


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- aaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-50/OA/2021 & STC15-51/OA/2021

DIN-20220264WT000000F3E3

आदेश की तारीख / Date of Order :15.02.2022
जारी करने की तारीख / Date of Issue : 17.02.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV
आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-63 & 64/2021-22

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, Bahugali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

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

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

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

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए।(अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

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

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार 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 संलग्न की जाएंगीम एक प्रमाणित प्रति होगी।

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

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

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

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

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

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 00.1रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

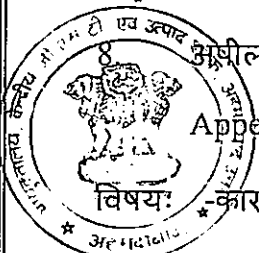
The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

अपील पर भी रु 00.4 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

विषय: *कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-50/OA/2021 & STC/15-51/OA/2021 both dated 23.04.2021 issued to M/s. Patel Anilkumar Laljibhai, G/13, Shajanand , Jay Vijay Construction, B/h . AEC Zonal Office, Sola Road, Navrangpura, Ahmedabad-380 013.



ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-63464/2021-22

M/s. Patel Anilkumar Laljibhai , G/13, Shajanand, Jay Vijay Construction, B/h. AEC Zonal Office, Sola Road, Navrangpura, Ahmedabad, Gujarat-380 013, were issued two SCNs F.No.STC/15-50/OA/2021 and No.STC/15-51/OA/2021 both dated 23.04.2021 by the by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad..

BRIEF FACTS OF THE CASE PERTAINING TO THE SCNs ISSUED TO PATEL ANILKUMAR LALJIBHAI ARE AS FOLLOWS:

M/s. Patel Anilkumar Laljibhai, situated at G/13, Shajanand, Jay Vijay Construction, B/h. AEC Zonal Office, Sola Road, Navrangpura, Ahmedabad, Gujarat-380 013, (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services, and are holding Service Tax Registration No. AEVPP5727JST001 & AEVPP5727JST002.

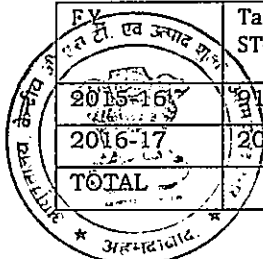
➤ **REGISTRATION NO.AEVPP5727JST001.**

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes & Customs (CBIC).

3. As per the records available with the divisional office of Division-VII and on going through the Third party Data provided by CBDT the said assessee for the F.Y. 2015-16 and 2016-17, the total sales of service (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for the F.Y. 2015-16 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 were found to be as under:

TABLE

F.Y.	Taxable value as per ST-3 returns (In Rs.)	Gross receipts from services (Value from ITR/26AS) (In Rs.)	Value difference in ITR and STR	Resultant Service Tax short paid (including cess)
2015-16	9180306/-	97640930/-	88460624/-	12826790/-
2016-17	20826660/-	87088863/-	66262203/-	9939330/-
TOTAL				22766120/-



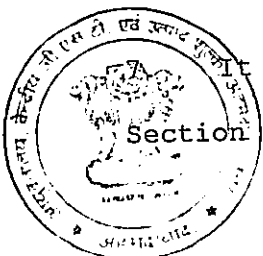
Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.2,27,66,120/- (including Cess) on the differential value of Rs.15,47,22,827/-.

4. As per Section 68 of the Finance Act, 1994 every person liable to pay service tax should pay Service Tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case it appeared that the assessee had not paid service tax for Financial Year 2015-16 and 2016-17.

5. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3returns). It appeared that the assessee had not assessed the tax dues properly, on the services received, and had failed to file correct ST-3 Returns under provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

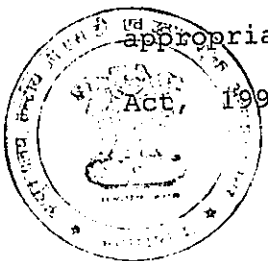
6. As per Section 75 ibid, every person liable to pay the tax in accordance with the provisions of Section 68 ibid, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. It appeared that the assessee had failed to pay their Service Tax liabilities in the prescribed time limit therefore they had made themselves liable to pay the said amount along with interest. The said Service Tax was required to be demanded and recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

It appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax



Rules, 1994 in as much as they had failed to pay/ short paid/ deposit Service Tax to the extent of Rs. 22766120/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they had failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

8. 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 which 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 worth the differential value as can be seen in the table above and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,27,66,120/-. 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 was in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government. It appeared that the above act of omission on the part of the Assessee which resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 were done with intent to evade payment of Service tax to the extent mentioned hereinabove. The same appeared to be recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. The above act of omission on the part of the Assessee



constituted offence of the nature specified under Section 78 of the Finance Act, 1994 and it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

9. No data was shared by the CBDT with CBIC, for the period 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 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.'

As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre-SCN consultation with the adjudicating authority had been made mandatory before issuance of a show cause notice involving an amount of over Rs 50 lacs. Accordingly, a communication was made to the assessee fixing the date for pre-SCN consultation on 23.04.2021 by the SCN issuing authority. However, nobody turned up for pre-SCN consultation before issuance of SCN.

10. Accordingly, Show Cause Notice No.STC/15-51/OA/2021 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to M/s. PATEL ANILKUMAR LALJIBHAI, G/13, SHAJANAND, JAI VIJAY.CONSTRUCTION., COMPLEX,B/H.AEC ZONAL OFFICE, SOLA ROAD,NAVRANPURA., AHMEDABAD, Gujarat- 380013 asking them as to why:



- (i) The demand for Service tax to the extent of Rs. 22766120/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

➤ **REGISTRATION NO.AEVPP5727JST002.**

11. Similar analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central of Direct Taxes (CBDT) for Service Tax Registration No. AEVPP5727JST002 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 & Customs (CBIC).

