


<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:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-120/OA/2020

DIN-20220264WT0000002E2A

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- 65 /2021-22

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-120/OA/2020 dated 21.10.2020 issued to M/s. Bhavna Engineering Company Private Limited, Bhavna House, 21, Sadhana colony, Nr. Sardar Patel Stadium, Navrangpura, Ahmedabad-380 009

ORDER IN ORIGINAL NO. AHM-EXCUS-002-COMMR- 65 /2021-22.

M/s. Bhavna Engineering Company Private Limited, Bhavna House, 21, Sadhana colony, Nr. Sardar Patel Stadium, Navrangpura, Ahmedabad-380 009, were issued SCN No.STC/15-120/OA/2020 dated 21.10.2020 by the Principal Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO BHAVANA ENGINEERING COMPANY PRIVATE LIMITED, ARE AS FOLLOWS;

M/s. Bhavna Engineering Company Private Limited, Bhavna House, 21, Sadhana colony, Nr. Sardar Patel Stadium, Navrangpura, Ahmedabad-380 009 (hereinafter referred to as the "Assessee" for the sake of brevity) are engaged in providing taxable services, and are holding Service Tax Registration No. AAFCB8899LSD001.

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" in respect of M/s. Bhavna Engineering Company Private Limited was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes & 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 of the said assessee for the F.Y.2015-16, the total sales of service (Value from ITR/ Form 26AS) were found to be not tallying with Gross Value of Service Provided vis-à-vis as declared in ST-3 Return of the F.Y.2015-16. Therefore, it appeared that the said assessee had declared less taxable value in their Service Tax Returns (ST-3) for the F.Y.2015-16 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16. The difference in value as observed for F.Y. 2015-16 was found to be as under:

(Amount in Rs.)

Sr No.	F. Y.	Total Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	HIGHER VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	425644823/-	0/-	422844819/-	425644823/-	61718499/-

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.6,17,18,499/- (including Cess) on the differential value of Rs.42,56,44,823/-.

4. The assessee were requested to provide explanation to the department vide letter dated 07.10.2020 for difference in value shown in ST-3 Returns vis-à-vis that shown in Income Tax return filed for FY 2015-16. It was also requested to furnish the documents viz. Balance Sheet, Profit & Loss account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax (ST3) Returns for FY 2015-16. But, the assessee neither produced any documentary evidences nor submitted any reply in the matter.

5. As assessee had not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the service tax assessee had been ascertained on the basis of income mentioned in the Income Tax returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department was considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

6. 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. 6,17,18,499/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 6,17,18,499/- (including Cess) worked out on value of Rs. 42,56,44,823/- declared in ITR/Form 26AS 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.

7. 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 as to why he should not pay the amount specified in the notice.

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

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; (iv) by these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 made themselves punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) 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) contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

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, and share with CBIC for the Financial Year 2015-16. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 6,17,18,499/-. 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. It appeared that the same should be recovered form the assessee

under the provisions of Section 73(1) of the Finance Act,1994 readwith Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, alongwith interest under the provisions of Section 75 of Finance Act,1994 and penalty under Section 78 of the Finance Act,1994.

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. 6,17,18,499/- 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.

12. No data was shared by the CBDT with CBIC, for the period 2016-17 & 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 2016-17 & 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.'

13. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2016-17 & 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 from the Department and the assessable value for the year 2016-17 & 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 period 2016-17 & 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

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 said amount of Service Tax amounting to Rs. 6,17,18,499/- (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.

15. It appeared that all these acts of contravention of the provisions of Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994, to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

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

17. The proceedings proposed and action that may be taken against the said noticee, under the aforementioned provisions of the Central Excise Act, 1994 and the Central Excise Rules, 2002 or the Finance Act 1994 read with the Service Tax Rules, 1994 framed there under, were saved by the Section 174(2)

of the CGST Act, 2017 and therefore the provisions of the Chapter V of the Finance Act, 1994 and the Rules made thereunder were applicable for the purpose of demand of Tax, Interest etc. and imposition of penalty under the subject SCN.

18. Therefore, Show Cause Notice F. No. STC/15-120/OA/2020 dated 21.10.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s. Bhavna Engineering Company Private Limited, asking them as to why:

- (i) The Service Tax to the extent of Rs. 6,17,18,499/- (Rupees Six Crore Seventeen lakh Eighteen Thousand Four Hundred Ninty Nine Only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;
- (ii) Service Tax liability not paid during the financial year 2016-17 and 2017-18 (upto June-2017), ascertained in future, as per paras no. 7 and 8 of the SCN, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

19. DEFENCE REPLY:

The assessee had not submitted any defence reply on the subject matter. However, they have tendered their written submission during personal hearing held on 04.02.2022. The salient arguments/contentions put forth by the assessee in their defence are as under:

- They have submitted that the Subject SCN was for the FY 2015-16, and as per circular 1053/02/2017-CX dated 10.03.2017, and Instruction no. 1080/09/DLA/MISC/15 dated 21st December 2015 issued by the Board and many other clarifications issued till the date of issuance of this SCN, it was mandatory to grant a Pre-SCN consultation to the taxpayer before issuance of Show Cause notice, however, no Pre-SCN consultation was granted to them in the instant case. They have submitted that, inquiry was conducted by the Division-VII, Ahmedabad North for the FY 2016-17, wherein the Commissioner, Ahmedabad North had granted Pre- SCN consultation to them and they had submitted the required documents and explanations therein on the basis of which no SCN was issued to

them for the period 2016-17.

