आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
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निवन्धित पावती डाक द्वरा/By R.P.A.D

फा.सं./F.No. **STC/15-91/OA/2020** आदेश की तारीख़/Date of Order:-31.03.2022

जारी करने की तारीख़/Date of Issue :- 31.03.2022

DIN NO: 20220364WT0000510873

द्वारा पारित/Passed by:- आर गुलजार वेगम ***/R. GULZAR BEGUM***

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 119-121/ADC/GB/2021-22

जिस व्यक्ति)यों (को यह प्रति भेजी जाती है ,उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील ,(केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन ,अंबावाड़ी ,अहमदाबाद-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 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 Commissioner (Appeal) 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)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-.में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice **No.** STC/15-91/OA/2020 dated 29.09.2020, STC/15-147/OA/2020 dated 21.10.2020 and STC/15-28/OA/2021 dated 23.04.2021 issued to M/s. Sanavi Infrabuildcon Private Limited situated at Chandrabhaga Housing, 48/472, Nr. Bhavsar Hostel, Ahmedabad-380013.

BRIEF FACTS OF THE CASE :

M/s. Sanavi Infrabuildcon Private Limited, Chandrabhaga Housing, 48/472, Nr. Bhavsar Hostel, Ahmedabad-380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) was registered under Service Tax having Registration No. AAUCS6738GSD001 and was engaged in providing "Construction, services other than residential complex, including commercial/industrial buildings or civil structures" and "Works contract service".

2. Ongoing through the third party CBDT data for the Financial Year 2014-2015, 2015-16 and 2016-17 it has been observed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015, 2015-16 & 2016-17 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

#	F.Y.	Taxable Value of services provided as per ST-3 returns (In Rs.)	Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided or Higher value of Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided, as applicable(In Rs.)	Rate of Service Tax (in %)	Resultant Service Tax short paid, including Cess (in Rs.)
1	2014-15	0/-	2,44,22,807/-	12.36	30,18,659/-
2	2015-16	0/-	3,48,70,928/-	14.50	50,56,285/-
3	2016-17	0/-	5,38,56,903/-	15.00	80,78,536/-
Total		0/-	11,31,50,638/-	##	1,61,53,480/-

3. The letters dated 08.02.2018, 30.05.2018, 25.06.2019, 30.09.2019 and 06.07.2020 were issued to the assessee for clarification. However, No clarification was submitted by the assessee till the issue of Show Cause Notice. Since the said noticee has not provided any details/data for such difference, the reasons for such difference cannot be ascertained and therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice, the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns or (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2014-15, 2015-16 and 2016-17. The same is worked out as shown in above table.

4. Two more Show Cause Notices involving same period and same amount were also issued to the assessee as detailed below which are also considered herewith for adjudication.

S.No	Show Cause Notice issued from F. No.	F.Y.	Higher Value difference in ITR & STR) or value Difference in TDS & STR (In Rs.)	Resultant Service Tax
1	STC/15-147/OA/2020/21.10.2020	2015-16	34870928/-	5056285
2	STC/15-28/OA/2021/23.04.2021	2015-16	34870928/-	5056285
		2016-17	53856902/-	8078535

5. In view of above, it was observed that the Assessee has 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 failed to pay/ short paid/ deposit Service Tax to the extent of Rs. 1,61,53,480/- (Including Cess), 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 failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

6. It has been noticed that at no point of time, the Assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015, 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs.1,61,53,480/- (Including Cess). It is observed that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same is to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

Accordingly Show Cause Notices have been issued called upon to show cause as to why :

(i) The demand for Service tax to the extent of Rs.1,61,53,480/-(Including Cess) (Rupees One Crore Sixty One Lacs Fifty Three Thousand Four Hundred and Eighty Only) short paid /not paid by them, 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 should not be imposed upon them for late filling of ST-3 Returns under the provisions of Section 70 of the Finance Act, 1994, if any

DEFENCE REPLY :

