSS/MM/TCST/97/2014-15 for *transportation and Cleaning of WSS steel Tanks on Call basis"* required the assessee to empty the tanks, clear the tanks thoroughly, load Steel Tanks, Transport Steel Tanks from loading site and unload & properly place the said Steel Tanks at site. It appeared that the services provided by the assessee under a single contract were not naturally bundled in the ordinary course of the business and had involved elements of various services and would therefore attract the provisions of Section 66F(3)(b) of the Finance Act, 1994.

2.19. Accordingly, it appeared that the assessee was liable to discharge service tax on the taxable value of services provided to M/s. ONGC, as detailed below:

Year	Applicable rate of service tax	Value** of the service portion of ONGC contracts on which service tax was not paid by the assessee. (Rs. In actual)	Service tax payable (in Rs.)
2015-16 (Oct – March)	14	5738227	803352
	14.50	14997350	2174616
	SUB-TOTAL (A)	20735577	2977968
2016-17	14.50	3437090	498378
	15	41005910	6150887
	SUB-TOTAL(B)	44443000	6649265
2017-18 (UPTO June 2017)	15	13103790	1965568
	SUB-TOTAL (C)	13103790	1965568
	TOTAL (A+B+C)	78282367	11592801

***Value as ascertained from the incomes received by the assessee from ONGC and booked under the head "Sales A/c Non-taxable Services"*

2.20. Under the negative list regime of service tax effective from July 1, 2012, as per the definition of service under Section 65B (44) of the Finance Act, 1994, *every activity for a consideration by any person for another* shall be liable to service tax, unless excluded under the negative list or is specifically exempted. The concept *'activity for a consideration'* involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. The service provided by the assessee was not covered under clauses (a) to (q) of the Negative List specified in Section 66D of the Act and were, therefore taxable services. Such services were also not covered under the Mega Exemption Notification No. 25/2012-ST dated 20.6.2012 as amended. Therefore, it appeared that services provided by the assessee to ONGC would fall within the ambit of *service* as defined under Section 65B (44) of the Act and the consideration received by them from such service recipients, appeared liable to Service tax in terms of Section 66B of the Act.

2.21. It appeared that the assessee had failed to discharge service tax liability of **Rs.1,15,92,801/-** on the entire taxable value of services, provided to ONGC and had also failed

to reflect the correct value of taxable services provided by them in the ST-3 returns filed by them during the period October 2015 to June 2017.

2.22. It appeared that the assessee had contravened the provisions/conditions of:

i. Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 ('Rules') as they had failed to pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed;

ii. Section 70 of the Act read with Rule 7 of the Rules as they had failed to assess their tax liability properly and also file correct ST-3 returns.

2.23. It appeared that the assessee had not disclosed the full amount of consideration received by them on provision of services in the ST-3 returns filed by them for the period October 2015-2016, 2016-17 and for Apr 2017- June 2017 and had therefore, suppressed the material facts from the department with intent to evade payment of duty. The department came to know about such short payment of service tax only during audit. Therefore, in this case all essential ingredients exist to invoke the extended period under proviso to Section 73(1) of Finance Act, 1994 to demand the service tax not paid. Therefore, it appeared that the unpaid service tax of **Rs.1,15,92,801/-** was liable to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act ibid. By suppressing the actual taxable value of services provided by them and by contravention of the various provisions of the Act and the Rules made thereunder, the assessee had also rendered themselves liable to penalty under Section 78(1) of the Finance Act, 1994.

2.24 With the introduction of self-assessment, the liability of ascertainment and discharge of tax has been shifted onto the assessee. The deliberate short payment of tax & suppression of value of taxable services is in disregard to the requirements of law and also not in line with the government's efforts to create a voluntary tax compliance regime. In the case of *Mahavir Plastics versus CCE Mumbai,* 2010 (255) ELT 241, it has been held that if facts are gathered by the department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case *of Lalit Enterprises Vs. CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. It, therefore, appeared that unpaid Service Tax of **Rs.1,15,92,801/-** was required to be recovered from the assessee under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act *ibid.* The assessee was also liable for penal action under Section 78(1) of the Act for contravention of various provisions of the Act and the rules thereunder.

2.25 Pre-SCN Consultation in terms of instructions issued from File No 1080/09/DLA/MISC/15 dated 21.12.2015, F.No. 1080/DLA/CC Conference/2016 dated 13.10.2016 and Master Circular No. 1053/02/2017-CX dated 10.03.2017, was granted on 15.04.2021, before the Additional Commissioner, Central Tax Audit, Ahmedabad. Mr Kaushal Parikh, Director attended the consultation through video conferencing on behalf of the assessee. He had submitted during the consultation that they had followed ONGC price Bid as per the Notice Inviting Tender and paid service tax on portion of value and remaining portion of value as per price bid of open tender of ONGC. ONGC had paid service tax on GTA on RCM. The assessee

further submitted that they had no intention of tax evasion but was following ONGC's Tender Terms and conditions.

2.26. Central Tax Audit, Ahmedabad had already conducted an audit of the records of M/s. ONGC (ST Reg AAACO1598AST034) for the period April 2016 to June, 2017 and a Final Audit Report No. CE/ST-1075/2018-19 (ST) dated 24.3.2021 was issued on ONGC. An observation para was incorporated in the said FAR which is reproduced below :

*"**Observation Para:** - It is observed that M/s. ONGC has signed agreement with some parties viz. Aakash Oil Field Services Pvt. Ltd and similar other parties in the name of "Hiring the services of Turnkey Transportation of work over Rigs". In said agreements, Scope of work includes services to be rendered by the contractor for carrying out the job viz. **Rig dismantling** at old site by providing cranes with operators/slingers/helpers, **transportation** of all Rig material, **Rig building** at new location. As per the agreement contractor is responsible for mobilizing requisite resources and shall be required to undertake the job relating to a specific Rig movement in one single continual manner and one such complete operation shall be deemed as one service. Further, as per para–D schedule of rates for the above all work has been mentioned only in two categories viz. Cost component for Crane services & Cost component of material transportation services.*

ONGC is engaged in the activities of petroleum exploration and Rig is the main area where they explore the Oil and movement of such Rigs involves various services viz. Dismantling of Rig, Handling & Loading of Rigs and its accessories, Transportation of Rigs and its accessories, Handling & Unloading at new site, Erection, installation and commission at new site. Accordingly, it appears that, service provider has to do various activities / services to complete the contract and it is to be deemed as one service. On the basis of the terms of Contracts, it appears that, the services provided by the service provider come under the purview of Bundle of Services and principles for interpretation & taxability of bundled services have been laid down in Section 66F of the Finance Act,1994. Further, as per explanation of Section 66F (3), the expression "bundled services" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

Section 66F(3)(a) states that; if various elements of service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character. In such cases, the service is required to be classified as per the essential character. In instant case, main asset of ONGS is the Rig and its erection at the new location is the prime motive to extract Oil from the field. Hence, essential character to be treated is erection and commissioning of Rig at new place and all other activities are ancillaries to that services. Further, Section 66F(3)(a) states that, if various elements of service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of Service Tax.

Therefore, it appears that, the services provided by M/s. Aakash Oil Field Services Pvt. Ltd and similar other parties are appropriately classifiable as per section 66F(3)(b) which has higher rate of Service Tax i.e. @ 14.5% instead of part of services in GTA with abatement claimed by ONGC. In this instant case, ONGC is the service receiver and whole liability of Service Tax is

to be paid by the service provider, whereas ONGC has paid the Service Tax under RCM on GTA services treating part of service as GTA which is irregular as stated above.

