



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220564WT00006176DD

फा.सं./F.No. STC/15-238/OA/2021-22

आदेश की तारीख/Date of Order :- 31.05.2022

जारी करने की तारीख/Date of Issue :- 31.05.2022

द्वारा पारित/Passed by:-

मुकेश राठौर / Mukesh Rathore

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 17/ADC/MR /2022-23

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 विरुद्ध 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 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच 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. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) 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।

(3) उक्त अपील की प्रति।

(4) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

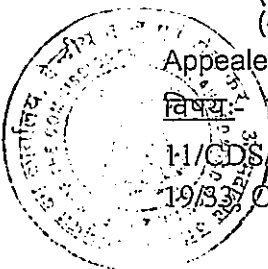
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(3) Copy of accompanied Appeal.

(4) 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.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. IV/17-11/CDS/PI/2018-19 dated 25.03.2021 issued to M/s Construction & Design Services, Sector ET-19/337 C & DS Unit-41, Sterling City, Near Water Tank, Bhopal, Ahmedabad, Gujarat-380058.





BRIEF FACTS OF THE CASE :

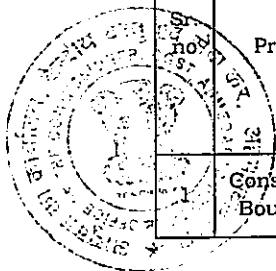
M/s. Construction and Design Services, Sector ET-19/33, C & DS Unit-41, Sterling City, Near Water Tank, Bhopal, Ahmedabad, Gujarat-380 058 (hereinafter referred to as "the said assessee") are providing/procuring the services under the category of Works Contract Service (zzzza) ; which are taxable services under Section 65 and Section 68(2) of the Finance Act, 1994 and are registered under Service Tax, Ahmedabad Commissionerate being allotted Service Tax Registration No. AAALU0256CSD052 under Section 69 of the Finance Act, 1994 (32 of 1994) and having undertaken to comply with the conditions prescribed therein.

2. The DGCEI LZU, Lucknow had initiated investigation against M/s Construction and Design Services (a part of UP Jal Nigam) for non-payment of service tax on construction services/ work contract services provided by them to Government. Exemption on construction services provided to Government and Government was withdrawn vide Notification No. 06/2015-ST read with Notification No. 09/2016-ST. Various units of M/S Construction and Design Services were found not paying Service Tax on construction services provided to government in government agencies. During investigation by DGCA Lucknow Zonal Unit, Lucknow, it has been observed that their total 53 registered units which are located in various City/ towns in the state of Uttar Pradesh as well as other states. Therefore DGCEI, Lucknow Zonal Unit Vide Letter No.DGCEI/LZU.INV/Gr.F/19/2016 Dtd.08.06.2018 intimated various formation about the one units of M/s Construction and Design Services which falls under the jurisdiction of this Commissionerate having Service Tax Registration No.AAALU0256CSD052 at Sector ET-19/33, C & DS Unit-41, Sterling City, Near Water Tank, Bhopal, Ahmedabad, Gujarat-380 058. Therefore , an inquiry was initiated in respect of wrong benefit of exemption notification 25/2012 dated 12.06.2012.

3. Letter/Summons were issued to M/s Construction and Design Services on 04.09.2018, 24.09.2018, 30.03.2019, 18.12.2019 and 21.02.2020 for submission of required documents and recording statement. In response to the summons, the Project Manager of M/s. Construction and Design Services has submitted their reply vide letter dated 05.03.2020 and requested two months times to submit required documents. (RUD-1). Summon were again issued on 06.08.2020 for recording statement and submission of documents and a final Notice on 05.10.2020 for the same. In response to letter dated 05.10.2020, the Project Manager of M/s CDS, Ahmedabad has submitted some copies of letters issued by Navodaya Vidyalava Samiti (NVS), Noida to The General Manager, N-9, C & DS , UP Jal Nigam, WP-21 Sector-71, Noida regarding Administrative Approval and Expenditure Sanction by NVS. This shows that the assessee was not cooperative regarding the investigation and deliberately tried to derail and delay the investigation by engaging in adjournment tactics.

4. The assessee submitted details of received amount for services provided by them, vide their letter dated 22.02.2021. However, it was noticed that some of the works contract services, as detailed in Tabel-1 below provided did not fulfill the conditions as provided in the exemption notification as the agreement was not finalized before 01.03.2015 as per the conditions in Entry Sr. no. 12(A).