12. As per the records available with the divisional office of Division-VII and on going through the Third party Data provided by CBDT the said Registration No. AEVPP5727JST002 of the assessee for the F.Y. 2015-16 and 2016-17, the total sales of service (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for the F.Y. 2015-16 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 were found to be as under:

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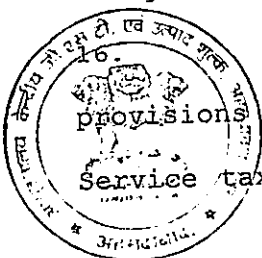
Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.2,27,66,120/- (including Cess) on the differential value of Rs.15,47,22,827/-.

13. 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 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994". In the instant case, it appeared that the assessee had not paid service tax for Financial Year 2015-16 and 2016-17.

14. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). It appeared that the assessee had not assessed the tax dues properly, on the services received, and had failed to file correct ST-3 Returns under provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

15. As per Section 75 ibid, every person liable to pay the tax in accordance with the provisions of Section 68 ibid, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. It appeared that the assessee had failed to pay their Service Tax liabilities in the prescribed time limit therefore they had made themselves liable to pay the said amount along with interest. The said Service Tax was required to be demanded and recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

It appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they had failed to pay/ short



paid/ deposit Service Tax to the extent of Rs. 22766120/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they had failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

17. 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 which 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 worth the differential value as can be seen in the table above and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,27,66,120/-. 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 was in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government. It appeared that the above act of omission on the part of the Assessee which resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 were done with intent to evade payment of Service tax to the extent mentioned hereinabove. The same appeared to be recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. The above act of omission on the part of the Assessee constituted offence of the nature specified under Section 78 of the



Finance Act, 1994, and it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

18. No data was shared by the CBDT with CBIC, for the period 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 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

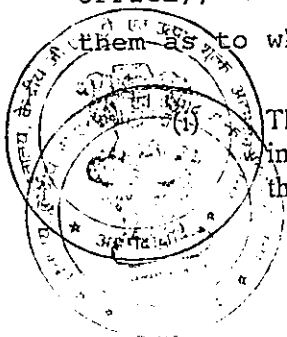
Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

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19. As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre-SCN consultation with the adjudicating authority had been made mandatory before issuance of a show cause notice involving an amount of over Rs 50 lacs. Accordingly, a communication was made to the assessee fixing the date for pre-SCN consultation on 23.04.2021 by the SCN issuing authority. However, nobody turned up for pre-SCN consultation before issuance of SCN.

20. Accordingly, Show Cause Notice No.STC/15-50/OA/2021 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to M/s. PATEL ANILKUMAR LALJIBHAI, G/13, SHAJANAND, JAI VIJAY.CONSTRUCTION., COMPLEX, B/H.AEC ZONAL OFFICE,, SOLA ROAD, NAVRANPURA.,, AHMEDABAD, Gujarat- 380013 asking them as to why:

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- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

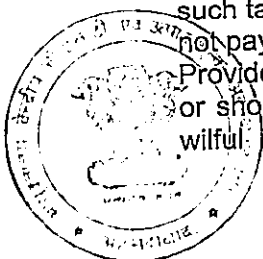
21. **DEFENCE REPLY:**

The assessee tendered their written submission on 25.06.2021 for SCN issued from F.No.STC/15-50/OA/2021/41 dated 23.04.2021, Service Tax Registration No.AEVPP5727JST001, wherein they interalia have stated that:

- They are engaged in providing service of execution of works contract to State Government , Nagarpalika, AMC etc.
- They have submitted that "Works contract" had been defined in clause 54 of Section 65B of the Finance Act,1994 and means-
"a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property"
- They have submitted that as per Sr.NO.12 of Notification No.25/2012-ST dated 20.06.2012, services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—
 - (a) ***
 - (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
 - (c) ***
 - (d) canal, dam or other irrigation works;
 - (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
 - (f) ***
- They have submitted that Section 73(1) of the Finance Act,1994 provides as under:

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

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of — (a) fraud; or (b) collusion; or (c) wilful mis-statement; or (d) suppression of facts; or (e) contravention of any of the



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

- They have submitted that Section 73(6) of the Finance Act, 1994 provides as under:

For the purposes of this section, "relevant date" means, -

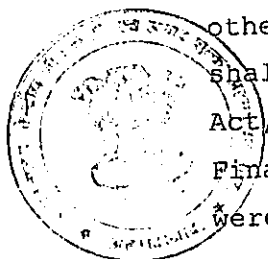
- (i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —
- (ii) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
- (iii) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
- (iv) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;
- (v) in a case where the service tax is provisionally assessed under this Chapter or the rules made there under, the date of adjustment of the service tax after the final assessment thereof;
- (vi) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.

- They have submitted that they had paid applicable service tax on the invoices raised by them; that service provided by them was of drilling for water resources and making bore-well for drinking water. They have submitted that services provided by them were under exemption and service tax was not leviable on the same. They have discharged service tax whenever applicable and for the exempted service they were not liable to pay service tax. They have submitted the reconciliation statement.
- They have submitted that they were availing exemption under Notification No.25/2012-ST dated 20.06.2012, entry no.12 was available to the assessee for supply to the government for "canal, dam or other irrigation works or pipeline, conduit or plant for (i) water supply (ii) water treatment or (iii) sewerage treatment or disposal. They have submitted that they had provided services in relation to water supply and the same was exempted. They have submitted that they had provided services as sub-contractor to the main contractor and as per entry no.29(h) of the exemption notification 25/2012, sub-contractor providing services to main contractor were exempted.
- They have submitted that the SCN is vague and incoherent and the Joint Commissioner had not ascertained proposing to levy and collect service tax on the basis of any specified taxable services allegedly rendered by them, that the SCN was issued without investigation, that the department had relied upon third party data, that the same was not attached and not available for inspection. They have submitted that it has been mentioned in SCN that Annexure-A data was available for inspection, but , neither



address nor contact details were available, that it was not possible for them to verify the same. They have submitted that, while issuing SCN relied upon documents were required to be attached and made available with SCN.