Therefore, in case of services provided by M/s. Aakash Oil Field Services Pvt. Ltd, as the audit of said service provider is currently under progress and is being conducted by Audit party-51, Circle-VIII, CGST Audit, Ahmedabad, therefore Audit Party-52 may be asked to thoroughly examine the issue as discussed above during audit and initiate necessary action to safe guard the Govt. revenue in case of M/s. Aakash Oil Field Services Pvt. Ltd. Further, the Jurisdictional officers under whose jurisdiction the other service provider's providing similar services to M/s. ONGC are registered, may also be requested to conduct a detailed enquiry in this regard to safeguard the Govt. revenue."

2.27. Therefore, M/s. Aakash Oil field Services Pvt Ltd, were called upon to show cause as to why:-

(i) Short paid service tax of **Rs.1,15,92,801/-** (Rupees One crore fifteen lakhs ninety two thousand eight hundred and one only) should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994;

(ii) Interest at the applicable rate should not be charged and recovered from them under Section 75 of the Finance Act, 1994 on the demand at (i) above;

(iii) Penalty should not be imposed upon them under Section 78(1) of the Finance Act, 1994 on the demand at (i) above.

DEFENCE REPLY:

The assessee have submitted their written submission as under:

3 **Defence Reply dated 22.10.2020 in** respect of SCN dated 21.10.2020 , wherein they have stated that:

- The audit of their records are under progress, audit has covered the period from 2015-16 to 2017-18 (upto June 2017). They had submitted reconciliation statement of their income vis-à-vis taxable service shown in ST-3 Returns.

4 **Defence Reply dated 24.04.2021 in** respect of SCN dated 21.10.2020 wherein they have stated that:

- Their records have been audited by the department and they have paid the service tax as pointed by the audit on account of reconciliation or records. They have submitted the copy of the audit report.

5 **Defence reply dated 29.01.2022: Combined reply to both SCNs**

5.1. Defence reply in respect of Show Cause Notice bearing No. STC/15-111/OA/2020 dated 21.10.2020, wherein they have interalia stated that:

- The SCN dated 21.10.2020 was issued for the period 2015-16 to 2016-17 on the basis of data Received from CBDT. It was observed that the values declared in ITR was higher than that of declared in ST-3 Returns. They had in connection with letter dated 06.10.2020 issued to them, intimated the Assessing Officer about ongoing audit at the relevant time and requested to

await for the audit report. All records were submitted to the audit superintendent. However, they were issued the SCN dated 21.10.2020, invoking extended period of time.

- Their entire records were audited and audit report was issued. The accounts were tallied with the Service Tax returns and audit had found that the aforesaid differential amount was on account of provision of transportation services to M/s ONGC in which service tax had been paid by ONGC as recipient of service. The Auditors had not found any other difference on which Service tax was not paid or evaded by not showing income in ST-3 returns. Hence, the show cause notice dated 21.10.2020 issued solely relying on Balance Sheet amount was required to be dropped.
- They had provided Transportation Service to M/s. ONGC in which as per the terms of contract, the transportation service was bifurcated into two parts. On transportation part, ONGC had paid service tax after availing exemption and on remainder part pertaining to ancillary or intermediary services, they had paid service tax at full rate. The difference as observed in balance sheet vis-à-vis service tax returns was on account of aforesaid services on which they were availing exemption and ONGC had paid service tax as recipient of transportation service. The department is of the view that they had to pay service tax on entire transportation amount at full rate instead of service tax being paid by ONGC at reduced rate. Hence for recovery of differential service tax, a separate show cause notice dated 19.04.2021 has been issued on the basis of audit para. Thus, the SCN dated 21.10.2020, solely issued on the basis of ITR, needs to be dropped.

5.2. Defence Reply in respect of Show cause notice bearing No. GADT/TECH/SCN/ST/9/2021-TECH and LEGAL dated 19.04.2021 :

- The Show Cause Notice dated 19.04.2021 has been issued on the basis of audit of records maintained by them. In this regard, certain facts were not disputed that they were providing transportation services to M/s. ONGC. They were transporting Rigs/Vessels from one site to another site of ONGC. As the Rigs/Vessels were heavy in weight they had to use Cranes for loading/unloading purpose. Further the Rigs could not be transported as such on trailers due to dimensional issues. For that reason, the Rigs had to be dismantled into pieces by removal of Nut-Bolts under supervision of ONGC Engineers and had to be re-fitted at new site by fixing Nut-Bolts again under supervision of ONGC Engineers. This activity was also essential for safe and smooth transportation as without being in dismantled condition, heavy machineries such as Rigs cannot be transported. Thus, they had provided ancillary or intermediary services of

loading/unloading as well as removal and refitting of Nut-Bolts of Rigs for transportation.

- They have been providing exactly the same service since their service registration in 2007. Prior to 2012, M/s. ONGC used to pay service tax as recipient of service under RCM on entire amount received by them for transportation which included provision of ancillary or intermediary services. The departmental audit of records were conducted and after thorough verification of records, audit reports dated 25.01.2010, 13.01.2011 and 07.01.2013 were issued for the period 2004-05 to 2008-09, 2009-10 and 2010-11 to 2011-12. They have enclosed the copies of the audit reports.

- With effect from 1.7.2012, the service tax law was modified and new section 66F was introduced. In such a case, to comply with amended provisions and as per the terms of tender itself, two separate rates were invited for two different services i.e. first rate for transportation activity and second rate for ancillary or incidental activities such as loading, unloading, dismantling, re-fitting of rigs, cleaning of vessels etc. The service tax on transportation activity was being paid by ONGC being recipient of service and service tax on ancillary or incidental activities was paid by them at full rate.

- It is nowhere alleged in the show cause that the aforesaid bifurcation of rates was done with ill-motive. M/s. ONGC is a Government of India Enterprise and they do this particular activity of transportation of Rigs from their one site to another all across India. ONGC had invited tenders all across India in identical pattern and various service providers had provided identical services to ONGC in same manner. Nowhere in the entire country this objection had been raised. Hence demand solely to them is discriminatory and requires to be dropped on this short ground. They had followed the terms of tenders invited by ONGC which is a large Public Sector Enterprise having their own Legal and Taxation department. They could not have even doubted ONGC's understanding of law and had acted bonafidely as per advice of ONGC and also as per understanding prevalent amongst the trade regarding transportation and ancillary activities. Hence the demand now issued on the basis of interpretation of law, is barred by limitation. They have bifurcated rates in two parts as per invitation of tender itself and they had just filled details of charges as per the terms of tender invited by ONGC and had paid full tax on ancillary activities even though they could have availed exemption on entire receipt from ONGC. Hence, their bonafide belief cannot be faulted with and hence,

demand notice invoking extended period is bad in law and requires to be quashed.

- The services provided by them throughout the period from 2007 onwards till today is exactly the same. Even for the period commencing from 2012 to 2015, audits were conducted by the departmental authority. Hence, their activity were well within knowledge of the department and for the period prior to 2015, the department had audited their records. The department had not raised any objection against bifurcation of amounts and payment partly on ancillary activities by them. Hence, the present notice is nothing but change of view in respect of same activity at the end of department. In such a case, the notice invoking extended period is clearly barred by limitation. It is well settled law that if the department had earlier not objected to same activity, department is prevented from invoking extended period of limitation for the later period. Hence it is submitted that that the notice is barred by limitation and is required to be dropped on limitation also.

- They have stated that, even on merits, the case of the department is not sustainable. The department has relied upon provisions of 66F(3)(b) for demanding differential service tax considering the services as not naturally bundled. In this regard, the aforesaid sub-rule is clearly not attracted in the facts of the case and provisions of 66F (3)(a) are applicable which is related to services which are naturally bundled in the facts of the case.