Tabel-1									
Project Name and Code		GO No./Shansades h No./Letter No.	Fund received details						
			April 2015 to March 2016		April 2016 to March 2017		April 2017 to June 2017		
			Date	Amount (Rs. In lakhs)	Date	Amount (Rs. In lakhs)	Date	Amount (Rs. In lakhs)	
Construction of Boundry Wall	4111674	F.2-40(37)/2007-	09.09.2015	34.36	-	-	-	-	-



	at JNV Ahmedabad (Gujarat)		NVS(W) dated 29.05.2015	26.11.2015	63.54	-	-	-	-
				09.03.2016	20.77	-	-	-	-
		Total			118.67		0		0
2	Re - Construction of Boundry Wall at JNV Amreli (Gujarat)	4112426	F.2-40(25)/07- NVS/(M&R)/P/ dated 29.06.2016	-	-	05.01.2017	20.00	-	-
				-	-	08.02.2017	130.09	-	-
				-	-	15.02.2017	73.64	-	-
					Total		0		223.73
3	Additional work at JNV Amreli (Gujarat)	4112427	F.2-40(25)/07- NVS(W) dated 29.06.2016	-	-	05.01.2017	16.07	11.04. 2017	9.27
				-	-	-	-	-	-
					Total		0		16.07
4	Construction Phase-A at JNV Ahmedabad (Gujarat)	4107767	F.2- 40(37)/2007- NVS(W) Ph- A/183 dated 27.10.2016	-	-	05.01.2017	16.07	04.04. 2017	367.27
				-	-	-	-	29.06. 2017	470.78
					Total		0		16.07
Grand Total					118.67		255.87		847.32

5. For all the above mentioned projects the assessee availed the exemption benefits of Notification 25/2012 dated 12.06.2012. The assessee in their reply dated 22.02.2021 stated that they are exempted from payment of service tax by virtue of entry no. 12,12A,13 &14 of the notification.

6. Entry no. 13 and 14 of Notification 25/2012 dated 12.06.2012 are quoted below for ready reference -

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

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

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

(ba) a civil structure or any other original works pertaining to the 'In-situ rehabilitation of existing slum dwellers using land as a resource through private participation under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers.

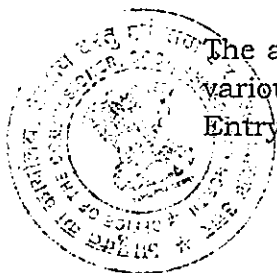
(bb) a civil structure or any other original works pertaining to the 'Beneficiary-led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;";

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

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

a structure meant for funeral, burial or cremation of deceased;"

The assessee has provided construction services to Javahar Navoday vidhyalaya in various parts of Gujarat states and the same does not fall under any category in Entry no. 13 of Notification 25/2012 dated 12.06.2012 quoted above.



7. Further Entry no. 14 of Notification 25/2012 dated 12.06.2012 reads as under -

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

(a) railways, excluding monorail and metro;

Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt."

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

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

(ca) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:]

(i) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;

(ii) any housing scheme of a State Government."

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

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

The assessee has provided construction services to Javahar Navodaya vidhyalaya in various parts of Gujarat states and the same does not fall under any category in Entry no. 13 of Notification 25/2012 dated 12.06.2012 quoted above.

8. It was observed that the services provided by the assessee are covered in Notification 25/2012 dated 12.06.2012 Sr. no 12 (A) (earlier sr. no 12). The assessee claimed to have availed the benefit of exemption as per Entry no. 12 of Notification 25/2012 -ST dated 20.06.2012. which read as under before amendment -

"Notification 25/2012 ---

.....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:-

1.....

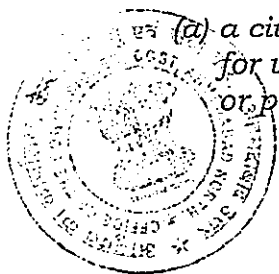
2.....

3.....

.....

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 or profession;



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

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

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

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;"

9. However, the exemption to Entry no. (a), (c) and (f) was withdrawn with effect from 01.04.2015 vide notification 06/2015-ST dated 01.03.2015. hence the assessee is not eligible for exemption under this entry from 01.04.2015.

Further vide notification 09/2016 -ST dated 1.3.2016 a new entry 12 A was inserted in notification 25/2012-ST dated 20.06.2012 which read as under. -

"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;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

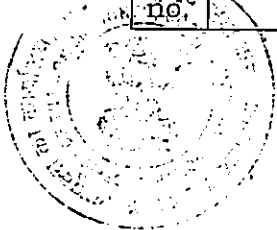
under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;"

vide this entry the exemption was partially restored but the condition specifically stated that the contract to provide the said service should have been entered into before 1.03.2015 and appropriate stamp duty is also to be discharged before 1.3.2015.

10. The agreement/GO/Shashnadesh for "Construction of Boundry Wall at JNV Ahmedabad (Gujarat)", Re -Construction of Boundry Wall at JNV Amreli (Gujarat), Additional work at JNV Amreli (Gujarat), Construction Phase-A at JNV Ahmedabad (Gujarat) has been executed on 29.05.2015, 29.06.2016, 29.06.2016 and 27.1.0.2016 respectively and hence the condition of Entry no. 12 A of Notification 25/2012 dated 12.06.2012 is not fulfilled and therefore it was observed that the assessee is not eligible to avail the exemption benefit. A brief of the projects and their respective agreement/GO/Shahshnadesh date is depicted below in tabular format for sake of brevity -