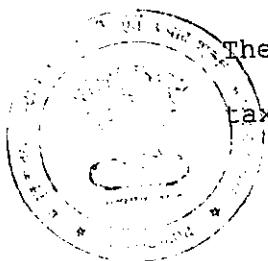
- They have relied upon the following case laws;
 - M/s. Mahadev Trading Company Vs. Union of India (2020-TIOL-1683-HC-AHM-GST)
 - Sahibabad Printers Vs. Additional Commissioner, CGST (Appeals) and 2 others (2020-TIOL-2164-HC-ALL-GST)
 - Principal Commissioner Vs. Shubham Electricals (2016-(42) STRJ312 (del.))
 - Commissioner of C. Ex., Bangalore Vs. Brindavan Beverages (P) Ltd. [2007(213) ELT 487(SC)]
 - Commissioner Vs. Interchrome Pvt Ltd. [2004(164)ELTA128(SC)]
 - Shilpe Enterprise Vs. Commissioner of C.Ex., Allahabad [2017(349)ELT308 (Tri-All)]
- They have submitted that SCN was issued without applying legal procedure and in a mechanical manner, which fails to establish how the discount and incentive are liable to service tax.
- They have further submitted that SCN issued was time barred as there was no suppression. They have relied upon the decision of Span Commercial Co., Vs. CCE Ahmedabad-I, Suzica Colour Laboratory Vs. Commissioner of Central Excise and Service Tax, Patna [2020-TIOL-1176-CESTAT-KOL], Guala Closure (India) Pvt. Ltd., Vs. CCE, Ahmedabad-II, M/s. Concept Motors Pvt. Ltd., V. CST, Ahmedabad and M/s. Truvision Colour Lab. Vs. Commissioner of Central Excise, Indore [2017(51)STR267 (Tri-Del)]. They have submitted that there was no malafide intention attributable to them to invoke extended period of limitation. They have submitted that the SCN should have been issued within period of 18 months from filing of ST3, that SCN issued in respect for the period for 2015-16 to 2016-17 was time barred. They have relied upon judicial pronouncements wherein it had been held that extended period of five years under proviso under Section 73(1) of the Finance Act, 1994 was not invocable and SCN was required to be quashed.
- They have submitted that levy of service tax was through Chapter-V of the Finance Act, 1994. Section 173 of the CGST Act provides that Chapter-V of the Finance Act, 1994 shall be omitted, omission of a chapter as against repeal of an Act, Finance Act, 1994 do not stand repealed. They have submitted that Section 173 of CGST Act, 2017 "Amendment of Act 32 of 1994" stated that "save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted". They have submitted that 172(2) of the CGST Act, 2017 refer to repeal of the various Act and amendment of Finance Act, 1994, the saving provisions as applicable to repeal were not the same as applicable to amendments of an act, the



Finance Act was amended and a particular chapter was omitted, the chapter was completely obliterated from the statute and it impermissible to apply repeal and saving provisions for the same. They relied upon the case laws of Rayala Corporation (P) Ltd. Vs. Director of Enforcement (1969)2 SCC 412 and Kolhapur Cane Sugar Works Vs. Union of India (2000) 2 SCC 536. They have submitted that omission was not the same as repeal and therefore the saving provisions of Section 172(2) cannot be extended to Service Tax, since chapter V was omitted. (SIC)

- They have submitted that penalty was not impossible under Section 78 of the Finance Act, 1994, they have relied upon the case laws of
 - Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I [2007(216)ELT 177(SC)],
 - Bhagwati Spherocast Pvt. Ltd. Vs. Commr. Of C.Ex., Ahmedabad[2019(368)ELT308 (Guj)],
 - Super Shiv Shakti Chemical Pvt Ltd., Vs Commissioner of C.Ex., Udaipur [2019(369)ELT 1279(Tri-delhi)]
 - CCE, Tiruchipalli Vs. Shri Suthan Promoters 2010-TIOL-623-HC-MAD-ST
 - RAC Steel Vs.CCE, Salem 2010-TIOL-484-CESTAT-Mad and Rajrani Exports Vs.CCE, Salem (2010)18 STR 777
- They have submitted that assessee was eligible for benefit of cum duty valuation. They have submitted that when the assessee had not collected service tax from the recipient of service consideration received had to be treated as cum-tax, they have relied upon the following case laws;
 - Commissioner Vs. Advantage Media Consultant 2009-14-STR-J49(SC)
 - Commissioner of Service Tax, Mumbai Vs. Allied Aviation Ltd., 2017-(47)STR-279 (Tri-Mumbai)
 - Turrent Industrial Security Pvt. Ltd., Vs CCE & C, Jamshedpur 2009-TIOL-45-CESTAT-KOL
 - CCE, Patna Vs. M/s. Advantage Media Consultation 2008-TIOL-548-CESTAT-KOL
 - Municipal Corpn of Delhi Vs. Commissioner of Service Tax , Delhi 2009-TIOL-975-CESTAT-DEL
 - Robot Detective & Security Agency , Chennai vs. CCE Chennai 2009-TIOL-238-CESTAT-MAD
 - ABN Amro Bank Vs. CCE, Noida 2011-TIOL-1147-CESTAT-DEL
 - Speedway Carriers Pvt Ltd vs. Commissioner of Central Excise, Jaipur 2012-TIOL-1230-CESTAT-DEL
 - Professional Couriers Vs. Commissioner of Service Tax, Mumbai 2013(32)STR 348 (Tri-Mumbai)
 - CCE, Delhi Vs Maruti Udyog Ltd., 2002-TIOL-34-SC-CX-LB

They have submitted that the assessee had not charged service tax from the service receivers as they was under bona-fide



belief that no service tax was payable, explanation 2 to Section 67 during the relevant time was that "where the gross amount not charged by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charges".