- They have submitted that SCN was issued without following any process of investigation and was devoid of any factual aspects. SCN had been issued plainly on basis of pure arithmetic based on the data received from Income tax and comparing the same with the Service Tax returns filed.
- The assessee has relied upon the case of **COMMISSIONER OF SERVICE TAX, AHMEDABAD VERSUS PURNI ADS. PVT. LTD. [2010 (19) S.T.R. 242 (TRI. - AHMD.)]** that before raising the demand on the difference between the amounts of ST-3 return and Balance Sheet, the adjudicating authority should reconcile these figures by adopting the proper methods, that it was not proved that the differential amount was received on account of providing of taxable service, that it had not been proved that the said difference is on account of receipts from taxable income.

The assessee has also relied upon the following case laws;

SHARMA FABRICATORS & ERECTORS PVT. LTD. Versus C.C.E., ALLAHABAD 2017 (5) G.S.T.L. 96 (Tri. - All.), the same was affirmed by Allahabad High Court [*Commissioner v. Sharma Fabricators & Erectors Pvt. Ltd. - 2019 (22) G.S.T.L. J166 (All.)*]

- The assessee has submitted that demand in the SCN was based on differential amount between income reported in 26AS / Income tax return and ST-3 return. Nowhere, it had been proved how the differential receipts were classifiable as taxable service, that the demand had been raised mechanically without proving the allegations with cogent and corroborative evidences which was not justified in the light of the following cases:-
 - M/S Mahadev Trading Company Vs Union of India {2020(10) TMI 431-GUJ-HC}
 - Sahibabad Printers Vs Additional Commissioner CGST (Appeals) {2020 (12) TMI 582- Allahabad HC}
 - Sahitya Mudranalaya Pvt Ltd Vs Additional Director General {2020 (3) TMI 154 - GUJ-HC}
 - CC CHENNAI V/S M/S FLEMINGO (DFS) PVT LTD [2010-TIOL-60-HC-MAD-CUS]
 - K. HARINATH GUPTA VS COLLECTOR OF CENTRAL EXCISE, HYDERABAD [1994 (71) ELT 980 (TRIBUNAL)]
 - M/S AVIAT HEALTH CARE PVT LTD VS CC & CE, BELAPUR [2008-TIOL-1924-CESTAT-MUM.]
 - SIFY TECHNOLOGIES LTD VS CST, CHENNAI.

They have submitted that a show cause notice was not merely an empty formality. The opportunity to show cause must be real and substantive which means the Noticee concerned must know as to why the issuing authority was holding the view of Noticee being liable to pay tax. It will enable the Noticee to meet the case sought to be made out against them. When an obligation was cast upon the authority to give notice to show cause before reaching the conclusion against the person affected by its action,

the purpose and requirement to issue show cause notice is two-fold (i) the Noticee must get an opportunity to meet the case against him and (ii) they must have an opportunity to set forth their own case to show as to why an adverse order should not be passed against them. Thus, unless and until prima-facie reasons and materials are recorded in the SCN, no opportunity can even be given to the Noticee to meet their case. They have relied upon the case of Hon'ble Bombay High Court in **Rajmal Lakhichand v. Commissioner of Customs, 2010 (255) ELT 357 (Bom)**, the same had been affirmed by the Hon'ble Supreme Court in **2012 (278) ELT 577 (SC)**. They have further relied upon the decision of the Hon'ble Bombay High Court in **Royal Oil Field Private Limited v. Union of India, 2006 (194) ELT 385 (Bom)**. They have submitted the indispensable requirement of the SCN that the exact allegation must be put forth so as to give an opportunity to the assessee to show cause against them.

They have submitted that the Hon'ble Supreme Court in a plethora of cases has held that the SCN was the foundation for the judicial proceedings and the basic requirement for following the principles of natural justice, i.e. opportunity to defend was denied if SCN was without reasoning or without specific grounds. In this regard reliance has been placed by the assessee on the following cases:

- i. *CCE v. Brindavan Beverages P. Ltd., 2007 (213) ELT 487 (SC)*
- ii. *Kaur & Singh v. Collector of Central Excise, New Delhi, 1997 (94) E.L.T. 289 (S.C.)*
- iii. *Royal Oil Field P. Ltd. v. Union of India, 2006 (194) ELT 385 (Bom.)*
- iv. *Oryx Fisheries (P) Ltd. v UOI, (2010) 13 SCC 427*

They have submitted that the department in the SCN itself had accepted that it had not done any investigation and the notice was exclusively based on the data of the Income Tax Department.