- In this regard, they were engaged in transporting Rigs/Vessels of ONGC. The rigs are heavy machinery and vessels are large dimensional open tanks. Hence, for loading and unloading of this heavy and large goods into trailers, cranes are required. These Rigs were fitted at site of ONGC with nut & bolts. The ONGC has its own dismantling/reassembling department. Under observation of engineers deputed by ONGC from their internal department, they used to remove nut-bolts for dissembling Rigs for facilitating smooth transportation, load the rigs/vessels by using cranes into trailers and used to transport the same to various sites belonging to ONGC. At the delivery sites also, they used to unload by way of cranes and do fitting of nut bolts of Rigs for re-assembling purpose. In case of large vessels, they are a kind of open large tanks in which various petroleum, chemicals etc are filled. As the same was transported in open conditions without being covered, the ONGC had required the transporter also to do cleaning of vessels after transportation at new site so that they can start refilling petroleum, chemicals etc. However, their main activity

was transportation of goods which was around 80% of the total invoice value and remaining 20% was towards loading/unloading by way of crane and fitting, cleaning etc. Hence, the essential character of the activity was to transport rigs/ vessels from one site of ONGC to other. Hence, the services are required to be classified under head of transportation service being main or essential activity and not under any other head as other activities are only incidental or ancillary to transportation of goods. Hence provisions of Sec. 66F(3)(a) are attracted considering nature of the main activity as Transportation which gives the bundle its essential character and demand invoking provisions of Sec. 66F(3)(b) is bad in law and requires to be dropped.

- Their activity has not changed since 2007, even after 2012, with widening of tax net, the basic nature of service has not changed. The activity which was earlier taxable, remained same and hence, the activity which were earlier assessed under transportation service, had continued assessment under same head. The exemption granted to transportation activity remained operative even after 2012. The department had issued Circular No. 104/ 07/2008-ST dated 6th August, 2008 wherein it was opined that intermediate or ancillary services such as loading/unloading, packing/unpacking, transshipment, warehousing etc provided in the course of transportation by Road and these services being not independent activities but, are the means for successful provisions of the principal service, namely, the transportation of the goods by Road. It was further clarified that it is well accepted principle of classification that single composition service should not be broken and classified as separate service. A composition service, even if consist of more than one service, should be treated as single service based on the main or principal service and accordingly, classified. The method of invoicing does not alter the single composite nature of service and classification in such cases are based on essential character by applying principle of classification enumerated in sec. 65A. Thus, if any, ancillary or intermediate service is provided, in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by GTA, and not by any other person, such service would form part of GTA service. Thus, as per the aforesaid clarification, irrespective of invoicing whether composite or bifurcated the services would be classified as single composite service under transportation head. Hence, the services provided by them were classifiable under GTA and hence, they were eligible for reduced rate of duty on ancillary or intermediate services provided.

- The department has clarified the provisions of section 66F in Para 9.2 of the guidance note that in case of naturally bundled services in the ordinary course of business, it shall be treated as provision of single service which gives such bundle its essential character. Further, an illustration of hotel service is given. It is clarified that if a Five Star Hotel is booked on a lump sum package with the facilities such as accommodation, breakfast, tea-coffee during conference, access to fitness room, availability of conference room as well as business centre, etc., it is observed that the hotel is providing bouquet of services in which various services attract different effective rate of tax. None of the individual constituent are able to provide essential character. However, the service can be described as convention service and if accordingly classified, it is able to capture entire essence of package. However, the department has further clarified that it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on the another service that is chargeable at the concessional rate. Hence, the department, even in 2012 when 66F was inserted, has issued clarification that a single composite service can be bifurcated and separate service tax can be paid on single composite service.
- They have further contended that it cannot be alleged that the contract had bifurcated value to offload the value of one service on another service, which was chargeable to the concessional rate. When the department itself has clarified that single composite convention service can be bifurcated in various elements and service tax can be paid separately for each service, they have done nothing contrary to the clarification issued by the department. Though the main service including ancillary and intermediate is classifiable under GTA head attracting lower rate of duty as per Sec.66F(3)(a), they have bifurcated the value into two parts and have paid full rate of tax on ancillary or intermediate services. Hence, they have opted to pay higher service tax on ancillary or incidental services as per guidelines issued by department as well as ONGC to avoid any further complication. Once the departmental instructions allowed to charge individually for the services without offloading the value of one service on another service, they have done nothing wrong and demand is not sustainable in law.
- The department vide Circular No. 186/5/2015-ST dated 5th October, in para-3, has clarified that goods transport service provided is a composite service which may include various ancillary service such as loading/unloading, packing / unpacking, transshipment, temporary storage, etc. These ancillary services may be provided by GTA himself or

may be sub-contracted by the GTA. In either case, GTA issues consignment notes and the invoice for providing said service which includes value of ancillary services provided in the course of transportation of goods by Road. It is clarified that these services are not provided as independent activities but are the means for successful provision of principal service namely; transportation of goods by Road. In para-4, again it is reiterated that composite service need not be broken into its component if it is provided as such in the ordinary course of business. Thus, a composite service even if it consist of more than one service, should be treated as single service based on main or principal service. Further it is clarified that if ancillary services are provided in the course of transportation of goods by Road and the charges for such services are included in the invoice issued by GTA, such service would form part of GTA service and therefore, the abatement of 70% would be available on it. Thus, department has reiterated the clarification issued in 2008 circular and has re-clarified that the services of loading/unloading, packing/unpacking are ancillary to the transportation and attract reduced rate of duty.

- ONGC has paid Service Tax as recipient of service. Now as per the demand notice, the tax was payable by them on total amount received for transportation activity. Assuming without admitting that service tax was payable as proposed in the notice, the tax already paid by ONGC cannot be re-demanded from them. This amounts to double taxation on same set of services. The department ought to have adjusted the tax paid by ONGC against present demand. Assuming the tax was not payable by ONGC, the department cannot retain money which is not tax under Article 265 of the Constitution. The department has failed to adjust the aforesaid payment of tax while raising demand. Hence also the demand is bad in law and requires to be dropped.

- The records of ONGC have been audited by the department, however, the department has not objected payment of tax by ONGC as recipient of services. Once the assessment of tax at the end of ONGC is finalised and no objection is raised against payment of Service Tax as recipient of service for transportation of goods, the same cannot be re-opened at the end of provider of transportation service. It is settled law that the department is barred from reopening assessment when the tax is paid and assessed at other end. Hence also the demand is bad in law and is required to be dropped.

- They have relied upon Judgment of the Hon'ble Supreme Court in the case of ***M/s RINL Vs. Dewan Chand Ram Saran*** reported at ***2012 (26) STR 289***, wherein the Hon'ble Supreme Court had taken a view that liability to pay tax can be transferred under contract. In such a case the demand is to be raised from transferee on which liability is shifted. Here in the present case, as per the terms of contract, ONGC has to pay service tax on transportation activity and ONGC has paid tax at concessional rate. If any more tax is payable, then the same was to be recovered from ONGC and department was required to issue demand notice to ONGC and not to them.

- They have also relied upon judgement of the Hon'ble Tribunal in the case of ***M/s. H.N. Coal Transport Pvt. Ltd. V/s. CCE&ST*** reported at ***2019 (26) G.S.T.L. 214,*** wherein the tribunal had held in the para-12 that SECL is a Public Sector Company and it is nobody's case that they have consciously and irregularly vivisected the activity and entered into two contracts for loading as well as transportation. The contacts indicate rates separate for respective activity. The machinery used for two activities are independent and unconnected with each other. Simply, because both the activities are performed within mining area, it cannot be bundled together into one. Further it is observed that though individual services has been done away after 1.7.2012, but the benefit of abatement to transport service have been continued. It is not further disputed that service tax on transportation activities have been paid by recipient i.e. SECL. In the circumstances, taking a different view for the period with effect from 1.7.2012 is not warranted. In the present case also, the service tax on transportation activity is paid by ONGC. In such a case, relying on the aforesaid order, they have stated that no demand can be raised considering the service as bundle service when the vivisection of service is done correctly and separate charges are mentioned in the contract itself and service tax is also paid accordingly.