They have relied upon the case of M/s. Maruti Udyog 2002 (141)ELD003 (SC) and Rampur engineering 2006(5)STT 386. They have submitted that they had not collected service tax from the service receiver, provision of section 67 will be applicable and benefit of cum duty valuation was admissible.

PERSONAL HEARING:

22. Personal Hearing was granted to the assessee on 16.12.2022. Shri Bishan Shah, Chartered Accountant appeared on behalf of the noticee. He made a reference to the written submission made by the notice which had been tendered on 25.06.2021. He submitted that the SCN was not sustainable as they were exempted for the payment of service tax, because of the nature of services being provided by them which was squarely covered under the exemption notification. He has submitted that "two" SCNs namely STC/15-50/OA/2021 & STC/15-51/OA/2021 covering the same issue during the same period were issued which itself demonstrates the non-application of mind and un-sustainability of the demand.

DISCUSSION AND FINDINGS:

23. I have carefully gone through the facts of the case and records available in the case file, which include the two SCNs namely STC/15-50/OA/2021 & STC/15-51/OA/2021, the defence reply submitted on 25.06.2021, documents and oral submission made by the assessee during the personal hearing.

24. On going through the both the SCNs, I find that the assessee has been issued the two SCNs for Service Tax Registration

NO.AEVPP5727JST001 & AEVPP5727JST002. 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" was 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. 15,47,22,827/- in value was observed for FY 2015-16 & 2016-17, therefore, it appeared that the assessee had short paid the service tax of Rs. 2,27,66,120/- on such differential value, for providing the taxable service. Therefore, the subject SCNs were issued. I find that the demand of Service Tax vis-à-vis taxable value on which service tax had been demanded are same in both the SCNs. I also find that time period covered in the two SCNs is also the same. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 2,27,66,120/- on the taxable value of value of Rs.15,47,22,827/- on the both SCNs for the Financial Year 2015-16 and 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

25. I find that assessee is a proprietorship firm, holding PAN Card AEVPP5727J, and both Service Tax registrations had been issued on PAN base AEVPP5727J. I find that the assessee had submitted their Audit Report under Section 44AB of the Income Tax Act,1961 and the said report had been issued for PAN No.AEVPP5727J. Therefore, I am of the opinion that data shared by the CBDT with CBEC was on PAN AEVPP5727J. Since, the Service Tax Registration of the assessee was PAN based, and assessee were holding Two Service Tax Registration No. AEVPP5727JST001 & AEVPP5727JST002, therefore the SCN issuing authority had issued two SCNs for Service Tax Registration No.AEVPP5727JST001 & AEVPP5727JST002 on the basis of data shared by CBDT to CBIC.

However, I find that in the Audit Report under Section 44AB of



the Income Tax Act, 1961, Nature of Registration had been mentioned Service Tax with Registration No. AEVPP5727JST001.

26 Thus, first and foremost it is important to understand the liability or otherwise of the noticee for paying Service Tax. I feel for understanding the same it is necessary to understand the activities being carried out by the assessee. I observe that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption notification.

27. I discern that the assessee in his defence reply dated 25.06.2021, has stated that their income is from Works Contract services provided to State Government, Nagar Palika, AMC etc. The services provided by them in relation to pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal, were exempt from payment of service tax under Sr. No. 12(e) of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. Further, they have stated that they had paid service tax wherever, it was applicable. I find that the assessee have submitted that they had provided services in relation to water supply and the same was exempted from levy of service tax.

28. I find that the assessee are holding two Service Tax Registration No. AEVPP5727JST001 & AEVPP5727JST002, and they had filed ST3 returns for the year 2015-16 & 2016-17 for Registration No. AEVPP5727JST001, under the category of works contract service and paid the Service Tax thereon, wherever it was applicable. The assessee had not filed ST-3 for Registration



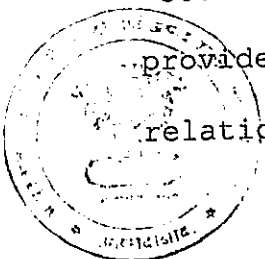
NO.AEVPP5727JST002. I find that Balance Sheet for the F.Y.2015-16 & 2016-17 had been prepared on PAN base AEVPP5727J and Form 26AS had also PAN base AEVPP5727J, income received from the service provided by the assessee under balance sheet are for both registration of service tax.

29. I find that assessee has contested that SCNs had been issued without investigation and without ascertaining the business of the assessee. However, I am not in agreement with assessee, because the fact of the matter is that the assessee had not responded to the pre-SCN consultation given on 23.04.2021, and had not attended pre-SCN consultation, because of which, it was not possible for the SCN issuing authority to ascertain and investigate the business of the assessee without any concrete documents/arguments. I find that the assessee had relied upon the following case laws in support of their claim that SCN was issued without relied upon documents;

M/s. Mahadev Trading Company Vs. Union of India (2020-TIOL-1683-HC-AHM-GST)
Sahibabad Printers Vs. Additional Commissioner, CGST (Appeal) and 2 others (2020-TIOL-2164-HC-ALL-GST)
Principal Commissioner Vs. Shubham Electricals (2016-(42) STRJ312 (del.))
Commissioner of C. Ex., Bangalore Vs. Brindavan Beverages (P) Ltd. [2007(213) ELT 487(SC)]
Commissioner Vs. Interchrome Pvt Ltd. [2004(164)ELTA128(SC)]
Shilpe Enterprise Vs. Commissioner of C.Ex., Allahabad [2017(349)ELT308 (Tri-All)]

I find that the facts of the above case relied upon by the assessee are on a different footing and the ratio of the same is not applicable to the facts of the case at hand.