They have submitted that they were in the business of providing infrastructure construction service. They have comprehensive experience in carrying out complex Government projects such as highways and roads, bridges and irrigation projects. They were paying service tax at full rate wherever it was applicable and many of services were exempted from the levy of service tax. During the FY 2015-16, they had rendered services to various Governmental Authorities and private companies, and detailed contract wise break-up of the services rendered by them are as under:

Sr. No.	Work Type	Customer Name	Classification	Amount Rs.	Exemption Entry from 25/2012-ST
1	Irrigation Canal Construction	Sardar Sarovar Narmada Nigam Ltd - Kharagoda	Works Contract Services	1,09,53,144	12(d)
2	Irrigation Canal Construction	Sardar Sarovar Narmada Nigam Ltd (Limbd and Barvala)	Works Contract Services	7,42,41,588	12(d)
3	Irrigation Canal Construction	Sardar Sarovar Narmada Nigam Ltd (Bolera)	Works Contract Services	2,40,38,982	12(d)

4	Irrigation Canal Construction	Sardar Sarovar Narmada Nigam Ltd (Bolera)	Works Contract Services	68,98,765	12(d)
5	Irrigation Canal Construction	Sardar Sarovar Narmada Nigam Ltd (Vallabhipur)	Works Contract Services	1,34,58,633	12(d)
6	Irrigation Canal Construction	Sadbhav Engineering Ltd (Dhandhuka)	Works Contract Services	16,20,96,743	29(h) read with 12(d)
Sub-Total for canal works				29,16,87,855	
7	Public Road Construction	Sadbhav Engineering Ltd (Bhilwara)	Works Contract Services	10,31,52,902	13(a)
8	Public Road Construction	Ahmedabad Municipal Corporation	Works Contract Services	8,12,718	13(a)
Sub-Total for Public Road works				10,39,65,620	
9	Water Supply Pipeline	Sardar Sarovar Narmada Nigam Ltd - SSNNL Harij	Works Contract Services	2,99,91,348	12(e)
Grand Total				42,56,44,823	

They have submitted that demand in the SCN to the exact value of Rs. 42,56,44,823/- on which service tax of Rs. 6,17,18,499/- had demanded, had been derived from their Income from service provided to exempted projects exactly the same as in the SCN, needs to be dropped.

They have submitted that they have provided services to Sardar Sarovar Narmada Nigam Limited (SSNNL) for construction of canal, earth work, lining structures of Minor and major canals & Service Roads for the distributaries and minors of Kharagoda, Barvala, Bolera and Vallabhipur including operation and maintenance; that Services provided to SSNNL were exempt from service tax vide Entry no. 12(d) of Notification no.25/2012 dated 20.06.2012. They have submitted that SSNNL is set up by Government of Gujarat where 100% equity of the company is held by the state government and 100% control over the working of the company is also in the hands of the state government; that SSNNL is primarily set up to construct the Sardar Sarovar Dam and its various canal across the state, it's primary function thereby was water conservation and supply of water for domestic, industrial and commercial purposes. They have submitted that, Article 243W read with entry 5 of the Twelfth Schedule of the Constitution of India mandates this very purpose, hence all the conditions of the definition of 'Governmental Authority' are satisfied and therefore the exemption was rightly availed by them.

➤ **Construction of Irrigation Canal for Sadbhav Engineering**

Sadbhav Engineering Ltd (SEL) got a contract for construction of Irrigation canals from SSNNL. They sub-contracted the work of constructing canal which includes Earth work, lining structures & service roads for Dhandhuka Branch Canal. The said project involves actual construction of irrigation canals and lining structure and service roads which is necessary for canals and dams. Services provided by SEL for the said project directly to SSNNL were exempt from payment of service tax vide Entry no. 12(d). Further the Sub-contractor were given exemption vide entry 29(h) of Notification no.25/2012 dated 20.06.2012, as under:

"29. Services by the following persons in respective capacities -

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;"

The main ingredient was that only those sub-contractors were exempted, which provided works contract services. It could be seen from the appended contracts, that all works done were works contract as defined in section 2 (54) of Chapter V of the Finance Act, 1994

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

They have submitted that the works done for construction of Canals for SSNNL directly or for SEL were exempt from levy of Service Tax.

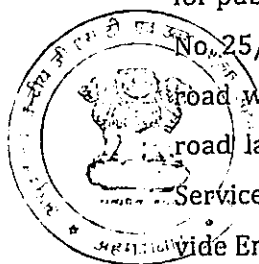
- They have submitted that Sadbhav Engineering Limited got a work order for construction of four laning of Rajsamand (NH 8) - Gangapur - Bhilwara (NH-79) in the section NH-758 from 0.000 kms to 86.400 kms in the state of Rajasthan. Part of the said contract assessee was sub-contracted, whereby they had to do the Earthwork, GSB, WMM, Kerbing and structure works from 50.000 kms to 86.400 kms. It was evident from the work orders submitted that the road being constructed was a National Highway and was a Public Road. Construction works of public roads explained above were exempt vide Entry No.13(a) of the Notification No.25/2012-ST, as under:

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

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

They have submitted that the works done for construction of public roads for SEL are exempt from levy of Service Tax.