7. Shri Nirav P. Shah, Advocate on behalf of the assessee vide his letter dated 04.12.2020 has submitted his defence reply with reference to the Show Cause Notice wherein he stated that Service Provided by his clients does not attract service tax as the same are either provided to SEZ units or to Government infrastructure Projects which are exempt in nature under Notification No. 25/2012; that his clients have provided services to four clients during disputed period and out of the four clients, two clients are SEZ units and other two clients are providing work Contract Services to Government Infra Project, which are also exempt; that his clients have provided services to Essar Project (India) Ltd, as per the Purchase Order, no service tax is to be charged on the service activity as the work is exempt under Sr. No. 29 (h) of

Notification No. 25/2012 S.T as services provided to M/s. Essar with reference to construction of Port at Hazira for Ro-Ro Ferry Project; that the main project being exempt, his clients as a sub-contractor are also exempt from payment of service tax. They attached copy of purchase order issued by M/s. Essar Project (India) Ltd; that his clients have also provided services to M/s. Reliance Industries Ltd. (a Unit of Reliance Jamnagar SEZ). It is submitted that aforesaid clients, being SEZ Unit, have instructed my clients not to charge any service tax on services provided; they have also issued Form A-2 to his clients and hence, services provided to M/s. Reliance SEZ Unit is also not chargeable to service tax, being export of services. They attached copies of purchase order issued by M/s. Reliance SEZ Unit and Form A-2; that his clients have further provided services to M/s. Krishna Corporation. The aforesaid services are construction related to Dantiwada Dam Project which are also exempt under Sr. No. 12(d) of Notification No. 25/2012; that his clients have provided work on such service, which is exempt under Sr. No. 29(h) of the Notification; they attach copy of sales invoice and therefore no service tax is payable on aforesaid service also; that his clients have also provided services to M/s. Descon Infra during the disputed period for construction of a building which is to be used as Laboratory for testing of drugs by National Institute of Occupational Health at Meghaninagar, Ahmedabad; that it is submitted that aforesaid is original work for construction of Government building which is exempt under Sr. No. 12A (a) of the Notification No. 25/2012; that they attach copy of purchase order issued by M/s. Descron ; that they submitted that his clients have undertaken original construction work under various Government Projects as Sub-Contractor which are exempted in nature. Besides the Government work contract, his clients have provided construction services to Reliance SEZ which is also exempt. Hence they have not provided any services on which service tax is not paid.

PERSONNEL HEARING :

8. Personnel Hearing in the matter with regard to all the three show cause notices has been granted on 25.03.2022 wherein Shri Nirav P. Shah, Advocate, on behalf of assessee appeared for personnel hearing. He has submitted written reply dated 04.12.2020 and he requested to adjudicate all the three Show Cause Notices.

DISCUSSION AND FINDINGS

9. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notices, ITR, Balance sheet for the year 2014-15, 2015-16 and 2016-17. In the present case, Show Cause Notice were issued to the noticee demanding Service Tax of Rs. 1,61,53,480/- for the financial year 2014-15, 2015-16 and 2016-17 on the basis of data received from Income Tax authorities and find that the noticee had obtained Service Tax registration and also filed the ST-3 Returns as stipulated in the Finance Act, 1994 and rules made thereunder. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. The assessee submitted that they are providing services to SEZ, Government Infrastructure Project. Based on the details received from Income tax department and comparing the receipt shown in Form 26AS with ST-3 returns filed by the them, the show cause notices were issued to recover short paid service tax of Rs. 1,61,53,480/-with interest and penalty.

10. In the instant SCN, the point is regarding taxability of (1) Services provided to SEZ units (2) Services provided to Government Infrastructure Project. In this regard on perusal of reply to SCN and other documents submitted by the assessee, *I find that the* main business of their company is Construction Services other than residential complex and works contract services as derived from their ST-2 form. They have given the clarification regarding differential value of Rs.11,31,50,638/- for the year 2014-15, 2015-16 and 2016-17 are pertaining to *(1)* Services provided to SEZ units (2)

Services provided to Government Infrastructure Project. They stated that Service provided to SEZ units and government infrastructure project are exempted vide notification from payment of Service tax. *They have also furnished documents such as audited financial statements, Gross Trial Balance, ITR, Form 26AS, ST 3 return sample invoices etc work order.*

Now I discuss the taxability of services provided yearwise:

FINANCIAL YEAR 2014-15

11. During the year 2014-15, the assessee has provided Services to the tune of Rs. 2,44,22,870/- on which Service tax of Rs. 30,18,659/- has been demanded in the show cause notices. I find that the assessee has provided services to (1) Krishna Corporation for an amount of Rs. 5,00,000/- and (2) Reliance Industries Limited to the tune of Rs. 2,39,22,807/-. On perusal of the documents submitted by the assessee, I find that the assessee have provided Services to M/s. Krishna Corporation for construction related to Dantiwada Dam Project. M/s. Krishna Corporation is main contractor and the assessee has worked as subcontractor in the said project. Sr. No. 29(h) of notification No. 25/2012 ST provides exemption from payment of Service Tax for said work. I hereby reproduce relevant portion of the notification.

Notification No. 25/2012-ST

- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, 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:-

> *12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –*
> *[(a) ....*
> *(b) ....*
> *[(c) ....*
> *(d) canal, dam or other irrigation works;*
>
> *29. Services by the following persons in respective capacities –*
> *(a)..... sub-broker or an authorised person to a stock broker;*
> *(b) .....*
> *(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;*

12. On perusal of records, I find that the main project of construction related work was allotted to M/s. Krishna Corporation and the same was subcontracted to M/s. Sanavi Infrabuild,, the assessee. However, the assessee has not provided any agreement with the main contactor for the work allotted to them as claimed by the assessee. They have also failed to provide any ledger or copy of invoices to prove that they have received any consideration for completion of the said work. In the absence of such documentary evidence, the claim of the assessee for exemption from services tax could not be verified. Therefore I am not in position to ascertain that the assessee is eligible for exemption in payment of Service Tax for benefit of Sr. No. 29(h) of notification No. 25/2012 and the work carried out by the assessee is rightly classifiable under relevant portion of exemption notification as stated above.

13. On perusal of the submissions, I find that the assessee has informed that they have provided Services to M/s. Reliance Industries Ltd (a unit of Reliance SEZ, Jamnagar. However, the assessee has not supplied any document in support of their claim i.e form A-1, A-2, invoices, endorsement of SEZ officer for receipt of Services or any other documents from it can be ascertained that they services are exempted from service tax. FORM A-1 is declaration by the SEZ Unit or Developer for availing *ab initio* exemption under notification No.12/2013- Service Tax dated 1st July, 2013 (as amended, wherein various details has to be mentioned by the SEZ units to avail the *ab initio* exemption and FORM A-2 is Authorization for procurement of services by a SEZ Unit/Developer for authorised operations under notification No.12/2013- Service Tax dated 1st July, 2013 (as amended)

14. I find that the Notification No. 40/2012 as amended provides exemption from payment of Service Tax for supply of Services to SEZ units. I have also gone through their 26AS for the relevant period wherein I find that the assessee has received payment from M/s. Reliance Industries Ltd under head 194"C". However, in absence of any supporting documents to avail the benefit of exemption notification, I am not in position to ascertain that the assessee is eligible for benefit of exemption notification for Supply of Services to SEZ units. The assessee in both (A) & (B) above, has not furnished the details in their relevant Service Tax returns also.

FINANCIAL YEAR 2015-16

15. During the year 2015-16, the assessee has provided Services to the tune of Rs. 3,48,70,928/- on which Service tax of Rs. 50,56,285/- has been demanded in the show cause notices. On perusal of records, I find from the records available in file that the assessee has provided Services to M/s. Reliance Industries Ltd (a unit of Reliance SEZ, Jamnagar. In support of the same the assessee has attached form A-2 for the services provided to Reliance SEZ to the tune of Rs. 2,39,22,807/-. However, Form-A wherein the details or work order described has not been provided. Further, the work order and work contract and receipt of services has not been endorsed by the specified officer as required. From the work order, furnished by the assessee, it could not be identified that the service provided is for the particular period of 2015-16. I have also gone through their 26AS for the relevant period wherein I find that the assessee has received payment from M/s. Reliance Industries Ltd under head 194"C". Therefore, I am not in position to ascertain that the assessee is eligible for benefit of exemption notification for Supply of Services to SEZ units or not. The assessee has not furnished the relevant and required details in the ST 3 return also to claim the exemption from payment of service tax.