- They have also relied upon the following judgements:
  1) Rungta Projects Ltd. V/s. CCE&ST reported at 2018 (9) G.S.T.L. 404.
  2) CCE V/s. RPL Project reported at 2019 (25) G.S.T.L. 113
  3) DRL Logistics Pvt. Ltd.V/s. CST reported at 2017 (7) G.S.T.L. 352 as confirmed by Hon'ble Supreme Court reported at 2018 (18) G.S.T.L. J172.

In all the aforesaid cases, the higher authorities have taken identical view that though transporter provides various ancillary or intermediary

services, the composite service has to be classified under transportation services. Hence, their activity is to be classified under transportation head only and the same cannot be classified under head of any other activity.

- Lastly, they have requested to drop the SCN in the interest of justice.

PERSONAL HEARING:

6. Personal hearing was granted to the assessee vide letter dated 15.09.2021, 11.10.2021. The assessee had sought extension of time, therefore they were granted Personal hearing vide letter dated 01.11.2021. The personal hearing was conducted on 18.11.2021. Shri Nirav Shah, Advocate and Shri Pankaj Shah, Accountant appeared on behalf of the assessee. They requested to tag the SCN issued by the Additional Commissioner on the same issue so that uniform decision by a common adjudicating authority is arrived at. They also requested to grant a fresh Personal hearing on 08.12.2021. The same was acceded to, and a fresh personal hearing was granted vide letters dated 22.11.2021 and 27.12.2021. Again adjournment of personal hearings was sought due to their engagement in High Court and Covid situation. Finally the personal hearing was held on 24.01.2022, and the same was attended by Shri Devan Parikh, Sr. Advocated and Shri Nirav Shah on behalf of the assessee. They stated that the department was aware of the facts of the case through audit and returns etc. They submitted that even prior to 2012, the service provided by them were classified as GTA service, that the position has remained the same even in GST Regime. They requested to decide the matter on merit and requested to take their written submission on records while deciding the case.

DISCUSSION AND FINDINGS:

7. I have carefully gone through the facts of the case and records available in the case file, which include both the SCNs, the defence reply dated 22.10.2020, 24.04.2021 & 29.01.2020, documents submitted and oral submission made by the assessee during the personal hearing.

8. I observe that two SCNs have been issued to the assessee. (1) The SCN dated 21.10.2020 has been issued on the basis of the third party data shared by the CBDT for FY 2015-16 to FY 2016-17. Accordingly, the data i.e. sale of services (As per ITR)/ amount paid/ credited towards the services (as per Form 26AS) was compared with corresponding ST-3 returns of the assessee and difference was worked out. Therefore, SCN demanding of Service Tax of Rs. 2,90,27,156/- on the said difference in value was issued on 21.10.2020 (2) The second SCN dated 19.04.2021 has been issued by the Additional

Commissioner, CGST Audit, Ahmedabad on the basis of audit observation. The audit had observed that the transportation services and other services rendered by the assessee to M/s. ONGC under a single contract, were required to be treated as not naturally bundled service in terms of Section 66F(3)(b) of the Finance Act, 1994 for purpose of levy of service tax. Accordingly, audit had observed that the service tax was also required to be paid by the assessee on Transportation charges/income by way of treating all the services to be bundled service. The SCN proposes demand of **Rs.1,15,92,801/-** covering the period from October -2015 to June 2017.

9. I find that the SCN dated 21.10.2021 seeks demand on differential value of service as reflected ITR /26AS vis-a-vis value declared in ST-3 Returns for FY 2015-16 to 2016-17. On the other hand, the SCN dated 19.04.2021 seeks demand of Service Tax on Transportation Income, on which no tax was paid by the assessee during FY 2015-16 (from Oct 15) to 2017-18 (upto June17). Therefore, both the SCNs seek the demand on incomes on which tax has not been paid by the assessee. Further, I find that the period covered under both the SCNs covers almost same period and can not be decided separately in the interest and uniformity of the decision, as both the SCNs are inter connected. I find that the assessee has also requested during the personal hearing dated 18.11.2021 to tag both the SCNs as well. Therefore, I decide to take up the matter simultaneously for fair and just decision in the matter.

SCN No. GADT/TECH/SCN/ST/9/2021-TECH and LEGAL dated 19.04.2021

10. I would like to proceed first with the **SCN dated 19.04.2021**. I find that the SCN has levelled charges that as per terms of the contract and the scope of work outlined in various contracts, the assessee had completed several activities under a particular contract. For example, Service provided by the assessee in relation to *Turnkey Transportation of work over Rigs* Service provided by the assessee had included an element of dismantling of rigs, transportation of rigs to new location along with loading/unloading of rig and their proper placement /alignment at the new locations. The work under the said contract involves activities such as hiring of cranes/ trailer, manpower supply, loading and unloading, transportation of rigs to the new location, dismantling and again erection and commissioning of the said rigs, Such activities/services provided by the assessee under a single contract are not naturally bundled in the ordinary course of the business and had involved elements of various services but an arrangement had been made under the contract so that they were bundled together. It has also been alleged that the different elements of the service provided by the assessee are not integral to one overall service and if one or more services provided by the assessee are removed, the nature of the service would not be affected. Section 66F(3)(b) states that if various elements of such service

are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax. Therefore, it was observed that the essential character of the contract was erection and commissioning of rig and all other activities are ancillaries to that essential service. Similarly, the contract agreement in relation to *"transportation and Cleaning of WSS steel Tanks on Call basis"* required the assessee to empty the tanks, clear the tanks thoroughly, load Steel Tanks, Transport Steel Tanks from loading site and unload & properly place the said Steel Tanks at site. It has also been observed that the services provided by the assessee under a single contract were not naturally bundled in the ordinary course of the business and had involved elements of various services and would therefore attract the provisions of Section 66F(3)(b) of the Finance Act, 1994. 16. Hence, it has been proposed in the SCN that services provided by the assessee under various contracts were appropriately classifiable under Section 66F(3)(b) and will be chargeable at the highest rate of service tax. Accordingly, SCN dated 19.04.2021 seeking demand of Service tax of **Rs.1,15,92,801/-**, covering the period from Oct 2015 to June 2017 was issued to the assessee on 19.04.2021.

10.1 I find that the assessee has contended that they were providing transportation services to M/s. ONGC by transporting Rigs/Vessels from one site to another site of ONGC. As the Rigs/Vessels were heavy in weight they had to use Cranes for loading/unloading purpose, and further the Rigs could not be transported as such on trailers due to dimensional issues, that the rigs were required to be dismantled into pieces by removal of Nut-Bolts under supervision of ONGC Engineers and had to be re-fitted at new site by fixing Nut-Bolts again under supervision of ONGC Engineers. This activity was also essential for safe and smooth transportation as without being in dismantled condition, heavy machineries such as Rigs cannot be transported. Thus, they had provided ancillary or intermediary services of loading/unloading as well as removal and refitting of Nut-Bolts of Rigs for transportation. Similarly, in case of large vessels, a kind of open large tanks in which various petroleum, chemicals etc were to be filled. As the same were transported in open conditions without being covered, the ONGC had required the transporter to also do cleaning of vessels after transportation at new site so that they can start refilling petroleum, chemicals etc. However, their main activity was transportation of goods which was around 80% of the total invoice value and remaining 20% was towards loading/unloading by way of crane and fitting, cleaning etc. Hence, the essential character of the activity is to transport rigs/ vessels from one site of ONGC to other. Hence, the services are required to be classified under head of transportation service being main or essential activity and not under any other head, as other activities are only incidental or ancillary to transportation of

goods. Hence provisions of Sec. 66f(3)(a) are attracted considering nature of the main activity as Transportation which gives the bundle its essential character. I find that they have quoted two circular in their support (i) Circular No. 104/07/2008-ST dated 6th August, 2008 and (ii) Circular No. 186/5/2015-ST dated 5th October, 2015, which clarified that any incidental or ancillary services provided alongwith transportation service, will also be classifiable under Transportation service.