- They have submitted that they had provided services to Ahmedabad Municipal Corporation (AMC) for construction of Road. The State Government had introduced a scheme called Swarnim Jayanti-Chief Minister Urban Development Scheme, wherein the internal roads of housing society shall be constructed with the partnership of public and local authority i.e Municipal Corporation. They had constructed such paver based roads under the said scheme. The tender was issued by AMC, LOA (letter of award) was also issued by AMC and payment was also received from AMC. They had not any contract or connection with Society, all such work was provided only and only to AMC. As the housing society is open for public, hence the road constructed was also covered through Sr.No. 13(a) of Notification No.25/2012-ST which had already been discussed. The Paver moulding road is also type of road which is generally constructed in narrow passage where the heavy equipment for road laying cannot be used. Moreover it had longer life than traditional type of road. Services related to the above mentioned project were exempted from levy from Service Tax vide Entry No. 13(a) of Notification no.25/2012 dated 20.06.2012, as under:



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

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

- They further submitted that if the department does not accept their ground to consider the said project as exempted, then they were eligible to take the benefit of basic threshold exemption limit of Rs.10 lacs. The said relaxation had come through Notification 33/2012 (Service tax) dated 20th June, 2012. The relevant portion from the same is extracted here below:

"the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:"

The aggregate value has also been explained in the same notification as follows;

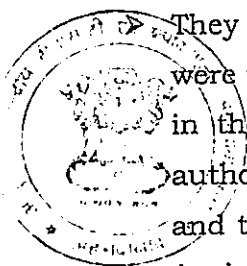
(B) "Aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

Notification No. 25/2012-ST provides the list of services which were exempted from levy of service tax u/s 66B, the text reads as under.

"..... the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-....."

Based on Notification, out of total aggregate turnover was Rs.42,56,44,823/-, where as Rs.42,48,32,105/- (after excluding the Turnover of AMC Rs.8,12,718/-) were exempted turnover, the facts and legal grounds of all such had been explained. So, such exempted Turnover should not be part of aggregate taxable turnover. So, aggregate taxable turnover Rs.8,12,718/- which was less than 10 lacs, basic exemption limit specified in Notification No. 33/2012-ST.

They have submitted that total turnover in 2014-15 were also exempted as they were in the same line of business and eligible to take benefit of Rs.10 lacs limit in the year 2015-16. They have submitted that in 2014-15, the preventive authority has already initiated inquiry on the same i.e. ST3 vs 26AS/ITR issue and they have submitted all the relevant documents and explanation to them. Against which neither Show Cause Notice had been issued nor they had make any payment towards during the inquiry. Hence, for 2014-15, the department had accepted their exemption turnover and closed the matter. They have



submitted the copy of letter issued by Preventive section alongwith acknowledgment of their submission. They have submitted that in 2015-16, they have claimed the Basic threshold exemption of Rs.10 lacs and not paid the service tax based on alternate ground.

- They have submitted that they had provided services of supplying, installation and testing of under ground pipeline of sub-minor irrigation through kundies in chak area of SSP command to SSNNL. The said project involved earth work and lining structure and service roads which was necessary for canals and it was an important exercise which enhances life of the canal. Services provided for the said project to SSNNL was exempt from levy of service tax vide Entry no. 12(d) of Notification no.25/2012 dated 20.06.2012. Term 'Governmental Authority' is defined in the notification as under

'(s) "governmental authority" means an authority or a board or any other body;
(i) set up by an Act of Parliament or a State Legislature; or
(ii) established by Government,
with 90% or more participation by way of equity or control, to carry out any
function entrusted to a municipality under article 243W of the Constitution;'

SSNNL was set up by Government of Gujarat where 100% equity of the company was held by the state government and 100% control over the working of the company was also in the hands of the state government. Further, SSNNL was primarily set up to construct the Sardar Sarovar Dam and its various canal across the state, it's primary function was water conservation and supply for domestic, industrial and commercial purposes.

Article 243W read with entry 5 of the Twelfth Schedule of the Constitution of India mandates this very purpose, hence all the conditions of the definition of 'Governmental Authority' are satisfied and therefore the exemption is rightly availed.

They have submitted the copies of Copy of all work orders, Sales Ledger for FY 2015-16, Audited Balance Sheet for the FY 2015-16 and ST 3 Returns for FY 2015-16.

- They have submitted that Preventive section of the Ahmedabad North had sent an inquiry notice on the same grounds for the FY 2014-15, however, no SCN was issued thereafter, as it was concluded that all projects were exempted. They have submitted the Copy of notice issued by department and submission made by them.
- They have submitted that from the above facts, department on the basis of Third Party Data had inquired for F.Y.2014-15 and 2016-17, on both the cases, many of the contracts and work done were same and after post analysis of submission no demand notice was issued. In case of FY 2015-16 as they had not received any notice, they could not file any reply. They have submitted that all work orders were of long term and running into many years, as inquiries in 2014-15 and 2016-17 were closed on merits, the present SCN is also required to be closed on merits.