Sr. no.	Project Name and Code	G O No./Shansadesh No./Letter No.
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1	Construction of Boundry Wall at JNV Ahmedabad (Gujarat)	4111674	F.2-40(37)/2007-NVS(W) dated 29.05.2015
2	Re -Construction of Boundry Wall at JNV Amreli (Gujarat)	4112426	F.2-40(25)/07-NVS/(M&R)/P/ dated 29.06.2016
3	Additional work at JNV Amreli (Gujarat)	4112427	F.2-40(25)/07-NVS(W) dated 29.06.2016
4	Construction Phase-A at JNV Ahmedabad (Gujarat)	4107767	F.2-40(37)/2007-NVS(W) Ph-A/183 dated 27.10.2016

11. Therefore, It was observed that the assessee has carried out an activity for which they have received consideration and such activity falls with the definition of service under Section 65B(44) of the Finance Act, 1994. Further the activities provided by the assessee do not find mention in Section 66D of the Act nor are they exempted under the Mega Exemption Notfn. No 25/2012-ST dated 20.6.2012, as amended or any other notification issued under the Act. Accordingly, it was observed that the services provided by the assessee are taxable and liable for payment of service tax and the assessee is liable to pay Service tax on the amount of consideration received under works contract service.

12. For valuation of works contract service provisions are given in Rule 2A of Service Tax (Determination of Value) Rules, 2006 the same are quoted below -

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

.....

.....

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

4(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for,-

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

service tax shall be payable on seventy per cent. of the total amount charged for the works contract;"

13. In view of the above provisions the details of such works contract/construction services which are not exempted and respective service tax liability is as per below mentioned table -

Period	Gross Value	Reverse calculated taxable value	ST Liability
2015-16	11867000	11216446	650554
2016-17 @70% for repair service	22373000	20247059	2125941
2016-17@ 40%	1607000	1516038	90962
April to June 2017	84732000	79935849	4796151
	120579000	112915392	7663608

Legal provisions relating to taxability w.e.f. 01.07.2012 include-



(a) Section 65B(44) of Finance Act, 1994 defines service as "Service means any activity carried out by a person for another for consideration, and includes a declared service,..."

(b) As per Section 65 B (51) of the Finance Act, 1994, "taxable service" means any service on which Service Tax is leviable under Section 66 B.

(c) Section 66 B of the Finance Act, 1994, provides for levy of Service Tax on the value of all services other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another.

(d) Section 66E(h) of the Finance Act, 1994, prescribe 'services portion in the execution of a works contract', as declared service with effect from 01.07.2012.

(e) Section 65B (54) (introduced w.e.f. 01.07.2012) of the Finance Act, 1994 defines 'Work Contract' as "a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable or movable property or for carrying out any other similar activity or a part thereof in relation to such property".

(f) Section 67 of the Finance Act, 1994, provides as under:-

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, -

in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him

(i) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration

(ii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner

(2) Where the gross amount charged by a service provider, for the provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed

Explanation- For the purposes of this section, —

(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;



(b) "money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, Money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value; (effective upto 30.06.2012)

(c) gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

(g) Rule 2A of the Service Tax (Determination of Value) Rules, 2006 (Valuation Rules) provides -

2A. Determination of value of service portion in the execution of a works contract. - Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation. — For the purposes of this clause, -

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used

for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services;



(c) Where value added tax or sales tax has been paid payable on

the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

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

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

..... “

Explanation 1. — For the purposes of this rule,-

(a) “original works” means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) “total amount” means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

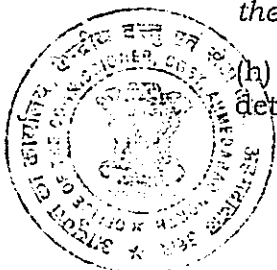
(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon :

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2. — For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004”.

(h) Section 67A of the Finance Act, 1994, prescribing for date determination of rate of tax stipulates that-



(i) The rate of service tax, value of taxable service and rate of exchange if any, shall be the rate of service tax or value of taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provide.

(i) Rule 3 of "Point to Taxation Rules, 2011" stipulates that the point in time when a service shall be deemed to have been provided shall be:

- (a) *the time when the invoice for the service provided or agreed to be provided is issued: provided that where the invoice is not issued within thirty days of the completion of the provision of the service, the point of taxation shall be the date of completion of provision of the service.*
- (b) *in a case, where the person providing the service receives a payment before the time specified in Clause(a), the time when he receives such payment, to the extent of such payment.*

Provided that for the purpose of clauses (a) and (b)

- (i) *in case of continuous supply of service, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;*
- (ii) *wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provision of clause (a).*

Explanation : For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be date of receipt of each advance.

(j) Rule 4 of "Point to Taxation Rules, 2011" stipulates "notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate shall be determined in the following manner, namely-

- (a) *in cases where taxable service has been provided before the change in effective rate of tax-*
- (i) *where the invoice for the same has been issued and the payment is received after the change in effective rate of tax the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or*
- (ii).....(iii).....".

(k) Section 68 read with Rule 6 of the Service Tax Rules, 1994 stipulates that every person providing a 'taxable service' to any person shall pay service Tax at the rate specified in Section 66B of the Act to the credit of the Government by the 6th day of the month, if the duty is deposited electronically through internet banking or by the 5th day of the month in any other case immediately following the calendar month in which in which the service is deemed to be provided as per the Rules framed in this regard. Further, the tax payable for the month of March shall be paid to the credit of the Government by the 31st of March.