10.2 They have further defended that ONGC had floated the tender across the country and had invited two separate rates for two different services i.e. first rate for transportation activity and second rate for ancillary or incidental activities such as loading, unloading, dismantling, re-fitting of rigs, cleaning of vessels etc. As per the terms and condition of tender, the service tax on transportation activity was to paid by ONGC being recipient of service and service tax on ancillary or incidental activities was to be paid by the service provider at full rate. Accordingly, they have paid service tax on all other incidental or ancillary service provided by them and ONGC had paid service tax on transportation charges being the recipient of service, even though they could have availed exemption on entire receipt from ONGC by classifying the service under Transportation service in terms of section 66F(3)(a). Rather, they had opted to pay higher service tax on ancillary or incidental services as per guidelines issued by department as well as ONGC to avoid any further complication.

10.3 They have also cited para 9.2 of guiding note issued by the department, wherein it has been clarified that in case of naturally bundled services in the ordinary course of business, it shall be treated as provision of single service which gives such bundle its essential character. Further, illustration provided thereunder, mentions that it can be charged individually for the services as long as there is no attempt to offload the value of one service on the another service that is chargeable at the concessional rate. Therefore, they had done nothing wrong in paying the service tax.

10.4 They have in support of their case, relied upon judgement of the Hon'ble Tribunal in the case of ***M/s. H.N. Coal Transport Pvt. Ltd. V/s. CCE&ST*** reported at ***2019 (26) G.S.T.L. 214***, wherein the tribunal had taken a view that a bundled service even on or after 1.7.2012 of loading of coal on Tippers on the coals space as well as transportation thereof up to the Railway siding. Here also the assessee had entered into two contacts; one for transportation and second for loading as in the present case. The Hon'ble Tribunal has held in the para-12 that SECL is a Public Sector Company and it is nobody's case that they have consciously and irregularly vivisected the activity and entered into two

contracts for loading as well as transportation. The contracts indicate rates separate for respective activity. The machinery used for two activities are independent and unconnected with each other. Simply, because both the activities are performed within mining area, it cannot be bundled together into one. Further it is observed that though individual services has been done away after 1.7.2012, but the benefit of abatement to transport service have been continued. It is not further disputed that service tax on transportation activities have been paid by recipient i.e. SECL. In the circumstances, taking a different view for the period with effect from 1.7.2012 is not warranted. They have also relied upon judgements as follows (1) Rungta Projects Ltd. V/s. CCE&ST reported at 2018 (9) G.S.T.L. 404 (2) CCE V/s. RPL Project reported at 2019 (25) G.S.T.L. 113 (3) DRL Logistics Pvt. Ltd.V/s. CST reported at 2017 (7) G.S.T.L. 352 as confirmed by Hon'ble Supreme Court reported at 2018 (18) G.S.T.L. J172.

10.5 They have further contended that they had been providing exactly the same service since their service registration in 2007. Their records had been verified by the departmental audit many time before last audit. They had been issued audit reports dated 25.01.2010, 13.01.2011, 07.01.2013 and 25.06.2015 which were issued for the period 2004-05 to 2008-09, 2009-10, 2010-11 to 2011-12 and 2012-13 to 2014-15. However, the department had never raised any objection against bifurcation of amounts and payment partly on ancillary activities by them. In such a case, the notice invoking extended period is clearly barred by limitation

10.6 In view of the above contention of the assessee, the issue for determination before me in the instant case is that whether the assessee was required to pay service tax on transportation service instead of by ONGC, treating all elements of service including transportation service provided by the assessee under a single contract, to be a single and not naturally bundled service in terms of Section 66F(3)(b) or otherwise. Therefore, in order to determine the nature of service, object of the contract, I would like to go through the contracts/ agreements which have been relied upon in the case.

10.7 On perusing the Contract Agreement No. AMD/MM/ASSET/SC/03/2015-16 dated 22.4.2016 (RUD-04), the following facts are forthcoming:

As per the contract agreement, the object of the Agreement was "for hiring the services of Turnkey Transportation of Work over Rigs" for Ahmedabad Asset for Period of three Years. The agreement also have Annexure-A to Annexure-D. The Annexure-A is Notification of Award for "HIRING SERVICES OF TURNKEY TRANSPORTATION OF WORK OVER RIGS" and stipulates specific terms and condition of the contract/tender, Rates, Mobilisation and deployment of

manpower and equipments; and Annexure-B is for "SCOP OF WORK" which defines scop of work, specification of work and special condition of the contract.

- Para D of Notification of Award (NOA) - **Annexure-A** prescribes rates of work and tax liability. The relevant part is reproduced for ready reference:

(D) Schedule of Rates:

Rates shall be payable as per the following schedule:

Sl.	Type of Rig	Rigs moves per annum considered for evaluation purpose only (nos.)	Quoted Cost Component (Basic Rates) for **Crane Services** (BR_C) (₹/Rig-move)	Quoted Cost Component (Basic Rates) for Material **Transportation services** for transportation of rig for distance slab of 20 to 20 KM (BR_M) (₹/Rig-move)
			Quoted Rate shall be inclusive of service tax @14.5% as per supply of tangible goods for use. **Note:** Contractor shall be liable to pay service tax to the authorities, which will be reimbursed by ONGC upon submission of documentary evidences	Quoted Rate shall be exclusive of service tax @ 4.2% as per Goods Transport Agency **Note:** ONGC shall pay the contractor agreed BR_M component. ONGC shall bear and deposit requisite service tax to the authorities.
	A	B	C	D
1	A-50	106	26,616.23	96,960.00
2	Cardwell-50/ Cardwell-100	109	32,140.35	1,29,910.00
3	U-PET Romanian Rig	26	57,250.00	2,30,000.00

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(g) **Service Tax :**

The service tax on cost component basic rate BR_M for material transportation services under the contract shall be payable by ONGC under the category Goods Transport Agency.

The service tax on cost component basic rate BR_C for Crane services under the contract shall be applicable under the category Supply of Tangible Goods for use and it will be the responsibility of the contractor to deposit the service tax to the concerned authorities. ONGC shall reimburse the said service tax, subject to submission of documentary evidence with the claim.

The contractor has confirmed that above rates have been quoted for the entire Scope of work and are firm, final, valid for the entire period of contract including extension, if any. These rates are inclusive of all taxes, duties, levies, work contract tax, freight, supply of consumables etc, in accordance with the terms and conditions of Tender Document.....

Relevant Part of the Annexure-B "Scope of work"

1.00 SCOPE OF CONTRACT

1.01 The award of work under this contract shall not entitle the Contractor an exclusive right to carry out all the works covered under this contract.

1.02 ONGC reserves the right to award the contract simultaneously to more than one contractor and also to award only a part of contract at its discretion at any time during currency of the contract. Contractor shall be bound to execute whatever work is awarded to him and shall not be entitled to any compensation in such cases.

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2.01 Ahmedabad Asset of ONGC is engaged in the activities of petroleum exploration & production from its various oil & gas fields situated in and around Ahmedabad and is drilling a number of wells as part of its field development programme. These producing oil/gas wells require work-over operations for requisite well-servicing from time to time, on account of various geo-technical reasons by way of deployment a suitable work-over rig.

2.02 The work-over rig, after completion of job at a particular well location is shifted to next location. This inter-locational rig movement alongwith all rig material / equipment is carried out by deployment of suitable load lifting equipments like Cranes and carriers like Trailers & Trucks of appropriate dimensions and pay-load capacities. The job also involves effective deployment of suitable manpower for both the functions ie, supervisory and operational.

An indicative assessment of weight and dimensions of various rig material / equipment is furnished at **Exhibit-EE** for the purpose of reference. It may be clearly noted that weights, dimensions and total quantum of Trailer/Truck loads given there are indicative only and may vary (i.e, increase / decrease) during actual job execution. Bidders are accordingly advised in their own interest to visit respective rig-sites for first hand estimation of quantum of load associated with each type of rig.