30. Assessee vide their reply dated 25.06.2021 has provided the list of the exempted services provided by them in relation to water supply, along with copy of work order.



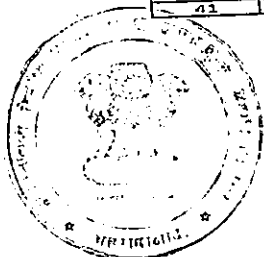
On going through the Form-26AS it is assumed that the assessee had provided the works contract services to the following parties and amount received from them under Section 194C has been considered as taxable service for issuance of SCN.

INCOME AS PER 26AS FROM	2015-16	INCOME AS PER 26AS FROM	2016-17
AMC	1274704	AMC	77364427
AMC	87001988	BAVLA NAGARPALIKA	1125886
AMC MEDICAL TRUST	1592000	BAREJA NAGARPALIKA	1895179
BAVLA NAGARPALIKA	3329647	WINDSOR MACHINE LIMITED	2395889
GWSSEB	1244282	GWSSEB	2934202
GIDC	640841	GSFC	344000
ONGC	1247074	KEHDA NAGARPALIKA	1029280
KEEDA NAGARPALIKA	1310394		

TOTAL====>> 97640930/- 87088863/-

I find that the assessee has provided the list of parties to whom the assessee had provided service in relation to water supply, alongwith the copies of works orders, as under;

Sr. No.	Work Name	DATE
1	Tractor-Trolley Supply Garden Dept.AMC	06-02-14
2	Const.U/G. Sump & Pump House AMC Shreenath-Lambha	16-09-13
3	Const.U/G. Sump & Pump House AMC At Shilaj Sam	01-11-13
4	Borewell Work Prakhnagar AMC	28-02-14
5	Borewell Work Jamalpur AMC	10-02-15
6	Borewell at Manpur Ex.Eng.PH MC.Div.A'bad	27-03-15
7	Borewell Work Nr. Dharnidhar Sec.AMC	25-04-15
8	Borewell at Odhav AMC	09-04-15
9	Const.U/G. Sump & Pump House AMC Nr.Kargli Petrol Pump	19-05-15
10	Borewell Work at Mohmatpura-Haripura Ex.Eng.PH MC.Div.A'bad	09-06-15
11	Borewell Work at Bakrana Ex.Eng.PH MC.Div.A'bad	17-06-15
12	Const.U/G. Sump & Pump House AMC Nr.Kargli Petrol Pump	19-05-15
13	Const.U/G. Sump & Pump House AMC Mohmatpura	04-08-15
14	Const. Damage Slab at 9& 11 at Dudheshwar AMC Nobalnagar	03-09-13
15	Const.U/G. Sump & Pump House AMC Nobalnagar	21-07-15
16	Const. of Compound Wall Jasodanagar WDS AMC	15-01-14
17	Borewell Work Bavla Nagarpalika	23-05-15
18	Borewell Work Bavla Nagarpalika	23-06-15
19	Borewell Work Bavla Nagarpalika	23-06-15
20	Borewell Work Dental Collage AMC	22-06-15
21	Borewell Work Jamalpur AMC	01-09-15
22	Borewell Work AMC Sankal Shari	12-08-15
23	Borewell Work Orna AMC	19-09-15
24	Borewell at Kadarlya Ex.Eng.PH MC.Div.A'bad	11-10-10
25	Borewell Work Jamalpur AMC	16-06-15
26	Borewell Work Akroti Township AMC	24-08-15
27	Borewell Work Kheda Nagarpalika	18-09-15
28	Borewell at Kalyavasana Ex.Eng.PH MC.Div.A'bad	11-12-15
29	Borewell Work Vahanvati AMC	22-01-16
30	Borewell Work TP-57 AMC	24-08-15
31	Borewell Work Kheda Nagarpalika	18-09-15
32	Borewell Work Satyanarayan Housing AMC	13-02-16
33	Borewell at Jivanpura Ex.Eng.PH MC.Div.A'bad	02-03-16
34	Borewell Work Odhav Bharwad Vat AMC	09-04-15
35	Const.U/G. Sump & Pump House AMC - Vinobhavanagar	23-02-12
36	Const.U/G. Sump & Pump House AMC - Vatva-Nigam	24-03-12
37	Borewell Work Vatva Riv. AMC	05-10-11
38	Borewell Work GSFC	06-01-16
39	Borewell Work Muliwada Dergha AMC	20-05-16
40	Borewell at Sachana Ex.Eng.PH MC.Div.A'bad	12-04-16
41	Borewell at Sachana Ex.Eng.PH MC.Div.A'bad	30-05-16



and 01.04.2016 to 31.03.2017, they have not provided work contract copy or RA bill, with any supporting documents. In absence of relevant relied upon documents assessee are not eligible for the benefit of exemption notification. Their claim for exemption benefit is therefore liable for rejection for the work contract sale.

33. I find that assessee has claimed the service provided to GSFC, Vadodara under category of water supply service; but the said service was for water harvesting structure and it cannot be covered under water supply service;

Further, I find that as per Wikipedia the activity of rainwater harvesting has been described as under:

"Rain Water Harvesting (RWH) is the collection and storage of rain, rather than allowing it to run off. Rainwater is collected from a roof-like surface and redirected to a tank, cistern, deep pit (well, shaft, or borehole), aquifer, or a reservoir with percolation"

From the above it is clear that the purpose of construction of rainwater harvesting system is totally different from the construction for water supply, water treatment or sewerage treatment. Even in the pre-GST regime, the construction of rainwater harvesting system had never been treated as exempted from Service Tax under notification no.25/2012- dated 20.06.2012' whereas the construction from the activities of water supply, water treatment or sewerage treatment were exempted.