FINANCIAL YEAR 2016-17

16. During the year 2016-17, the assessee has provided Services to the tune of Rs. 5,38,56,902/- on which Service tax of Rs. 80,78,536/-- has been demanded in the show cause notices.

17. On perusal of the records, I find that the assessee has provided services to Essar Projects (I) Ltd to the tune of Rs. 3,23,57,183/- for work pertaining to Ro-Ro ferry Project. The Essar Project limited vide certificate dated 15.05.2018 certified that the assessee has completed of onshore and off shore Civil Works for Ro Ro Ferry Terminals at Dahej & Gogha (Gujarat) under Gujarat Maritime Board. The Gujarat Maritime Board vide certificate dated 04.09.2015 has also certified the same. The relevant work orders dated 04.10.2016 submitted by ESSAR Project (India) Limited has also been furnished by the assessee. Sr. No. 29(h) of notification No. 25/2012 ST provides exemption from payment of Service Tax for said work. I hereby reproduce relevant portion of the notification.

Notification NO. 25/2012-ST

- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, 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:-

[12A. 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 or profession;

18. On perusal of the relevant documents and on perusal of relevant portion of Notification No.25/2012, I find that the assessee is eligible for availing benefit of Condition No. 12A of Notification No. 25/2012 and therefore I allow the benefit of exemption notification in respect of work carried out as subcontract to the tune of Rs. 3,23,57,183/-.

19. Further, on perusal of documents, I find that the assessee has provided services to M/s. DESCON Infrastructure Private Limited to the tune of Rs. 23,85,737/- for construction of building which is to be used as laboratory for testing of drugs by National Institute of Occupational Health at Meghaninagar, Ahmedabad. The work carried out by the assessee is said to be Original work for construction of Government building and assessee has claimed the exemption benefit under Sr. No. 12A(a) of the Notification No. 25/2012. However, as stated by the assessee in his written submission that the said work is original work, no documents evidencing that the said work is original work i.e work contract, invoice or any other documents to certify that the work carried out is on behalf of Government. Therefore, in absence of any supportive documents, I am not in a position to grant benefit of Sr. No. 12A(a) of the Notification No. 25/2012.

20. During the year 2015-16, the assessee has provided Services to the tune of Rs. 1,91,13,982/- provided Services to M/s. Reliance Industries Ltd (a unit of Reliance SEZ, Jamnagar. In support of the same the assessee has attached form A-2 for the services provided to Reliance SEZ to the tune of Rs. 1,91,13,982/-. However, Form-A wherein the details or work order described has not been provided. Further, the work order and work contract and receipt of services has not been endorsed by the specified officer as required. From the work order, furnished by the assessee, it could not be identified that the service provided is for the particular period of 2015-16. I have also gone through their 26AS for the relevant period wherein I find that the assessee has received payment from M/s. Reliance Industries Ltd under head 194"C". Therefore, I am not in position to ascertain that the assessee is eligible for benefit of exemption notification for Supply of Services to SEZ units or not. The assessee has not furnished the relevant and required details in the ST 3 return also to claim the exemption from payment of service tax.

21. The details calculation for all the three years are furnished herewith under;

Sr. No.	Year	Name of the party	Services Provided	Services allowed for exemption	The exemption benefit not allowed and Service Tax to be paid	Service Tax involved

01	2014-15	Krishna Corporation	500000	0	500000	
02	2014-15	Reliance Industries Limited	23922807	0	23922807	
	TOTAL FOR 2014-15		**24422807**		**24422807**	**3018659**

Sr. No.	Year	Name of the party	Services Provided	Services allowed for exemption	The exemption benefit not allowed and Service Tax to be paid	Service Tax involved
01	**2015-16**	**Reliance Industries Limited**	**34870928**	**0**	**34870928**	**50,56,285/-**

Sr. No.	Year	Name of the party	Services Provided	Services allowed for exemption	The exemption benefit not allowed and Service Tax to be paid	Service Tax involved
01	2016-17	Essar Projects (I) Limited	32357183	32357183	0	4853578
		Descon Infrastructure Private Limited	2385737/-	0	2385737	3224958
		Reliance Industries Limited	19113983	0	19113983	

22. The assessee is registered with Service Tax Department. However, in this case the assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to pay service tax being the service tax provider. The assessee in their reply to Show Cause Notice, has furnished in the written submission that the work carried out for their four clients only. However, in all the cases except Services Provided to M/s. Essar Project (I) Limited, the assessee has not provided proper documents evidencing that they are eligible to avail the benefit of exemption notification. Even during the course of personnel hearing also the assessee failed to submit any documents alongwith the reconciliation and supportive documentary evidences.