(Exhibit-EE lists out the rig materials to be transported, list includes Bunk House, Air Compressors, Pumps, Tubes, Pipes, various Tanks, Generators, Pipe Racks, generator House, POL Cage, Misc. store house, and other various items.)

2.03 Scope of work includes services to be rendered by the Contractor for carrying out following jobs on turnkey-basis, within the stipulated time-frame and as per operational requirement / instructions of ONGC ;

- rig-dismantling at old-site by providing of cranes with operators / slingers /helper
- transportation of all rig materials from old site to new-site; and
- Rig building at new location alongwith proper placement of rig material/equipment by providing of crane with operators/slingers/ helpers.

Contractor shall be responsible for arranging safe and proper loading, transportation and unloading of rig and all its associated material / equipment and their proper placement / alignment at the new location.

7.09 Upon conformation of route suitability by ONGC, the contractor shall mobilize his fleet and commence the assigned job within said minimum notice. The time of commencement of work shall be from 0700 hours only. Contractor shall deploy fleet / equipment (i.e, cranes, trailers and trucks) of suitable capacities in adequate numbers for timely and successful completion of job, which includes loading, transportation and unloading of rig equipments, associated materials and also their proper placement / alignment at new location on turnkey basis.

7.17 Contractor shall provide the cranes of required capacities, for rig-dismantling and rig building jobs at old and new work sites respectively, which shall remain under the disposal of in-charge work-site or authorized officer of ONGC, till such time the job of rig-building is complete and the rig is ready to start its operations at the new location.

7.18 All the work-over rigs mentioned in the Exhibit-AA are mounted on mobile rig-carriers. These rigs are self-propelled and can move from one

location to another under their own power. ONGC shall arrange for the movement of rig-carrier, from one location to another with its manpower.

Further, as per Note appended under Exhibit -EE to Scope of work (Annexure-B) -as per past experience, the requirement of total trailers was 16 ± 2 trailers (for Cardwell rigs) and 11± 1 trailers (for A-50 rigs)depending upon the availability of extra materials, tubulars at the well site for Cardwell rigs. They also required two cranes.

10.8 On perusing the Contract Agreement No. AMDIWSS/MM /TCST/97/ 2014-15 (SAP OA NO. 9010021732) For period 05.05.2015 to 04.05.2018 (RUD-05), the following facts are forthcoming:

- As per the contract agreement, the object of the Agreement was "Hiring Services for Transportation and Cleaning of WSS Steel Tanks on Call Basis" for Ahmedabad Asset for Period of three Years. The agreement also have Annexure-A to Annexure-E. The Annexure-A dated 24.04.2015 is a Notification of Award for "Hiring Services for Transportation and Cleaning of WSS Steel Tanks on Call Basis" and stipulates specific terms and condition of the contract/tender, Rates, Mobilisation and deployment of manpower and equipments; and Annexure-B is for "SCOPE OF WORK" which defines scope of work, specification of work and special condition of the contract.

- Para 2 of Notification of Award (NOA) - **Annexure-A** prescribes rates of work and tax liability. The relevant part is reproduced for ready reference:

Section -A: Tank Transportation	
Distance slab for one-way transportation	Charges for transportation of one tank including loading and unloading as per scope of work
Upto 05 kin	₹12,479.00 {=BR 1}
6-10 km	₹ 12,959.00 {BR2}
11-20 km	₹13,439.00 {BR3}
21-30 km	₹ 14,399.00 {BR4}
31-40 km	₹ 15,359.00 {BR5}
41-50 km	₹ 16,319.00 {BR6}
Rate per additional km beyond 50 km	₹ 81.60 {=BR7} in Rs. Per KM per tank/unit transportation

Section -B: Tank Cleaning			
Description	Charges for cleaning of one frac tank as per scope of work & SCC		Charges for clearing of one frac tank as per scope of work & SCC, including service tax @12.36%
	Excl. S/Tax	Applicable S.Tax @ 12.36%	
a	b	c	d
Cleaning of frac tanks	₹2399.00	₹296.52	₹2695.52

B. Service Tax:

a) Service tax as applicable for transportation of tanks, will be borne by ONGC and will be paid directly by ONGC to the concerned authorities.

b) Service tax as applicable for tank cleaning will be borne by the contractor and will be paid by contractor to the concerned authorities.

Relevant Part of the Annexure-B "Scope of work"

3.0 SCOPE OF SERVICE AND SERVICE REQUIREMENT:

3.1 The scope of service herein contains:

a. Complete emptying and loading of Steel Tank(s) from the given loading site / base.
b. Transportation of Steel Tank(s) from loading site / base to unloading site / base with utmost care and delivery of same in original condition without any damage / loss.
c. Unloading & proper placement of Steel Tank(s) at the given unloading site / base.
d. Tank cleaning:

(Tank Cleaning involves- emptying of tank, filing of the tank, re-cleaning at unloading site etc.)

e. The above components of work (a), (b), (c) and (d) shall constitute a single service against a single work order.

Annexure-C refers to "Special Condition of Contract": Relevant part of the Contact, is reproduced as under:

2.0 SCOPE OF CONTRACT

2.1 This contract will not entitle the exclusive right to contractor to carry out all the works covered under this tender.
2.2 The ONGC reserves the right to withdraw any portion of work and / or to restrict / alter the quantum of work during the currency of the contract and get it done through other agency and / or departmentally.

10.9 From the reading of above contracts/ agreements for "Hiring the services of Turnkey Transportation of Work over Rigs" entered into by the assessee and ONGC, it is discerned that the ONGC is engaged in the activities of petroleum exploration & production from its various oil & gas fields, they need to drill number of oil well for development of their production requirement. Thus, they need their drilling machinery i.e. rig and materials thereof, to be shifted to new place after completion of job. The contract has envisaged the transportation of rigs and all its associated materials to new place of job on turnkey basis. I also find that the assessee was required to provide number of trailers /trucks e.g. 16 ± 2 trailers (for Cardwell rigs) and 11± 1 trailers (for A-50 rigs) for transportation of the materials and two cranes for dismantling/ rebuilding of rigs and loading and unloading of materials. They were also required to provide requisite operators/helpers / slingers to carry out the job. The Exhibit-EE-1 to EE-8 appended to the Scope of Work (Annexure-B) list out the dimension and weight of the materials (other than rig) to be transported. The rig is dismantled before its transportation because of its dimensional and weight issue, it can not be transported as it is. I find that the services have been bifurcated in two parts (i) Dismantling and rebuilding of rig under the supervision of ONGC officials and providing of cranes with operators and requisite manpower for it, till the rig is ready to start condition,

loading/unloading of rig materials (this activity has been described **as "Crane Service / Supply of tangible goods"** in the contract) (ii) transportation of materials to new location. I find that the contract has clearly spelled out that the re-building and dismantling of rig was to be done in the supervision of ONGC officials by providing the crane, helpers and operators; and they would be at the disposal of the ONGC officials. The rate for Transportation of materials/eqipments is much higher than the rate for Cranes services. From, this factual position, I find that the main object/purpose of entering into the contract is to transport the rig and its associated materials/equipments for putting the rig in use at new place of Job.

10.11 I find that the SCN alleges that the main motive of entering into the contract by ONGC and the assessee, was for Erection, Installation and Commissioning of rig and make the rig functional at the new place of job. Accordingly, it has been alleged that the assessee had provided service of Erection, installation or commissioning service, which was the main service and transportation service was incidental /ancillary service to said main service. In this regard, it is discerned from the clause 7.18 of Annexure-B (Scope of work) that the rig is mounted on mobile rig-carrier, and rig-carrier is self propelled and can move on its own. Further, as per clause 7.17, the assessee was required to provide the cranes of required capacities, for rig-dismantling and rig building jobs at old and new work sites respectively, which was to remain under the disposal of in-charge work-site or authorized officer of ONGC, till completion of rig-building and the rig was ready to start its operations at the new location. The main activities to be carried out as per the contract were transportation of rig /and its associated rig materials and providing of cranes/ operators, helpers for dismantling/ re-building, loading and unloading of rig was ancillary/incidental service for complete transportation of rig. Therefore, it can not be said that the assessee had provided the Erection, commissioning or installation services. I find that the said allegation made in the SCN is without any concrete or tangible evidence and is without any serious justification.