34. I am of the considered view that the assessee are liable to pay service tax of Rs.76,70,000/- on the basis of calculation as given below;

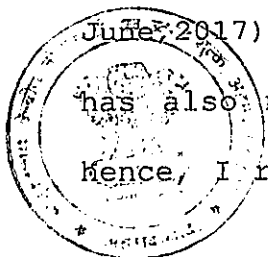


2015-16		2016-17	
Gross Taxable value as per SCN	97640930	Gross Taxable value as per SCN	87088860
Less: tubewell income as per ledger account, exempted through Notification No.25/2012, Sr.No.12(e)	26669412	Less: tubewell income as per ledger account, exempted through Notification No.25/2012, Sr.No.12(e), except work of GSFC	26125782
Net Taxable value	70971518	Net Taxable value	60963078
Abatement @60%	42582911	Abatement @60%	36577847
Taxable value	28388607	Taxable value	24385231
Service Tax payable including cess	4116348	Service Tax payable including cess	3657785
less service tax paid	0	less service tax paid as per ST3 return	104133
Service tax to be paid	4116348	Service tax to be paid	3553652

34.1 I find that the assessee was awarded works relating to borewell by AMC/Nagarpalika. I find that the CBEC vide Circular NO.199/9/2016-ST dated 22.08.2016 issued from F.No.137/51/2016-Service Tax, has already clarified that the construction of tube well is covered under exemption available under entry no.12 of the Mega Exemption Notification. Hence, I hold that the assessee is entitled to exemption of Service Tax on the receipts for the Service of borewell carried out in the instant case. In para 4 of the said circular it has been clarified as under;

"4. The phrase "water supply" is a general phrase. Basically it will involve providing users, access to a source of water. The source may be natural or artificial like tanks, wells, tube wells etc. Providing users access to such a source will involve construction of the source (if artificial) and the transmission of water to the user. It will involve activities like drilling, laying of pipes, valves gauges etc, fitting of motors, testing etc, so as to eventually result in the supply of water. Similarly the word plants has to be understood and interpreted with reference to the context. A plant for water supply need not necessarily involve a huge assemble of machinery and apparatus, for the reasons explained earlier."

34.2 I find that no data for the period 2017-18 (up to June, 2017) is available in the instant case file, and the same has also not been provided by the assessee or the department, hence, I refrain myself for entering into any discussion for the



period 2017-18 (up to June,2017) to determine the liability of Service Tax for the period 2017-18 (upto June,2017).

34.3 I find that works contract service is a composite service consisting of material used and labour/service provided to the client. The valuation to determine the liability of service tax due on works contract service for value of service portion in the execution of a works contract to be carried out as per Rule 2A(ii) of the Service Tax (Determination of Value) Rules,2006.The said rules herein are as under;

"2A. Determination of value of service portion in the execution of a works contract.-

Subject to the provisions of section 67, the value of service portion in the execution of a works contract , referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

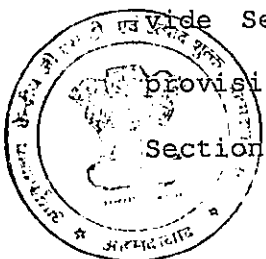
(i)

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

35. I find that the assessee had contested that the saving provisions of Section 174(2) cannot be extended to Service Tax since Chapter V had been omitted, they have relied upon the following case laws; Rayala Corporation (P) Ltd. Vs. Director of Enforcement (1969)2 SCC 412 and Kolhapur Cane Sugar Works Vs. Union of India (2000) 2 SCC 536. I find that the facts of the above cases relied upon by the assessee are on a different footing and the ratio of the same is not applicable to the facts of the case at hand.

35.1 Further, the then effective provisions of the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985, as repealed vide Section 174(1) of the CGST Act, 2017 and the then effective provisions of the Chapter V of the Finance Act, 1994, as omitted vide Section 173 of the CGST Act, 2017, and the then effective provisions



of the Finance Act, 1994, have been saved vide Section 174(2), of the CGST Act, 2017, which is read as under;

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-

(f) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;"

Therefore, the provisions of the said repealed/amended Acts and Rules made there under are rightly enforceable for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice.

36. I find that the assessee had contested that SCN is time barred and there was no suppression of facts. They have relied upon the case laws of "Span Commercial Co., Vs. CCE Ahmedabad-I, Suzica Colour Laboratory Vs. Commissioner of Central Excise and Service Tax, Patna [2020-TIOL-1176-CESTAT-KOL], Guala Closure (India) Pvt. Ltd., Vs. CCE, Ahmedabad-II, M/s. Concept Motors Pvt. Ltd., V. CST, Ahmedabad and M/s. Truvison Colour Lab. Vs. Commissioner of Central Excise, Indore [2017(51)STR267 (Tri-Del)]". I find that the facts of the above cases relied upon by the assessee are on a different footing and the ratio of the same is not applicable to the facts of the case at hand.

36.1 I find that the assessee has rendered taxable service namely "Works Contract Service" and not paid the service tax during the year 2015-16 & 2016-17 and thereby violated the provision of Section 68 read with Rule 6 of the Service Tax Rules. It is also noticed that the same had come to the notice of the department only after the submission of the documents by the assessee subsequent to the issuance of the SCN, which clearly proves malafide intention of the assessee. I therefore find that the said service tax not paid is

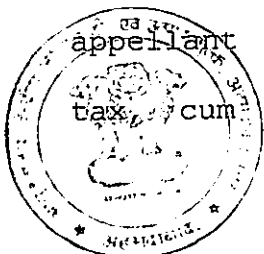
required to be demanded and recovered along with interest from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years and the demand sustainable on above ground shall be recovered under Section 75 of the Finance Act, 1994 for the delayed payment.