(l) Section 70 of the Act read with Rule 7 of the Rules stipulates that every person who is liable to pay the service tax shall himself assess the tax due on the services provided by him and shall submit a half yearly Return in Form ST-3 along with copies of the tax paid challans for the

months covered in the half yearly Return by the 25th of the month following the particular half year.

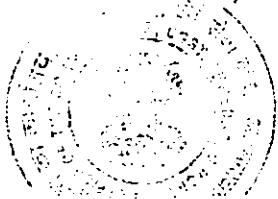
- (m) Section 65B (12) defines assessee as "*assessee*" means a person liable to pay tax and includes his agent.

15. Further as per Section 68 of the Finance Act, 1994, 'every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed'. The manner and period of payment of Service Tax has been prescribed under Rule 6(1) of the Service Tax Rules, 1994. In the present case, it appears that the Noticee have not paid the service tax in the rate, manner and period prescribed, which has resulted in non-payment of service tax amounting to Rs. 76,63,608/- as detailed above, and therefore it appears that they have contravened the provisions of Section 68 of the Act, read with Rule 6 of the Service Tax Rules, 1994.

16. As per Section 70 of the Finance Act, 1994, 'every person liable to pay the service tax shall himself assess the tax due on the services provided by him, and furnish a return in such form and in such manner and at such frequency as may be prescribed'. The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. Though the assessee has not submitted their ST-3 returns for scrutiny but nowhere in their defence they have submitted that they have paid service tax on the services in question. Therefore, In the present case, it appears that the Noticee have not assessed the tax due, correctly, on the services provided by them, as discussed in foregoing paras and have not shown the same in the ST-3 returns filed by them thus they have violated the provisions of Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

17. In view of the foregoing paras, it appears that the Assessee has contravened the provisions of the Act and rules made there under as given below:

- (i) they have contravened Section 66 of the Act, in as much as, they have failed to charge service tax on the value of taxable services provided to their customers.
- (ii) they have contravened Section 67 of the Finance Act, 1994 in as much as they have failed to self-assess their Service Tax Liability on declared services provided by them, at the specified rates and in such manner and within such period as discussed supra;
- (iii) they have contravened Section 68 of the Finance Act, 1994 in as much as they failed to pay the service Tax to the credit of the Central Government, by the 5th of the month immediately following the calendar month, in which the payments are received, towards the value of taxable services;
- (iv) they have contravened Section 70 of the Finance Act, 1994 in as much as they failed to submit a correct half-yearly return incorporating the details of the Service Tax discussed supra, along with a copy of the Challan in form GAR-7, in triplicate for the months covered in the half-yearly returns;
- (v) Rule-5 of Service Tax Rules, 1994, in as much as, they did not maintain records themselves to assess the service tax appropriately on the services provided by them.
- (vi) Section 77(1)(b) of the Finance Act, 1994 in as much as, they failed to keep, maintain, retain books of accounts and other documents required in accordance with the provisions of Finance Act, 1994.
- (vii) Section 77(1)(c) of the Finance Act, 1994, in as much as, they failed to furnish information called for by the Officers.
- (viii) Section 77(1)(d) of the Finance Act, 1994, in as much as, they failed to deposit service Tax electronically through internet banking.



- (ix) Section 77(l)(e) of the Finance Act, 1994, in as much as, they failed to issue invoices in accordance with the provisions of law

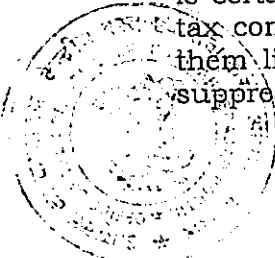
18. Moreover, in addition to the above contraventions, omissions and commissions on part of the assessee stated in the foregoing paras, it was observed that they have willfully suppressed the value of taxable services with intention to evade the payment of service tax rendering themselves liable for penalty under section 78 of Finance Act, 1994.

19. It was further observed that the assessee has not disclosed to the revenue that they have short paid service tax on work Contract Service provided to the government which does not fall under the exemption category. It is pertinent to note that the assessee is an government owned entity dealing with government contracts and it appears highly unlikely that such a huge detail escaped the rigorous scrutiny of accounting policies of government itself. This apparent mistake on their part hinges on the borders of manipulation and intent to avoid payment of service tax. It is noticed that had the DGGSTI Lucknow Zonal Unit and this office not conducted necessary enquiry and obtained the details, this apparent evasion of service tax by the assessee would have gone un-noticed and the assessee would have succeeded in evading the payment of Service Tax. Therefore, it appears that the assessee, with intent to evade payment of Service Tax, had willfully suppressed the facts from the department and had contravened various provisions of the Act and the Rules made thereunder. Further the assessee did not submit the requisite documents when asked by the proper officer nor appeared for statement and instead used delay tactics. Therefore, it was observed that the assessee has suppressed the material facts with an intent to evade the payment of service tax.