- They have submitted that they were engaged in providing service of designing and building Roads and Highways and services related to earth work and line structure of the canals, which are exempted from paying service tax for the work contract service. They have relied upon the case of **Sahitya Mundranalaya Pvt Ltd Vs Additional Director General**, of the Hon'ble High Court of Gujarat. The Hon'ble Court had taken into consideration that when the services provided by the noticee was exempted as per the Notification No.25/2012-ST dated 20.06.2012, the SCN needs to be quashed. Further, the Hon'ble Court had also taken into consideration that when there was no intention to evade payment of service tax, the larger period of limitation could not be invoked.
- They have submitted that, in para 4 of SCN it had been alleged that they had been issued discrepancies letter dated 07.10.2020 by the range officer but they have not replied to the same. They have submitted that the said issued letter was received by them after 7 to 10 days so around 15th to 20th October 2020, and the amount involved was huge and project data was voluminous, before understanding the issue and gathering the data for submission and before getting legal advice, they had been issued Show Cause Notice on 21.10.2020. To be precise, within 15 days of first letter issued by the range office, Show Cause Notice for an amount of Rs.6,17,18,499/- was issued to them.
- They have submitted that reasonable time period should be given for submission of facts and documents before issuing Show Cause Notice; that before issuing such huge amount of Show Cause Notice, Pre-SCN procedure should be followed. They had not been issued any Pre-SCN consultation from the department. They had not been given reasonable time for submission for SCN nor the required procedure had been followed before issuing subject SCN; that the present SCN had been issued without making any proper investigation and without taking into account all the facts and documents provided. The SCN is vague and cryptic and needs to be dropped.
- They have submitted that, the SCN had been issued on 21.10.2020 demanding Service Tax for the FY 2015-16 invoking proviso to Sec. 73(1) of the Finance Act, 1994. It is submitted that demand for said period is time barred. It was necessary that *there must be suppression of facts or wilful mis-statement with intent to evade payment of tax* for invoking extended period of limitation. They have relied upon the case of **Tata Consultancy Services Limited vs Commissioner**, the Honourable Supreme Court had held that *Extended period was not invocable where no evidence showing suppression of facts on part of the assessee existed and Penalty was not* *imposable when dispute was related to interpretation of statute.*
- They have submitted that allegation of suppression was not supported by proper evidence. They have relied upon the case of **Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur, 2013 (288) E.L.T. 161 (S.C.)**; and **Anand Nishikawa Co. Ltd v. Commissioner of Central Excise, Meerut, 2005 (188) E.L.T. 149 (S.C.)**.
- They have submitted that the SCN had not shown any positive act done by the Noticee which proves the intention of evasion of service tax, the SCN had failed to

justify the invocation of extended period under the proviso to Section 73(1) of the Act. They have relied upon the decisions of ;

- i. Continental Foundation Jt. Venture v. CCE, Chandigarh-I, 2007 (216) E.L.T. 177 (S.C.);
- ii. CCE, Mumbai IV v. Damnet Chemicals Pvt. Ltd., 2007 (216) E.L.T. 3 (S.C.);

They have submitted that the SCN invoking proviso to Section 73(1) of the Act should be rejected and accordingly entire demand raised along with Interest as per Section 75 of the Act should be quashed in entirety.

- They have submitted that the interest under the provisions of Section 75 of the Act was not recoverable, since the demand of Service Tax itself was not payable. They have relied upon the case of **Pratibha Processors v. Union of India [1996 (88) ELT 12 (SC)]**. They have submitted that penalty under Sections 77 and Section 78 of the Act was not imposable since the service tax itself was not payable and the Noticee had not contravened any of the provisions of the Act. They have relied upon the decision of the Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. v The State of Orissa** reported in AIR 1970 (SC) 253, the same was followed by the Tribunal in the case of **Kellner Pharmaceuticals Ltd. Vs CCE**, reported in 1985 (20) ELT 80, and it was held that proceedings under Rule 173Q are quasi-criminal in nature and as there was no intention on the part of the Noticee to evade payment of duty the imposition of penalty cannot be justified.
- They have submitted that the assessee had indeed assessed tax liability and discharged the same as per the provisions of the Act; that the Noticee had registered itself with the Service Tax Department and had been regularly paying Service tax and had been filing its ST-3 Returns regularly. Therefore, penalty was not imposable under Section 77 as the Noticee had not contravened any provision of the Act or the Rules made thereunder.
- They have submitted that for imposition of penalty under the Section 78, all the ingredients of invocation of extended period were required. It was seen that the aforesaid penalty was leviable only in cases of fraud, suppression of facts, wilful mis-statement, etc. with an intention to evade service tax. The penalty under Section 78 of the Act was proposed only when an assessee commits any positive act for evading service tax. Mere failure to disclose or declare would not amount to 'suppression'. They have relied upon the case of **Anand Nishikawa Co. Ltd. v. Commission of Central Excise, Meerut (Supra)**.

Collector v. Chemphar Drugs & Liniments — 1989 (40) E.L.T. 276 (S.C.);
 Padmini Products v. Collector of Central Excise, Bangalore (Supra);
 Sarabhai M. Chemicals v. Commissioner of Central Excise, Vadodara - (2005) 2 SCC 168 =
 2005 (179) E.L.T. 3 (S.C.);
 Pahwa Chemicals Pvt. Ltd. v. Commissioner — 2005 (189) E.L.T. 257 (S.C.)
 Uniworth Textiles Ltd. v. Commissioner — 2013 (288) E.L.T. 161 (S.C.)