37. In view of the above findings, the assessee are liable to pay Service Tax on taxable income received towards works contract service as calculated in above para 34, Service Tax of Rs.76,70,000/- is demanded and is to be recovered from the assessee under Section 73 of the Finance Act, 1994 for works contract service provided by them as discussed herein above.

38. I find that assessee had contested that they were eligible for cum duty valuation, in support of their argument they have relied upon the following case laws;

- o Commissioner Vs. Advantage Media Consultant 2009-14-STR-J49(SC)
- o Commissioner of Service Tax, Mumbai Vs. Allied Aviation Ltd., 2017-(47)STR-279 (Tri-Mumbai)
- o Turrent Industrial Security Pvt. Ltd., Vs CCE & C, Jamshedpur 2009-TIOL-45-CESTAT-KOL
- o CCE, Patna Vs. M/s. Advantage Media Consultation 2008-TIOL-548-CESTAT-KOL
- o Municipal Corpn of Delhi Vs. Commissioner of Service Tax , Delhi 2009-TIOL-975-CESTAT-DEL
- o Robot Detective & Security Agency , Chennai vs. CCE Chennai 2009-TIOL-238-CESTAT-MAD
- o ABN Amro Bank Vs. CCE, Noida 2011-TIOL-1147-CESTAT-DEL
- o Speedway Carriers Pvt Ltd vs. Commissioner of Central Excise, Jaipur 2012-TIOL-1230-CESTAT-DEL
- o Professional Couriers Vs. Commissioner of Service Tax, Mumbai 2013(32)STR 348 (Tri-Mumbai)
- o CCE, Delhi Vs Maruti Udyog Ltd., 2002-TIOL-34-SC-CX-LB

38.1 I find that the facts of the above cases relied upon by the assessee are on a different footing and the ratio of the same is not applicable to the facts of the case at hand. I find that in absence of any documentary evidence to show that amount received by the appellant from the service recipient was inclusive of service tax, cum tax benefit cannot be granted; [CCE v Rudra Galaxy



Channel Ltd (2015) 38 STR 445 (Tri-Mum) relying on Amrit Agro Industries Ltd v Commr (2007) 210 ELT 183 (SC)].

38.2 I find that when service tax is not separately collected from the clients, gross amount collected is to be considered as inclusive of service tax. The Explanation inserted to this effect in Section 67 of Chapter V of Finance Act, 1994 on 10.9.2004 only clarifies the general principle. [Gem Star Enterprises Pvt. Ltd. v. CCE (2007) 7 STR 342 (Tri.-Bang.); See also Abirami Associates vs. CCE (2009) 14 STR 801 (Tri-Chennai); P. Jani & Co. vs. CST (2010) 20 STR 701 (Tri-Ahmd.); Niranjana Lal Agarwal vs. CCE (2012) 26 STR 457 (Tri-Del.); Professional Couriers v. CST (2013) 32 STR 348 (Tri-Mum.)]. I find that cum duty benefit is available to the assessee only if assessee is able to show that price includes tax payable by him in view of the Supreme Court decision in the case of Amrit Agro Industries Ltd., (Supra). I therefore reject the contention of assessee, as tax is to be paid on gross amount charged under Section 67 of the Act.

39. In view of the above discussions and findings, the invoking of extended period of limitation under Section 73 of the Finance Act, 1994 is found to be sustainable.

39.1 Further, I find that invoking extended period of limitation has been discussed in the SCN at length and the same has been contested by the said assessee in their submissions. It is my considered view that the Government has, from the very beginning, put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service providers/ taxpayers and accordingly, measures such as self-



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

39.2 Further, it is observed that the assessee was fully aware about the fact that they were receiving such income which was chargeable to Service Tax. However, in spite of knowing the facts; they chose not to pay the said applicable dues related to Service Tax. This has been done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained



unnoticed, if the third party data had not been received from CBDT. These acts on the part of the assessee tantamounts to willful suppression, concealment and mis-statement of facts, with intent to evade the payment of dues related to Service Tax.

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

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



is rightly invoked for raising the demand for service tax against the assessee.

41. In view of the above, I find that extended period for recovery of service tax short paid/not paid by the assessee on rendering of said taxable services, under the proviso to section 73(1) of the finance act, 1994 was rightly invoked and the SCN is sustainable on limitation. Therefore, the service tax amount of Rs. 76,70,000/- is recoverable from the assessee along with interest as provided in proviso to section 73(1) of the finance act, 1994 read with section 75 of the act *ibid*.

42. I find that the assessee has contested that penalty under Section 78 of the Finance Act, 1994 not be impossible on them. They have relied upon the case laws of; Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I [2007(216)ELT 177(SC)], Bhagwati Spherocast Pvt. Ltd. Vs. Commr. Of C.Ex., Ahmedabad[2019(368)ELT308 (Guj)], Super Shiv Shakti Chemical Pvt Ltd., Vs Commissioner of C.Ex., Udaipur [2019(369)ELT 1279(Tri-delhi)], CCE, Tiruchipalli Vs. Shri Suthan Promoters 2010-TIOL-623-HC-MAD-ST, RAC Steel Vs.CCE, Salem 2010-TIOL-484-CESTAT-Mad and Rajrani Exports Vs.CCE, Salem (2010)18 STR 777. I find that the above citations are not applicable in the present case.

42.1 Since in the instant case, suppression of material facts have been established beyond doubt after discussions in the paras *supra*, I consider this to be a fit case for imposition of penalty under Section 78 of the Finance Act, 1994 which reads as under:

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

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



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

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

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

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

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

"Section 78 applies to a case where a person has registered himself under the Act and failed to file the prescribed return and in such return filed, he has suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service....."