20. It was observed that the said assessee has not disclosed full, true and correct taxable value for the service provided by them. It appears that all these material information have been concealed from department deliberately, consciously and purposefully with intent to evade payment of tax. Further, they have not disclosed the above facts i.e. short payment of service tax in question and suppressed the taxable value frequently. Therefore, in this case all essential ingredients exist to invoke extended period in terms of proviso to section 73(1) of the Finance Act, 1994, for demand of service tax. All these acts of contraventions of the provision of section 68 & 70 of Finance Act, 1994 as amended read with rule 4, 6 & 7 of service tax rules 1994 appears to be punishable under the provision of section 76, 77 and 78 of Finance Act, 1994 as amended from time to time.

21. The failure on the part of the said assessee to make the payment of service tax also attracts penalty under section 76 of the Finance Act, 1994 in addition to the interest payable under section 75 of the Finance Act, 1994.

22. The Government has from the very beginning placed full trust on the service providers and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a service provider is not required to maintain any statutory or separate records under the provisions of Finance Act and Rules made there under, as considerable amount of trust is placed on them and private records maintained by them, for normal business purposes are accepted, practically for all the purposes. All these operate on the basis of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences, it appears that the said assessee has knowingly suppressed the value of taxable services provided by them with intent to evade payment of service tax. The deliberate suppression of value is in utter disregard to the requirements of law and breach of trust deposited on them and is certainly not in tune with government's efforts in the direction to create a voluntary tax compliance regime. Such outright act in defiance of law appears to have rendered them liable for penal action as per the provisions Section 78 of the Finance Act, for suppression of material facts and, with intent to evade payment of tax.



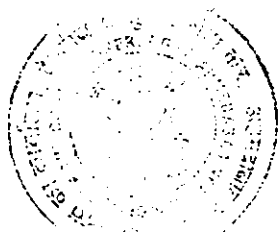
23. Moreover in the present regime of liberalization, self-assessment and filing of returns online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about such suppression only during audit or preventive/other checks. As the assessee has evaded payment of service tax by suppressing the value of services provided, the same is therefore required to be recovered under proviso to Section 73(1) of the Finance Act, 1994, by invoking extended period. In the case of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of Lalit Enterprises v CST Chennai, it is held that extended period is evocable when department came to know of Service charges received by appellant on verification of his accounts. Interest at the appropriate rate is also required to be recovered from them under Section 75 of the Act *ibid*.

24. The provisions of the repealed Central Excise Act, 1944, and amendment of the Finance Act, 1994 have been saved vide Section 174(2) of the CGST Act, 2017 and therefore, the provisions of the said repealed/amended Acts and Rules made there under are enforced for the purpose of this notice.

25. Therefore, M/s Construction and Design Services, Sector ET-19/33, C & DS Unit-41, Sterling City, Near Water Tank, Bhopal, Ahmedabad, Gujarat-380 058 called upon to show cause and appear before the Joint Commissioner, Central Goods & Service Tax, Ahmedabad North having his office situated at 1st Floor, Custom House, Income Tax Circle, Near All India Radio, Navrangpura, Ahmedabad - 380 009 as to why :

- (i) *total amount of Rs. 76,63,608/- (Rs. Seventy Six Lakh Sixty Three Thousand Six Hundred and Eight only) (inclusive of service tax, SBC and KKC) not paid by them should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994.;*
- (ii) *Interest at applicable rates under Section 75 of the Finance Act, 1994 should not be demanded and recovered from them on Service Tax demanded at (i) above.*
- (iii) *Penalty should not be imposed upon them under Section 76 of the Finance Act, as applicable, for non-payment of Service tax demanded at (i) above.*
- (iv) *Penalty should not be imposed upon them under Section 77(l)(b) of the Act *ibid* for contravention of various provisions of the Act and the rules made there under as discussed *supra*.*
- (v) *Penalty should not be imposed upon them under Section 77(1)(c) of the Act *ibid* for contravention of various provisions of the Act and the rules made there under as discussed *supra*.*
- (vi) *Penalty should not be imposed upon them under Section 77(1)(d) of the Act *ibid* for contravention of various provisions of the Act and the rules made there under as discussed *supra*.*
- (vii) *Penalty should not be imposed upon them under Section 77(1)(e) of the Act *ibid* for contravention of various provisions of the Act and the rules made there under as discussed *supra*.*
- (viii) *Penalty should not be imposed upon them under Section 77(2) of the Act *ibid* for contravention of various provisions of the Act and the rules made there under as discussed *supra*.*
- (ix) *Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, as applicable, for non-payment of Service tax demanded at (i) above, with intent to evade payment of tax.*

PERSONNEL HEARING :



26. Personnel Hearing was granted to the assessee on 28.04.2022 wherein Sarvadev Prasad (Unit accountant) appeared before me for personnel hearing on behalf of the assessee. They had submitted their written submission and re-iterated the same.