23. In view of the above facts, it is proved that the assessee may not have the data or they might have been try to avoid furnishing the details which may have lead to proof that the service provided by them may not be falls under any notification alloweing them for exemptin benefit. Therefore the full liability to pay service tax is on the assessee himself. To avoid this liability to pay service tax, he may be deliberately supplied the details/documents called for.

24. Further, I find that the said assessee have produced some work contract only as supporting documents. On perusal of the same, I could not ascertain the whether the exemption benefit of notification can be availed by the assessee or

otherwise. To ascertain the correct and legal obligation for payment of service tax verification of ledger accounts or invoices, work contract, subcontract, etc are inevitable. In the absence of such documents, the tax liability cannot be ascertained. On scrutiny of the ST 3 returns, I further observed and find that the assessee has not declared the service provided for the year 2014-15, 2015-16 and 2016-17 in their Service Tax return filed for the year. Therefore, they are liable to pay Service Tax of Rs. 1,12,99,902/- as stated in above para. The same is required to be recovered from them under the provisions of Section 73 of the Finance Act, 1994;

25. Furhter, I find that the assessee has filed their ST-3 returns as under:-

Sr. No.	Period	Due date	Filing date	No of days delayed	Late fee/Penalty
1.	Apr14-Sep14	25.10.2014	25.10.2014	0	0
2.	Oct14-Sep15	25.04.2015	25.04.2015	0	0
3.	Apr15-Sep15	25.10.2015	01.08.2016	281 days	20000
4.	Oct15-Mar16	29.04.2016	01.08.2016	94 days	7400
5.	Apr16-Sep16	25.10.2016	20.10.2016	0	0
6.	Oct16-Mar17	30.04.2017	10.04.2017	0	0

Therefore, the assessee is liable for late fees under section 70(1) of the Finance Act, 1994.

26. On perusal of para 6 of the SCN No. STC/15-147/OA/2020 dated 21.10.2020 and STC/15-28/OA/2021 dated 23.04.2021, I find that the levy of service tax for 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. However, I, do not find any charges leveled for the demand for the period 2017-18 (Up to June 2017) in the charging para of SCN. I find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

27. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. M/s. Rahul Road Lines deliberately not obtained S. Tax registration the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. As they have not disclosed the entire fact that they are providing GTA services to others, data provided by CBDT helped to find out the suppression of the assessee and subsequent issuance of Show Cause Notice to recover the remaining service tax from the said assessee. The said assessee in their submissions referred various case laws against invoking of extended period, however, in view of the above facts and discussion, it is correctly invoked the extended period while issuing SCN. Moreover, the Hon'ble apex court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.

"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.

12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis -statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.

13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.

14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.

15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder , the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :
"From sub-section 1 read with its proviso it is clear that in case the short payment, nonpayment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis -statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priory the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

In view of the above facts, the extended period is correctly invoked while issuing this Show Cause Notice

28. Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period nor did they have sought any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same

covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service by not obtaining Service Tax registration during the relevant period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

29. The constitution Bench of Hon'ble Supreme Court have examined the correctness of the ratio in the case of Sun Export Corporation, Bombay vs Collector of Customs, Bombay (1997)6 SCC 564 in Civil Appeal No. 3327 of 2007 and held that "an exemption notification has to be interpreted strictly and in case of ambiguity or alternate views, the benefit of doubt should go to the Government". Gist of the observations made by the Hon'ble Supreme Court while examining the judgement in the case of Sun Export Corporation, Bombay are as under:-

(i) *Exemption notification should be interpreted strictly; the burden of proof would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*

(ii) *When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/ assessee and it must be interpreted in favour of the revenue.*

(iii) *The ration in Sun Export case (supra) is not correct and all decisions which took similar view as in Sun Export Case (supra) stands overruled.*

30. The Hon'ble Supreme Court's aforesaid order emphatically held that the burden of providing applicability would be on the assessee to show that his case comes within the parameters of exemption clause or exemption notification. When the assessee avails the benefit of such notification, it is their liability to produce all necessary documents to prove the applicability that his case comes within the parameters of exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the assessee and it must be interpreted in favour of the revenue.