They have submitted that the Noticee did not commit any positive act for evading service tax; that penalty under Section 78 of the Act was not imposable.

➤ They have submitted that for imposing penalty, there should be an intention to evade payment of tax, or there should be suppression or concealment ; that there was no suppression or concealment on behalf of the Noticee. The Noticee was cooperative with the Department during the Audit and had communicated and provided all the information required by the Department.

They have submitted that the penal provisions were only a tool to safeguard against contravention of the rules; the Noticee had always been and was still under the bona fide belief that it was not liable to pay service tax. The Noticee had no intention to evade payment of service tax as mentioned in the grounds submitted by them, no penalty was imposable on the Noticee. They have submitted that penalty under Section 78 of the Act can be imposed only for reasons identical to those required for invoking extended period of limitation, the Noticee had never suppressed any fact with an intention to evade payment of service tax and therefore penalty under Section 78 of the Act was not imposable.

➤ They have submitted that assuming without admitting the Noticee had contravened the provisions of the Act, benefit of Section 80 of the Act was to be given as the Noticee was under a bonafide belief that it was not liable to pay the amount of Service tax on the amount received by the Noticee as pay-outs. Section 80 of the Act provided that no penalty should be imposed under Sections 77 and 78 of the Act, if the Noticee proves that there was reasonable cause for the said failure. There was a reasonable cause in the form of various decision in favour as discussed above, no penalty was imposable on the Noticee. Section 80 had been omitted w.e.f. 14.05.2015 vide the Finance Act, 2015. It is pertinent to note that the transitory provisions, i.e. Section 78B specifically states that in respect to cases pending adjudication on the day of passing of the Act, the provisions of Section 76 & 78 as amended by the Finance Act, 2015 will apply. There was no mention about Section 80. So far as Section 80 had been omitted, such omission will be applicable prospectively, i.e. for the disputed period pertaining to the period 14.05.2015 onwards.

They have submitted that they were not liable to pay service tax, based on submissions made, there was reasonable cause for failure, if any, on part of the Noticee to pay service tax on the incremental value. In terms of Section 80, penalties cannot be imposed under Sections 77 & 78 of the Act. They have relied upon the following judgments:

- 1..1 ETA Engineering Ltd. vs. CCE, Chennai, 2004 (174) E.L.T 19 (Tri-LB)
- 1..2 Flyingman Air Courier Pvt. Ltd. vs. CCE 2004 (170) ELT 417 (Tri.- Del.)
- 1..3 Star Neon Singh vs. CCE, Chandigarh, 2002 (141) ELT 770 (Tri. - Del)

Penalty proposed under Section 77 and 78 and interest under Section 75 of the Act was liable to be dropped.

They have submitted that instance Show Cause cum Demand Notice may be dropped

20. PERSONAL HEARING:

services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption notification.

21.3. I find that assessee had contested that they were not granted pre-SCN consultation before issuance of notice. I find that letter dated 07.10.2020 was issued to them for asking clarification for difference between ITR/16AS vis-à-vis ST-3 returns, the assessee submitted that they had not received any such letter, and hence, they could not respond to the same and SCN was issued on 21.10.2014. On going through the case records I find that the said letter had not been received back by the department, hence, looking to the last date for issuance of SCN, the SCN issuing authority had no option but to issue the present SCN.

21.4. I discern that the assessee in his defence reply dated 04.02.2022 has stated that they were in the business of providing infrastructure construction service. They have comprehensive experience in carrying out complex Government projects such as highways and roads, bridges and irrigation projects; that they had been paying service tax, wherever it was applicable, and many of services provided by them were exempt from the levy of service tax. On going through the Sales Register and copy of Work Orders submitted by the assessee it is seen that the assessee had provided services to the Government, Government Department, Government Company/ Authority, Government Council, Nagar Palika/ Panchayat. The details of the service provided by the assessee are as under:

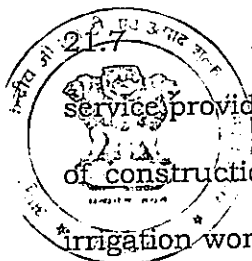
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9	Water Supply Pipeline	Sardar Sarovar Narmada Nigam Ltd – SSNNL Harij	Works Contract Services	2,99,91,348	12(e)
Grand Total				42,56,44,823	

21.5. I find that value of total sale of services in para-3 of the SCN Rs.42,56,44,823/- tallies with the contract receipt ledger account for the period 01.04.2015 to 31.03.2016 and profit and loss account for the F.Y.2015-16. I find that there is no dispute with the value of service provided by the assessee for F.Y.2015-16.