DEFENCE REPLY :

27. The assessee vide letter dated 22.02.2021 addressed to the Dy. Commissioner (AE), Ahmedabad North has furnished their written submission and defence reply wherein they stated that they are exempted from payment of service tax by virtue of entry no. 12,12A,13 &14 of the notification No. 25/2012-ST dated 20.06.2012, which has been narrated in detailed in brief facts of the case;

DISCUSSION AND FINDINGS

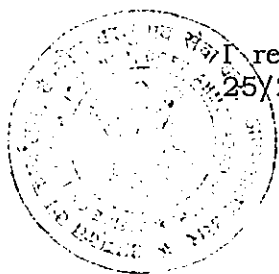
28. I have carefully gone through the records of the case, SCN, defence replies, as well as oral submissions made by the said assessee during the proceedings. In the instant case, I find that the said assessee is registered with Service Tax Department under Registration No. AAALU0256CSD052 and was engaged in providing/procuring the services under the category of Works Contract Service (zzzza)". I find that the DGCEI LZU, Lucknow had initiated investigation against M/s Construction and Design Services (a part of UP Jal Nigam) for non-payment of service tax on construction services/ work contract services provided by them to Government. During investigation by DGCA Lucknow Zonal Unit, Lucknow, Vide Letter No.DGCEI/LZU.INV/Gr.F/19/2016 Dtd.08.06.2018 intimated out of the various formation, one units of M/s Construction and Design Services falls under the jurisdiction of this Commissionerate having Service Tax Registration No.AAALU0256CSD052, therefore , an inquiry was initiated in respect of wrong benefit of exemption notification 25/2012 dated 12.06.2012.

28.1 On perusal of case records and SCN, I find that the SCN was issued to the said assessee to recover the short paid Service Tax of Rs. 76,63,608/-/- alongwith interest and penalty for non/short payment of service tax on works contract and claiming benefit of notification No. 25/2012-ST dated 20.06.2012. The Show Cause Notice has been issued on the basis of investigation by DGCA Lucknow Zonal Unit, Lucknow and alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 76, 77 and 78 of the Finance Act, 1994.

28.2 I find that the assessee has provided construction services under project i.e. Construction of Boundry wall at JNV (Ahmedabad and Amreli, Gujarat, additional work at JNV Amreli and construction of Phase-A at JNV Ahmedabad (Gujarat). The assessee has availed the exemption benefit of Sr. No. 12,12A, 13 & 14 of Notification No. 25/2012 dated 12.06.2012.

28.3 I have gone through the notification on which the assessee has availed the exemption benefit of Sr. No. 12,12A, 13 & 14 of Notification No. 25/2012 dated 12.06.2012. I discuss the same notification herewith one by one Sr. No.

I reproduce herewith Entry No. 12,12A, 13 & 14 of the Notification No. 25/2012-ST dated 12.06.2012.



Entry no. 13 and 14 of Notification 25/2012 dated 12.06.2012 are quoted below for ready reference –

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

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

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

(ba) a civil structure or any other original works pertaining to the 'In-situ rehabilitation of existing slum dwellers using land as a resource through private participation under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers.

(bb) a civil structure or any other original works pertaining to the 'Beneficiary-led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;";

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

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

a structure meant for funeral, burial or cremation of deceased;"

28.4 I find that construction services provided to Javahar Navoday vidhyalaya in various parts of Gujarat states for construction of boundary wall does not fall under any category in Entry no. 13 of Notification 25/2012 dated 12.06.2012 quoted above.

28.5 Similarly Entry no. 14 of Notification 25/2012 dated 12.06.2012 reads as under -

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

(a) railways, excluding monorail and metro;

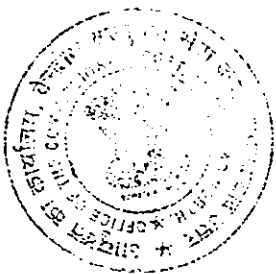
Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt."

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

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

(ca) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under;]

(i) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;



(ii) any housing scheme of a State Government."

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

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

28.6 I find that construction services provided to Javahar Navoday vidhyalaya in various parts of Gujarat states for construction of boundary wall does not fall under any category in Entry no. 13 of Notification 25/2012 dated 12.06.2012 quoted above.

28.7 However, I find that the services provided by the assessee are covered under Sr. no 12 (A) (earlier sr. no 12) of Notification 25/2012 dated 12.06.2012. The assessee claimed to have availed the benefit of exemption as per Entry no. 12 of Notification 25/2012 -ST dated 20.06.2012. which read as under before amendment -

"Notification 25/2012 --

.....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:-

1.....

2.....

3.....

.....

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 or profession;

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

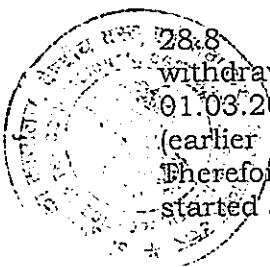
(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;]

(d) canal, dam or other irrigation works;

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

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act,"

28.8 However, I also find that the exemption to Entry no. (a), (c) and (f) was withdrawn with effect from 01.04.2015 vide notification 06/2015-ST dated 01.03.2015. Hence the assessee is not eligible for exemption under Sr. no 12 (A) (earlier sr. no 12) of Notification 25/2012 dated 12.06.2012 from 01.04.2015. Therefore, they are liable to pay the Service tax on construction services provided as started above.