31. I find that merely furnishing such letter that they are providing Services of SEZ does not prove that they are eligible for notification benefit. Therefore I find that M/s. Sanavi Infrabuildcon P.Ltd has not produced any evidence to establish that they are eligible for the benefit of notification No. 25/2012 Therefore, the Service Tax amount of *Rs.* 1,12,99,902/- is recoverable from the noticee along with Interest as provided in proviso to Section 73(1) of the Finance Act, 1994 read with Section 75 of the Act ibid, as stated in para 24 of the said order.

32. I further find that M/s. Sanavi Infrabuild have contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period from 01.04.2015 to 31.03.2017:

(i) Section 67 of the Finance Act, 1994 read with Rule 2A(ii)(B)(ii) of Service Tax (Determination of Value) Rules, 2006, in as much as they have failed to determine the net taxable value of taxable service and declared the same to the department.

(ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994 , as amended, in as much as they did not pay the appropriate Service Tax on the taxable services provided by them.

(iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, have failed to furnish proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided

therein and incorporating the required information to the jurisdictional Superintendent of Service Tax.

33. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Act, rendering themselves liable to penalty under Section 77(1) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994. They are also liable for penalty u/s. 77(2) of the Finance Act, 1994 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;

34. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of fiancé Act, 1994 as they failed to pay the correct duty with the intend to evade the same. It is also a fact that they had deliberately not shown in their ST-3 Returns, the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided them, in respective ST-3 returns filed by them at the relevant period. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. It, thus, found that the assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act,1994.

35. Further, all the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid/short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years. All these acts of contravention of the provisions of Section 65, 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 liable to penal action under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

36. In view of the above discussion and findings, I pass the following orders:-

ORDER

(i) I confirm the Service Tax amounting to Rs. 1,12,99,902/- (Rs. 30,18,659/- for the financial year 2014-15, Rs. 50,56,285/- for the year 2015-16 and Rs. 32,24,958/- for the year 2016-17) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act,2017 as amended and order M/s. Sanavi Infrabuildcon to pay up the amount immediately.

(ii) I order to drop the Service Tax demand of Rs. 48,53,578/- for the year

2016-17 for the Services Provided to Essar Project (I) Ltd.

(iii) I order that interest be recovered from M/s Sanavi Infrabuildcon Private Limited, On the service tax amount of Rs. 1,12,99,902/- as stated in above (i) under the provisions of Section 75 of chapter V of the Finance Act, 1994.

(iv) I impose late fee/penalty of Rs. 27,400/- on M/s Sanavi Infrabuildcon Private Limited, under Section 70 of the Finance Act, 1994 for late filing of ST-3 returns as discussed in para no. 25.

(v) I impose a penalty of Rs. 1,12,99,902/-on M/s Sanavi Infrabuildcon Private Limited, Chandrabhaga Housing, 48/472, Nr. Bhavsar Hostel, Ahmedabad-380013 under section 78 of the Finance Act 1994 as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M M/s Sanavi Infrabuildcon Private Limited pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s Sanavi Infrabuildcon Private Limited,shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

Accordingly all the three below mentioned Show Cause Notices have been disposed off.

S.No	Show Cause Notice issued from F. No.
1	STC/15-147/OA/2020/21.10.2020
2	STC/15-28/OA/2021/23.04.2021
3	STC/15-91/OA/2020/29.09.2020

R. Gulzar Beg

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North
Dated- 31.03.2022

F.No. STC/15-91/OA/2020

To
M/s Sanavi Infrabuildcon Private Limited,
Chandrabhaga Housing, 48/472,
Nr. Bhavsar Hostel, Ahmedabad-380013

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent, Range-V, Division-VII, Central Excise & CGST, Ahmedabad North
5. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
6. Guard File