21.6 I find that the assessee in their aforementioned reply dated 04.02.2022, has contested and stated that their major income were from Government projects such as highways and roads, bridges and irrigation projects. The services provided by them in relation to construction of Road for general public and Canal were exempt from payment of service tax under Sr. No. 13(a), 12(d),12(e) and 29(h) 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 also find that the assessee has contended that for the F.Y. 2014-15, the preventive authority had initiated inquiry on the same issue i.e. ST-3 Vs. 26AS/ITR and they had submitted all the relevant documents to Deputy Commissioner, Preventive-CGST, Ahmedabad North vide letter dated 27.07.2020 submitted on 30.07.2020 with explanation; that against which neither Show Cause Notice had been issued nor they had to make any payment towards service provided during the inquiry.

As per Sr. No. 12 of Notification No. 25/2012-ST dated 20.06.2012, the service provided to the government, local authority or a governmental authority by way of construction, repair, maintenance, renovation, fitting out of Canal,dam or other irrigation works and pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal, are exempt services. For ease of reference, the said Sr. No. 12 of the Notification is reproduced as under:



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

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business of profession; (omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.)

(b)

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; (omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.)

(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.....

21.8 As per Sr. No. 13 of Notification No. 25/2012-ST dated 20.06.2012, the service provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of road, is exempt service. For ease of reference, the said Sr. No. 13 (a) of the Notification is reproduced as under

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

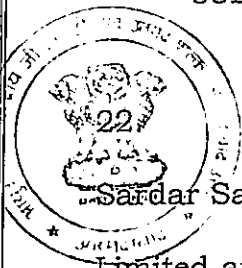
(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

21.9 I find that service provided by the sub-contractor by way of works contract was exempted from service tax under serial no.29 (h) of Mega Exemption Notification NO.25/2012-ST dated 20.06.2012, the same is reproduce herein as under;

"29. Services by the following persons in respective capacities-

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt."

I find that the assessee were providing works contract service to Sardar Sarovar Nigam Limited, service of Sub-contract to Sadbhav Engineering Limited and Ahmedabad Municipal Corporation, and have submitted that they were providing exempted services to the Government and services provided by them were exempted through Mega Exemption Notification No.25/2012-ST dated 20.06.2012. They had filed ST3 returns for F.Y.2015-16.



23. I find that the assessee were holding Service Tax Registrarion No.AAFCB8899LSD001, and they had filed ST3 returns for the year 2015-16, under the category of works contract service, Legal Consultancy Service, Manpower recruitment/supply agency service, Rent-a-cab scheme operator service, security/detective agency service, Transport of goods by road/goods transport agency service, sponsorship service provided to body-corporate or firm including sports sponsorships, other taxable services-other than the 119 listed. On going through the ST3, I find that the assessee had paid the legimate service tax due, except pertaining to exempted services and had filed due ST3 for F.Y.2015-16.

I find that the assessee had been awarded work by the

- (i) Sardar Sarovar Narmada Nigam Limited for work of constructing 14 minor of Block No.38 of Kharaghoda Branch Canal and their O&M for five years; Constructing canal earthwork structures and service road for LSBC Ch.43.08 to 55.766 km.; constructing earthwork, C.C. Lining, Structures & road approach of distributor and minors of Derwala Distributory of Vallabhipur Branch Canal; constructing earthwork, C.C. Lining, Structures & road approached of distributor and minors of Zolapur Distributory of Sanand Branch Canal; Constructing concrete lining for Vallabhipur Branch Canal; Constructing Distributaries/sub-distributaries & minors of Sanana Branch Canal; constructing fourteen minors of block no.38 of Kharaghods Branch canal and their O&M; constructing canal earthwork, Lining & service road for distributaries and minors of limbdi branch canal including operation and maintenance; supply, installing & testing of under ground pipeline system of sbu-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.02-NSM of Navasaval minor of harji distributory off taking from HSBC; supply, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.01-HRBM-IV of Harji Br minor-IV of harji distributory off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.06-HRBM-IV of Harji Br minor-IV of harji distributory



off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.08-HRBM-IV of Harji Br minor-IV of harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.08B-KLM of Kalana Minor of Boratwada distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.08A-KLM of Kalana Minor of Boratwada distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.03-NSM of Nava sarval Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.06A-NSM of Nava sarval Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.05-NSM-BSM of Nava sarval Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.04-NSM-BSM of Nava sarval Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.06B-NSM of Nava sarval Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.11JSM & 11JSBM of Jaska Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.10B-JSM of Jaska Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.10A-JSM of Jaska Minor of Harji distributary off



taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.02-JSBM of Jaska Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.03-JSBM of Jaska Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.05-JSM of Jaska Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.07-JSM of Jaska Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.09-JSM of Jaska Minor of Harji distributary off taking from HSBC; supplying, installing & testing of under ground pipeline system of sub-minor for irrigation through kundies in chak area for SSP command for chak area of sub minor no.06-JSM of Jaska Minor of Harji distributary off taking from HSBC; earth work, lining and structures of Boratwada and kukrana distributaries oftaking from Harji Sub-Branch canal of Bolera Branch Canal; earth work, lining and structures of Kanchanpura distributary and padiwada distributor with their minor oftaking from Bolera Branch Canal; constructing earth work, C.C. lining and structures & road approach of distributary and minors of Derwala distributary.