28.9 Further vide notification 09/2016 -ST dated 1.3.2016 a new entry 12 A was inserted in notification 25/2012-ST dated 20.06.2012 which read as under. -

"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;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex meant predominantly for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;"

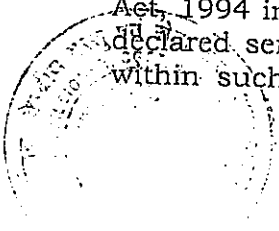
vide this entry the exemption was partially restored but the condition specifically stated that the contract to provide the said service should have been entered into before 1.03.2015 and appropriate stamp duty is also to be discharged before 1.3.2015.

28.10 I find from the records available in file and as stated in the show cause notice that the agreement/GO/Shashnadesh for "Construction of Boundry Wall at JNV Ahmedabad (Gujarat)", Re -Construction of Boundry Wall at JNV Amreli (Gujarat), Additional work at JNV Amreli (Gujarat), Construction Phase-A at JNV Ahmedabad (Gujarat) has been executed on 29.05.2015, 29.06.2016, 29.06.2016 and 27.1.0.2016 respectively and hence the condition of Entry no. 12 A of Notification 25/2012 dated 12.06.2012 is not fulfilled and therefore I find that the assessee is not eligible to avail the benefit of exemption under Sr. no 12 (A) (earlier sr. no 12) of Notification 25/2012 dated 12.06.2012 from 01.04.2015, as the exemption to Entry no. (a), (c) and (f) was withdrawn with effect from 01.04.2015 vide notification 06/2015-ST dated 01.03.2015.

28.11 Further vide notification 09/2016 -ST dated 1.3.2016 a new entry 12 A, I find that contract was carried out by the assessee after 1.03.2015, therefore the said condition has also not been fulfilled by the assessee and therefore, they are not allowed to avail the benefit of exemption notification. .

28.12 I also find that as stated in para 11 of the Show Cause Notice, and as determined in Rule 2A of the Service Tax (Determination of Value) Rules, 2006, the assessee is liable to pay Service Tax after reverse calculated taxable value. Therefore, the assessee is liable to pay Service tax to the tune of Rs. 76,63,608/- as determined in Para No. 11 of the Show Cause Notice.

28.13 I find that noticee had contravened the provisions of Section 66 of the Act, in as much as, they have failed to charge service tax on the value of taxable services provided to their customers. They have contravened Section 67 of the Finance Act, 1994 in as much as they have failed to self-assess their Service Tax Liability on declared services provided by them, at the specified rates and in such manner and within such period as discussed supra. They have contravened Section 68 of the



Finance Act, 1994 in as much as they failed to pay the service Tax to the credit of the Central Government, by the 5th of the month immediately following the calendar month, in which the payments are received, towards the value of taxable services. They have contravened Section 70 of the Finance Act, 1994 in as much as they failed to submit a correct half-yearly return incorporating the details of the Service Tax discussed supra, along with a copy of the Challan in form GAR-7, in triplicate for the months covered in the half-yearly returns. Rule-5 of Service Tax Rules, 1994, in as much as, they did not maintain records themselves to assess the service tax appropriately on the services provided by them. Section 77(l)(b) of the Finance Act, 1994 in as much as, they failed to keep, maintain, retain books of accounts and other documents required in accordance with the provisions of Finance Act, 1994. Section 77(l)(c) of the Finance Act, 1994, in as much as, they failed to furnish information called for by the Officers. Section 77(1)(d) of the Finance Act, 1994, in as much as, they failed to deposit service Tax electronically through internet banking. Section 77(l)(e) of the Finance Act, 1994, in as much as, they failed to issue invoices in accordance with the provisions of law.

29. Further, it is observed that the noticee was fully aware about the fact that they were receiving such income which was chargeable under the Service Tax. However, in spite of knowing the facts; they chose not to pay the said applicable dues related to Service Tax by not providing documents. This has been done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, if DGCEI LZU, Lucknow had not initiated investigation against. These acts on the part of the noticee are tantamount to willful suppression, concealment and mis-statement of facts, with intent to evade the payment of dues related to Service Tax. In view of the above discussions and findings, the invoking of extended period of limitation under Section 73 of the Finance Act, 1994 is sustainable

30. I find that at no point of time, the noticee have disclosed or intimated to the Department regarding providing/ receipt of Service of the value, the same has come to the notice of the Department only after DGCEI LZU, Lucknow had initiated investigation against. The Government has right from the very beginning placed full trust on the Service Tax providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the noticee had knowingly suppressed the facts regarding providing/ receipt of services by them worth the differential value as mentioned hereinabove and thereby had not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 76,63,608/-, the above act of omission on the part of the noticee 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 the payment of Service tax to the extent mentioned hereinabove.