10.12 Similarly, from the perusal of contract entered into by ONGC and the assessee for "Hiring Services for Transportation and Cleaning of WSS Steel Tanks on Call Basis", it is seen that the transportation of WSS Tank was required by ONGC to new place, after completion of a job. The cleaning of tank was done to put the tank in use again at new place of job. The Services required by ONGC or to be provided by the assessee, have been bifurcated in two parts i.e. (i) Tank Cleaning including emptying of tank, filing of the tank, re-cleaning at unloading site etc (ii) Transportation of the tank to new site including loading and unloading of the tank. The SCN does not mention as to what was the main

service and incidental/ancillary service in this case. The rate for Transportation of WSS Tank is much higher than the rate for Tank Cleaning service.

10.13 I find that the SCN also alleges in respect of both the contracts that the services provided by the assessee under a single contract are not naturally bundled in ordinary course of business and involves elements of various services but an arrangement was made under the contract that they were bundled together. It was also alleged that the different elements of service were not integral to one overall service and if one or more services provided by the assessee was to be removed, the nature of service would not be affected. The SCN also seeks bundling of transport service alongwith all other services into a single service under Section 66F(3)(b) of the Finance Act, and proposes demand of Service tax on transportation service at full rate. As per the contracts/ agreements, the activities of the assessee in the above two cases can be tabulated as under as under:

Contract	Activity -1	Activity -2
"Hiring the services of Turnkey Transportation of Work over Rigs"	- Rig-dismantling at old-site by providing of cranes with operators / slingers /helper - Rig building at new location alongwith proper placement of rig material/ equipment by providing of crane with operators/slingers/ helpers. - including Loading and unloading rig materials and associated materials (Contract describes this service to be "Crane Service)	-transportation of all rig materials from old site to new-site;
"Hiring Services for Transportation and Cleaning of WSS Steel Tanks on Call Basis"	Tank Cleaning which includes: - Emptying, Manual scrapping before loading of the tank, - recleaning of tank at site again after unloading, filling of tank.	-transportation of a tank including loading and unloading

10.14 I find that the grounds for bundling of the services in the subject SCN under Section 66F(3)(b) ibid, is that the assessee and ONGC had entered into a single contract for various services to be provide on turnkey basis and all the services ware to be considered as a single service for purpose of contract for carrying out the job. I find that ONGC had floated the tender and invited the separate rates for the aforesaid services (Activity -1 and Activity-2). The assessee had paid the service tax at full rate on Activity -1 and ONGC had paid service tax on Activity -2 under RCM at concessional rate. The assessee had issued invoices for Activity-2 to ONGC under category of GTA service. I find that the issue on hand also harps on bundled service, as per Explanation appended to Section 66F, the "bundled service" means *a bundle of provision of various service wherein an element of one service is combined with a element or elements of provision of any other service or services.* I find that the Section 66F(3) provides the manner of determination of taxability of bundled service, accordingly, if various elements of service are naturally bundled, the taxability shall be determined under clause (a) of the Sub-Section 66F(3) of the Finance Act, 1994 and if various elements of

service are not naturally bundled, the taxability of service shall be determined as per Clause (b) of Section 66F(3) of the Finance Act, 1994. I find that the Section 66F(3) can be invoked only if the service is a bundled service. I find that ONGC had reserved the right to award the contract simultaneously to more than one contractor and also to award only a part of contract at its discretion at any time during currency of the contract and awardee was bound to execute whatever work was to be awarded. The rates /consideration for Activity -1 and Activity -2 were separate under the contract. The Activity-1 or Activity-2 can be a bundle of services in its own, but the activity -1 and the Activity -2 together can not be said to be a bundled service, as the services were not offered at a single rate. I find that the SCN in para 12.4 had taken support of illustration of "A House given on rent" provided para 9.2.2 of CBEC's Education Guide. On perusing the same, I find that the fact of said illustration is clearly distinguishable with the fact of the instant case. In the illustration a **single rent** deed was executed for two floors which was to be used for two different purposes. In the illustration, **the single rent** was the indicator and important factor for considering the service to be a bundled service. However here, in the instant case two separate rates are available in a single contract for the Activity-1 and Activity-2. I also find that the department has observed nothing wrong in charging tax for individual service in case of composite supply of services, if there is no attempt to offload the value of one service to another service that is chargeable to concessional rate of tax. In this regard, I would take support of the illustration provided under para 9.2.1 of CBEC's Education Guide, which is reproduced for ready reference.

"A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities :

- *Accommodation for the delegates*
- *Breakfast for the delegates.*
- *Tea and coffee during conference*
- *Access to fitness room for the delegates*
- *Availability of conference room*
- *Business centre*

*As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service it is able to capture the entire essence of the package. Thus the service may be judged as convention service and chargeable to full rate. **However it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate".***

10.15 I therefore find that there is nothing wrong in charging tax separately for individual services. I do not find any attempt to offload the value of service to another service which attracts lower rate. I therefore find that the allegation in the SCN that the assessee had broken up the rates and services to avail the benefit of abatement and paying the tax at lower rate, does not hold

good and is not sustainable in law.

10.16 I find that the assessee relying on the CBEC's circulars (i) No. 104/07/2008-ST dated 6th August, 2008 and (ii) No. 186/5/2015-ST dated 5th October, 2015, has contended that any incidental or ancillary services provided alongwith transportation service, would also be classifiable under Transportation service. They have also contended that the services provided by them attracts provision of section 66F(3)(a) of the Finance Act, 1994 as the essential character of service provided is GTA services. From the facts of the case and above discussion, I find that the assessee has not offered the services to be a package of services or had not charged at single rate for all the services, therefore, the service can not be said to be naturally bundled service under the Section 66F(3)(a); hence the said section is not applicable. However, this would not make any difference to the present case on hand, as I find that the assessee had opted to charge the services separately considering the different services and tax has been paid separately either by the assessee or ONGC, as permissible by the law.

10.17 I find that the assessee has contended that they have been engaged in providing such service since 2007, and there is no change at their end in classifying their services since 2007. Since then, their records had been regularly audited by the department and audit reports dated 25.01.2010, 13.01.2011, 07.01.2013 and 25.06.2015 had been issued for the period 2004-05 to 2008-09, 2009-10, 2010-11 to 2011-12 and 2012-13 to 2014-15 and no objection of such type was ever raised by the audit. Therefore, the invokation of extended period of five years under the proviso to Section 73(1) is not maintainable. Evidently, I find that the audit of the records of the assessee have been carried out four time before the last audit, but no objection of such type was raised. I find that the transaction have been recorded in their financial records and invoices have been issued. In view of the above, I, therefore, find that there is no suppression of facts or contravention of provision of law with intent to evade the payment of service tax. Therefore, the invocation of extended period of five years is clearly hit by limitation of time period as well. Thus, subject SCN is also not sustainable on this count as well.

10.18 Having considered these factual and documentary evidences available on records, and written submission of the assessee, I find that the charges levelled against the assessee vide subject SCN are not tenable/ sustainable in law as discussed in detail hereinabove. I therefore hold that the proceeding initiated vide SCN dated 19.04.2021 is liable to dropped. For the

same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty.