- (ii) Original work had been awarded to Sadbhav Engineering Limited for constructing earthwork, C.C.Lining, structures and service raod of the pipli distributary and its minors oftaking from vallabhipur branch canal, including operation, maintenance & security, the same had been sub-contract ot Bhavna Engineering Co.

Original work had been awarded to Sadbhav Engineering Limited by National Highways Authority of India for four laning of Rajsamand-Bhilwara Section NH-758 under NHDP Phase IV in the state of Rajasthan on DBFOT(Toll basis), the same had been sub-contract to Bhavna Engineering Co.



- (iv) Ahmedabad Municipal Corporation for construction of RCC Road and Rubber moulded paver block in Arunoday Co-op housing society, Navpad Flat, Mahalaxmi Society.

I find that works awarded at Sr.No.i were for canal, dam or other irrigation work, water supply and are exempted vide sr.no.12(d)(e) of mega exemption notification no.25/2012.

I find that assessee had worked as sub-contractor in respect of Sr. No. ii & iii. I find that service provided by the sub-contractor by way of works contract is exempted from service tax under serial no.29 (h) of Mega Exemption Notification NO.25/2012-ST dated 20.06.2012, the same is reproduced herein as under;

"29.Services by the following persons in respective capacities-

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt."

In the instant case principal contractor was providing exempted works contract services i.e. canal, dam or other irrigation work and roads, and the sub-contractor are eligible from exemption from payment of service tax.

I find that Ahmedabad Municipal Corporation is "local authority" as defined in Section 65B(31) of the Finance Act,1994, that Sardar Sarovar Narmada Nigam Limited is undertaking wholly owned by the Government of Gujarat and covered under "Government Authority", that National Highways Authority of India was set up by an act of the Parliament, NHAI Act, 1988 "An Act to provide for the constitution of an Authority for the development, maintenance and management of national highways and for matter connected therewith or incidental thereto. Therefore, I find that assessee are eligible for Mega Exemption Notification No. 25/2012-ST as discussed herein above.

23.1 Keeping in view the aforementioned detailed discussions, I find that the works contract service provided by the assessee 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 canal, dam, irrigation works, pipe line, conduit or plant for (i) water supply (ii) water treatment or (iii) sewerage treatment or disposal; service provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel or terminal of road transportation for use by general public; were squarely covered under the Sr. No. 12 & 13 of the Notification No. 25/2012-ST dated 20.06.2012 and I find that the exemption is quite clearly available to the assessee as claimed by them. Since I am convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN for F.Y.2015-16.

24. Further, I find that the assessee had been issued reminder-II letter which sought clarification regarding short payment/non payment of service tax for F.Y.2014-15 by the Deputy Commissioner (Preventive), Ahmedabad North from letter F.No.STC/04/Prev-GR.II/IIIrdPartydata/17-18 dated 06.07.2020. The assessee vide letter dated 27.07.2020 had submitted reply with response to the said letter dated 06.07.2020. However, in the present SCN dispute period is for F.Y.2015-16, accordingly, I am not entering into any discussion pertaining to service tax liability or otherwise of the noticee for the F.Y.2014-15.

24.1 I find that for F.Y.2016-17, Draft SCN in respect of M/s. Bhavna Engineering Company Private Limited was submitted by the Division-VII for issuance of SCN by the Commissioner, CGST, Ahmedabad North, on the basis of data shared by the CBDT to CBIC. The assessee were granted Pre-SCN consultation on 12.10.2021. During Personal Hearing of Pre-SCN consultation the assessee had submitted that the assessee were engaged in construction of canals etc., on behalf/for the Government and they were exempted from the payment of Service Tax. They had tendered detailed written submission alongwith work orders. The assessee had submitted the detailed submission during Pre-SCN, and the same was forwarded to the Division-VII for further verification whether the SCN was required to be issued or not. The Deputy

Commissioner, Division-VII, CGST, Ahmedabad North vide letter F.No.CGST/Div-VII/North/Demand/TDP/2021-22 dated 11.10.2021 had submitted, "that all services are exempt under Notificatin No.25/2012-ST, hence, there was no demand of Service Tax for the 2016-17, and therefore, inquiry initiated against the said assessee under Third Party Data may be closed". In view of the above verification report received from the division SCN for the period 2016-17 was not issued by the Commissionerate.

24.2 I find that for the period 2017-18(upto June,2017), no data/details are available in the case file, and the same have also not been provided by the department or assessee, therefore, I refrain myself from entering into any discussion for the period 2017-18 (upto June,2017) to determine Service Tax liability.

25. In view of the facts and circumstances pertaining to the case as aforementioned, the demand is found to be 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 inclined to entering into discussions on the question of imposing penalty and interest. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order:-

ORDER

I drop the proceedings initiated against M/s. Bhavna Engineering Company Pvt. Ltd, vide Show Cause Notice F. No. STC/15-120/OA/2020 dated 21.10.2020.



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

By Regd. Post AD./Hand Delivery
F.No. STC/15-120/OA/2020

Date: 15.02.2022

To
M/s. Bhavna Engineering Company Private Limited,
Bhavna House,
21, Sadhana colony,
Nr. Sardar Patel Stadium,
Navrangpura,
Ahmedabad-380 009

Copy for information to:

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