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

32. I rely upon the judgment in the case involving Aircel Digilink India Ltd. v/s Commissioner of Central Excise, Jaipur, reported in 2006 (3) STR 386 (Tri.-Del) and the case involving Bharti Cellular Ltd. v/s Commissioner of Central Excise, Delhi, reported in 2006 (3) S.T.R. 423 (Tri.-Del). In both cases, the Hon. Tribunal upheld invocation of extended period after taking note of the fact that appellants had not disclosed certain details and mode of computation in their ST-3 details and that there was nothing on record to suggest that appellants ever approached the office of the Service Tax authorities to ascertain the details of their liability to pay the service tax. Similarly, in case of Insurance & Provident Fund Department v/s. Commissioner of

Central Excise, Jaipur-I, 2006 (2) S.T.R. 369 (Tri.-Del.), Hon. Tribunal held that non-disclosure of full amount of premium collected would attract invocation of extended period. The ratio of the above judgments can be applied to the present case also as the noticee had not only suppressed the material facts from the department but also failed to comply with law and procedures, including payment of service tax. In view of the above, I hold that in the facts and circumstances of the present case, proviso to section 73 (1) of Finance Act, 1994, is rightly invoked for raising the demand for service tax against the noticee. In view of the above, I find that extended period for recovery of Service Tax short paid/not paid by the noticee on rendering of said taxable services, under the proviso to section 73(1) of the Finance Act, 1994 was rightly invoked and the SCN is sustainable on limitation. Therefore, the Service Tax amount of Rs. Rs. 76,63,608/- 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*.

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

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

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

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

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

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

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

Thus penalty under Section 78, is attracted whenever any Service Tax has not been levied or not paid or has been short levied or short paid or erroneously



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

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

36. Further, in view of the discussion made in the forgoing paras, I hold that the noticee has failed to pay the service tax on the income received for works contract service by suppressing the facts from the department by contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax Rules, 1994. The Service Tax totally amounting to Rs. 81,24,778 is recoverable from the noticee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

37. In the instant SCN penalties under section 76 and 78 have been proposed. However, penalty under Section 76 and Section 78 of the Finance Act, 1994 cannot be imposed simultaneously. The Finance Act, 2008 (18 of 2008) which came into force from 10-5-2008, the Parliament has made the legal position clear by introducing a proviso to Section 78. It reads as under:

“Provided also that if the penalty is payable under this section, the provision of Section 76 shall not be attracted.”

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



ORDER

I confirm and demand of service tax of Rs. 76,63,608/- (Rs. Seventy Six Lakh Sixty Three Thousand Six Hundred and Eight only) (inclusive of

- service tax, SBC and KKC) under proviso to Section 73(1) of the Finance Act, 1994.;
- (ii) I order to recover interest at applicable rate under the provisions of Section 75 of the Finance Act, 1994 on the demand at (i) above.
- (iii) I drop the Penalty proposed under Section 76 of the Finance Act,
- (iv) I impose Penalty of Rs. 10,000/- (Rs. Ten Thousand only) under Section 77(1)(b) of the Act ibid for contravention of various provisions of the Act and the rules made there under.
- (v) I impose Penalty of Rs. 10,000/- (Rs. Ten Thousand only) under Section 77(1)(c) of the Act ibid for contravention of various provisions of the Act and the rules made there under.
- (vi) I impose Penalty of Rs. 10,000/- (Rs. Ten Thousand only) under Section 77(1)(d) of the Act ibid for contravention of various provisions of the Act and the rules made there under.
- (vii) I impose Penalty of Rs. 10,000/- (Rs. Ten Thousand only) under Section 77(1)(e) of the Act ibid for contravention of various provisions of the Act and the rules made there under.
- (viii) I impose Penalty of Rs. 10,000/- (Rs. Ten Thousand only) under Section 77(2) of the Act ibid for contravention of various provisions of the Act and the rules made there under.
- (ix) I impose Penalty Rs. 76,63,608/- (Rs. Seventy Six Lakh Sixty Three Thousand Six Hundred and Eight only) imposed upon them under Section 78 of the Finance Act, 1994, as applicable, for non-payment of Service tax demanded at (i) above.

(MUKESH RATHORE)
Additional Commissioner
Central Excise & CGST,
Ahmedabad North.

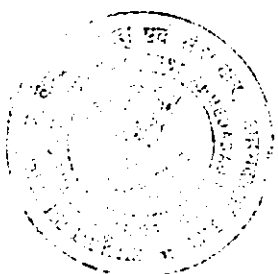
F.No. STC/15-238/OA/2021-22
By Regd. Post AD./Hand Delivery

Dated- .05.2022


To
M/s. Construction and Design Services,
Sector ET-19/33, C & DS Unit-41,
Sterling City, Near Water Tank, Bopal,
Ahmedabad, Gujarat-380 058

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
- 2.. The Dy. /Assistant Commissioner, DIV-II, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-IV, Division-II, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
- ✓5. The Guard File



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- (viii) I impose Penalty of Rs. 10,000/- (Rs. Ten Thousand only) under Section 77(2) of the Act ibid for contravention of various provisions of the Act and the rules made there under.
- (ix) I impose Penalty Rs. 76,63,608/- (Rs. Seventy Six Lakh Sixty Three Thousand Six Hundred and Eight only) imposed upon them under Section 78 of the Finance Act, 1994, as applicable, for non-payment of Service tax demanded at (i) above.


(MUKESH RATHORE)
Additional Commissioner
Central Excise & CGST,
Ahmedabad North.

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