11. SCN No. STC/15-111/OA/2020 dated 21.10.2020

11.1 Now, taking up the Second SCN No. STC/15-111/OA/2020 dated 21.10.2020 for determination, my observation on the same are as follows:

11.2 On going through the SCN, I find that basically the essence of the case is that data of Sales /Gross receipt from services/ Total Amount Paid/Credited under 194C, 194H, 194I, 194J" were shared by the CBDT for FY 2015-16 & 2016-17. The difference in taxable value was worked out after comparing the income declared in ITR /Form 26AS vis-à-vis taxable value disclosed in ST-3 Returns. The difference of Rs. 19,65,03,477/- in value was observed for FY 2015-16 & 2016-17, therefore, it appeared that the assessee had short paid the service tax of Rs. 2,90,27,156/- on such differential value, for providing the taxable service. 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 of Rs. 2,90,27,156/- on the taxable value of value of Rs. 19,65,03,477/- for the Financial Year 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

11.3. I find that the assessee in their aforementioned replies dated 24.04.2021, has stated that their Books of accounts have been audited by the department and Audit Report had been issued. They have submitted the copy of Final Audit Report No. CE/ST-1112/20-21 dated 09.04.2021. They have stated that the observation on account of reconciliation of income was raised by the audit, but the same had been paid by them in full alongwith interest and penalty. Further, the assessee during the course of personal hearing held on 18.11.2021 had stated that they have been issued another SCN by the Additional Commissioner, Central tax Audit, Ahmedabad on the similar issue. I find that the SCN No. GADT/TECH/SCN/ST/9/ 2021-TECH and LEGAL dated 19.04.2021 has been issued to the assessee by Additional Commissioner, Central Tax Audit, Ahmedabad on the basis of audit objection.

11.4. In view of the submission made by the assessee, I am of the opinion that the Final Audit Report issued by the department needs be looked at to arrive at any fair conclusion. On perusing the Final Audit Report No. CE/ST-1112/20-21 dated 09.04.2021, I find that the audit was conducted by the audit party of Circle VIII, CGST, Audit, Ahmedabad, which had covered the period from October 2015 to June 2017. The Audit Report was issued by the Deputy Commissioner, Circle-VII, CGST Audit, Ahmedabad. I find that the audit had raised the following Revenue paras, and the assessee had accepted the

revenue paras and tax was paid by them except in respect of Revenue Para-6, which was not accepted by them. The summary of the audit objections are reproduced hereinunder for ease of reference:

" Summary of major audit objections from the working paper:

Sr. No.	*Gist of Objections*	*Code no. of objection as per annexure-T of C.Ex. Audit mannual*	*Revenue Implication if any(in Rs.)*	*Assessee Agreement, Yes/No. If no reasons for disagreement*
1	*Short payment of service tax on reconciliation of taxable value with ST-3 returns*	*ST-VSR-30*	*S.Tax. Rs. 106395/- Int Rs.70711/- Penalty Rs. 15959/-*	*Yes, agreed and Paid*
2	*Non payment of service tax on legal service under RCM*	*ST-CSR071*	*S.Tax. Rs. 24800/- Int Rs.19799 / Penalty Rs.3720/-*	*Yes, agreed and Paid*
3	*Late filing of ST-3 returns*	*ST-CSR073*	*Penalty Rs. 3100/-*	*Yes, agreed and Paid*
4	*Wrong availment of credit (100% aviled) on capital goods*	*ST-GSR040*	*Int Rs. 63356/-*	*Yes, agreed and Paid*
5	*Non payment of amount /non reversal of the cenvat credit availed on capital goods on being sold*	*ST-SSR040*	*S.Tax.Rs. 259560/- Int Rs.183150/- Penalty Rs. 38934/-*	*Yes, agreed and Paid*
6	*Non payment of service tax on taxable income by way of wrong classify the service*	*ST-CSR012*	*S.Tax. Rs. 1,15,92,801/-- applicable interest and penalty*	*Not agreed*
	TOTAL Detection		*Rs. 1,23,82,284/-*	

....."

11.5. Therefore, it is apparent from the Final Audit Report that the verification of the books of accounts and other records have been verified by the audit in detail for the period from October 2015 to June 2017. It is apparent from Revenue Para -1, that the assessee's income from services and trading activities were verified for FY 2016-17 and 2017-18 (June 2017) by the audit. The said para is reproduced for ready reference.

"Revenue Para-1: Short payment of service tax on reconciliation of taxable income with ST-3 Returns (Audit Code: ST VSR-30).

During the course of audit on reconciliation of records, it was noticed that the assessee has short paid service tax on Taxable Income during FY 2016-17 & 2017-18. It was observed that the assessee has short paid service tax amounting to Rs. 1,06,395/- which is required to be recovered alongwith interest and penalty as per Section 73,75 & 76 of the Finance Act, 1994. The calculation of Service Tax is as under:

Sr. No.	*Year*	*Taxable Amount*	*ST payable*	*Interest*	*Penalty*	*Total*
1	*2016-17*	*586431*	*87965*	*59213*	*13195*	*160373*

2	*2017-18 (June 17)*	*122867*	*18430*	*11497*	*2765*	*32692*
	Total	*709298*	*106395*	*70711*	*15959*	*193065*

On being pointed out, the assessee agreed with the objection and made the payment......"

11.6 The audit has not pointed out any major difference in incomes for FY 2016-17 and 2017-18 (June 2017), the assessee has already paid the tax and applicable interest and penalty as pointed by the audit. I therefore refrain myself from entering in to the period for FY 2016-17 and 2017-18 (upto June 2017) to determine liability of assessee for service tax.

11.7 As regard FY 2015-16, nothing is forthcoming from the audit report/ revenue para, whether reconciliation was carried out or otherwise. Therefore, as per the reconciliation sheet and annual report for FY 2015-16 as provided by the assessee, the reconciliation of incomes only for FY 2015-16 is carried out as under:

	FY 2015-16	
	Income from sale of service As per P&L Account (inclusive of taxes)	400519122
	Less: Taxes (Service tax and Vat)	40816544
	Net Income	359702578
	Less: Income From Transportation	43297197
	Less: Correction in Transportation (shown in other head- added to Transportation)	5761248
A	Net Taxable Income	310644133
B	Gross Value as per ST-3 Returns	310846205
C	Difference (A-B)	-202072

11.8 From the above working, it is discerned that the difference for FY 2015-16 in the SCN, was on account of non disclosure of Transportation service Income in ST-3 Returns and the income booked was inclusive of taxes. From the above factual position, there is no service tax payable by the assessee for FY 2015-16 to 2017-18 (upto June 2017). I also find that the assessee has been issued the SCN by the Additional Commissioner, Central Tax Audit, Ahmedabad on Revenue Para -6, as discussed hereinabove. Further, I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department had not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax. Having considered these factual and documentary evidences available on records, and relying on the Final Audit Report, SCN issued by the audit, and Reconciliation carried out for FY 2015-16, I find that there is no short

payment on the part of the assessee. Thus, the subject SCN is liable to be dropped on merits being not tenable and not sustainable.

11.9. In view of the facts and circumstances pertaining to the subject case, the demand is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty.

12. In view of the above discussion and findings, I pass the following order:

ORDER

I drop the proceedings initiated against M/s. Aakash Oil Field Services Pvt. Ltd., C-1203, Titanium Square, Thaltej Cross Road, S.G. Highway, Ahmedabad 380054, vide Show Cause Notice No. GADT/TECH/SCN/ST/9/2021-TECH and LEGAL dated 19.04.2021 issued by the Additional Commissioner, Central GST, Audit, Ahmedabad and SCN No. STC/15-111/OA/2020 dated 21.10.2020 issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North.

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

By Regd. Post AD./Hand Delivery
F. No. STC/15-111/OA/2020

Date: .02.2022.

To
M/s. Aakash Oil Field Services Pvt. Ltd.,
C-1203, Titanium Square,
Thaltej Cross Road,
S.G. Highway,
Ahmedabad 380054

Copy to:

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