.....Therefore, the argument that once acts of suppression, concealment and furnishing inaccurate particulars are established, the penalty follows as a matter of course or in other words is automatic, is without any substance as it runs counter to the express provision contained in Sections 78 and 80 of the Act. When once it is held that there is no reasonable cause, then the authority is empowered to impose penalty as prescribed under Section 78, for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount or service tax sought to be evaded by reason of suppression or concealment or the value of taxable service or the furnishing of inaccurate value of such taxable service.

21. When once the ingredients of Section 78 are established and there is no reasonable cause for failure. Section 80 is not attracted. Then the authority has to impose a minimum penalty of the amount or service tax sought to be evaded and the maximum is double the said amount. Here, there is no discretion, which is vested with the authority. The discretion is only confined to impose a penalty above the minimum and less than the maximum provided for under the Act....."

42.3 Thus penalty under Section 78, is attracted whenever any Service Tax has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful mis-statement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. However, as per the second proviso to section 78, where such service tax along with interest is paid within 30 days from the date of communication of the order penalty would be further reduced to 25% of the service tax so determined. The benefit of reduced penalty shall be available only if such penalty along with interest is also paid within 30 days from the date of receipt of the order. The assessee have rendered themselves liable to penalty under Section 78 of the Finance Act, 1994 as they were not paying service tax in spite of the fact that they were providing the taxable service.

43. Further, in view of the discussion made in the forgoing paras, I hold that the assessee has failed to pay the service tax on the income received for "works contract services" by suppressing the facts from the department by contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and Section



67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax Rules, 1994. The Service Tax totally amounting to Rs.76,70,000/- is recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

44. Regarding penalty under Section 77, I find that the assessee has also contravened the provision of Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable services; violated the provisions of Section 68 of the act read with Rule 6 of the Service Tax Rules, 1994 by not paying the Service Tax during the F.Y. 2015-16 & 2016-17. Further, the assessee has not assessed the tax dues, properly on the services provided by them, as discussed above, and has failed to file correct ST3 returns in time thereby violating the proviso of Section 70 of the act read with Rule 7 of the Service Tax Rules, 1994. In view of the above, they are liable for imposition of appropriate penalty under Section 77 of the Finance Act, 1994.

44.1 I find that the assessee had not filed ST3 returns for Service Tax Registration NO.AEVPP5727JST002, the assessee is also silent on the status of the said registration, therefore, they are liable for imposition of appropriate penalty under Section 77 of the Finance Act, 1994.

45. I find that two SCNs had been issued by the department from F.No.STC/15-50/OA/2021 for Service Tax Registration No. AEVPP5727JST002 and STC/15-51/OA/2021 for Service Tax Registration No. AEVPP5727JST001 both dated 23.04.2021. I find that both SCNs had been issued on identical data shared by CBDT to CBIC on the PAN base AEVPP5727J. Since, Service Tax Registration was PAN based, the income received from service provided was filed before the Income Tax Department by the assessee for PAN No.AEVPP5727J, which had been reflected in both service tax registration, leading to department issuing two SCNs. I find that ITR/26AS were PAN based, and ST3 returns were filed by the assessee for Registration NO. AEVPP5727JST001.



Assessee has provided Tax Audit Report for Service Tax Registration No. AEVPP5727JST001, the demand issued for Registration NO. AEVPP5727JST002 is not tangible, bad in law and the same is required to be dropped.

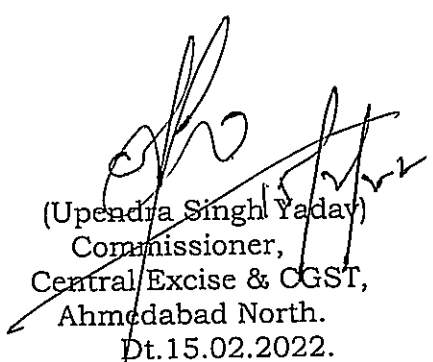
46. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order:

ORDER

- (i) I confirm the demand and order recovery of Service Tax of Rs. 76,70,000/- (Rs. Seventy Six Lakhs Seventy Thousand) including cess (as per para 34) from the assessee under the provision of Section 73 of the Finance Act,1994.
- (ii) I drop the proceedings initiated against Patel Anilkumar Laljibhai, G-13, Sahjanand , Jai Vijay Construction, Complex, B/H AEC Zonal Office, Sola Road, Navrangpura, Ahmedabad , vide Show Cause Notice F.No. STC/15-50/OA/2021 dated 23.04.2021 for Service Tax Registration NO.AEVPP5727JST002.
- (iii) I drop the demand of Rs. 1,50,96,120/- out of the total demand of Rs.22766120/-, vide SCN F.No. STC/15-50/OA/2021 dated 23.04.2021.
- (iv) I order to recover interest at the applicable rate from the assessee under the provisions of Section 75 of the Finance Act, 1994 on the demand at (i) above.
- (v) I impose penalty of Rs. 76,70,000/- (Rs. Seventy Six Lakhs Seventy Thousand) under section 78 of the Finance Act, 1994. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.
- (vi) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under section 77(2) of the Finance Act,1994 for, not make payment of Service Tax and non filing of correct ST3 returns for Registration No. AEVPP5727JST001.



(vii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under section 77(2) of the Finance Act, 1994 for, not make payment of Service Tax and non filing of ST3 returns for Registration No. AEVPP5727JST002.


(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.
Dt.15.02.2022.

F.NO.STC/15-50/OA/2021
F.NO.STC/15-51/OA/2021

M/s. Patel Anilkumar Laljibhai ,
G/13, Shajanand,
Jay Vijay Construction,
B/h. AEC Zonal Office,
Sola Road, Navrangpura,
Ahmedabad, Gujarat-380 013

Copy to:

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

