



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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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-199/OA/2020

आदेश की तारीख/Date of Order:- 10.01.2022

जारी करने की तारीख/Date of Issue :- 12.01.2022

DIN NO: 20220164WT0000000D80

द्वारा पारित/Passed by:-

मुकेश राठौर/ MUKESH RATHORE

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 43/ADC/MR/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है ,उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील ,इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील ,(केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केंद्रीय उत्पाद शुल्क भवन ,अंबावाड़ी ,अहमदाबाद-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रु) 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 भुगाना 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। उम पर केंद्रीय 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 विरुद्ध 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 F. No. **STC/15-199/OA/2020** dated **30.12.2020** issued to **M/s. Ankita Infrastructure P. Ltd.** situated at 408, 4<sup>TH</sup> Floor, Devraj Mall, Nr. Trimurti Complex, Opp. Haveli Thakkarbapanagar, Ahmedabad-382330.

## BRIEF FACTS OF THE CASE

M/s. Ankita Infraproject P.Ltd, having PAN No AAMCA5387M having its office premises at 408, 4TH FLOOR, DEVRAJ MALL, NR TRIMURTI COMPLEY, OPP HAVELI THAKKAR BAPANAGAR, AHMEDABAD-382350 (here-in-after referred to as the said assessee) are engaged in providing services falling under "Works Contract Service". engaged in providing taxable services which are not falling under Negative list of services as defined under Section 66D of the Finance Act, 2012. However they are not registered with the Service Tax Department.

2. An analysis of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 and FY 2015-16 and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC). On perusal of the said analysis it was noticed that the said assessee has earned substantial service income by way of providing taxable services, but has neither obtained Service Tax Registration nor paid Service Tax on whole amount of services provided by them. As per the details shared with the CBDT, the amount of 'Total Amount paid/Credited under 194C is tabulated as under:

Sr. No.	FY	Total Amount paid/Credited Under 194C
1.	2014-15	240321514
2.	2015-16	96072582

3. On the basis of the aforementioned data, the Office of the Principal Commissioner, CGST Ahmedabad South has initiated enquiry vide summons bearing F.N. IV/01-32/SC-III/2020-21 dated 14.08.2020 (DIN No. 20200864WS00004VE533). Further, vide the aforementioned summons the assessee was requested to submit the documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Contracts/Agreements entered into by them with the persons for provisions of services, Annual Bank Statements etc. for the F.Y. 2014-15 to 2017-18 (Upto June). In reply, the said assessee vide his letter dated 20.08.2020 submitted the relevant documents and it was noticed that the assessee had provided construction services to M/s. DRA Ankita JV, who is main contractor and said firm awarded tender for the work- under Ground Drainage System for town of Sabarkantha district.

4. The assessee was not registered with the Service Tax Department and they had not discharged their Service Tax liability on construction of under Ground Drainage System. As per the provisions of the Finance Act, 1994 and Rules made there under, the assessee was required to obtain the Service Tax Registration from the Department and to assess correct value of the services provided and received by them as well as to pay service tax on the actual amount received/paid by them for rendering/receiving services from their client within the stipulated time as prescribed and to follow all the procedures laid down in the Finance Act and Service Tax Rules.

5. Even though the correct taxable value was in the knowledge of the said service provider, they had not obtained the service tax registration and had not disclosed the details/data by not filing the ST-3 Return. Therefore, they had deliberately suppressed the correct taxable value and thus not paid the correct service tax leviable on the taxable value towards providing/receiving taxable services with a view to evade payment of service tax.

6. For the period from 2014-15 i.e. after the introduction of negative list of services inserted by the Finance Act, 2012 w.e.f. 01.07.2012 the assessee has claimed the exemption from the service tax liability by virtue of notification no. 25/2012 dated 20.06.2012. considering their

services as falling under Negative List. However it is observed that the said assessee is not in position to establish the fact that activity of the construction of underground Drainage System undertaken by them is exempted under Service Tax Regime by supporting documents and therefore it is concluded that the construction activity undertaken by the said assessee should be considered as a Works Contract Service and service tax liability should be recovered them for FY 2014-15 and 2015-16.

**LEGAL PROVISIONS: WORKS CONTRACT SERVICES**

7. (A) Date of Introduction: 01.06.2007 vide Notification No. 23/2007-S.T., dated 22.05.2007

(B) Definition and scope of service: "Taxable Service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams. Explanation.—For the purposes of this sub-clause, "works contract" means a contract wherein,—

(i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) Such contract is for the purposes of carrying out,—

(a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) Construction of a new residential complex or a part thereof; or

(d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) Turnkey projects including engineering, procurement and construction or

(f) Commissioning (EPC) projects; (Section 65 (105) (zzzza) of Finance Act, 1994).

8. Services covered under Negative list, defined in **Section 66D** (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

- (a) Service by the Government/Local Authority
- (b) Service by RBI
- (c) Service by Foreign Diplomatic Mission located in India
- (d) Service in relation to agriculture
- (e) Trading of goods
- (f) Manufacture of goods
- (g) Selling of space/time for advertisement
- (h) Services by access to road or bridge on a payment of Toll charges
- (i) Betting, gambling or lottery
- (j) Admission to Entertainment Events & Amusement Facilities
- (k) Transmission or distribution of electricity
- (l) Educational Services
- (m) Renting of Residential dwelling for use as residence
- (n) Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency
- (o) Transportation of Passenger with or without accompanied belongings
- (p) Transportation of goods.
- (q) Mortuary/Funeral services

9. In view of the facts discussed in foregoing paras and material evidence available on record, the said assessee has contravened the provisions of Section 66 of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994, Section 69 of the Finance Act, 1994, read with Rule 4 of Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to determine ; collect and pay the service tax amounting to Rs.1,73,32,147/- (including Education cess and S & H Edu. Cess), for the period for the period 2014-15 to 2015-16 as detailed above within the stipulated time limit; they have failed to declare value of taxable service in their service tax returns to the department in the prescribed return in form ST-3 and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

10. It is evident that the said assessee has escaped the assessment and not furnished the actual value and not discharged Service Tax liability. Further, the said assessee has not disclosed these facts to Service Tax department by not filing in their ST-3 returns and thus as per Section 73 of the Finance Act, 1994 as amended, non payment of service tax amounting to Rs.1,73,32,147/- (including Education cess and S & H Edu. Cess) for the period for the period 2014-15 to 2015-16 is required to be recovered. As per Section 75 *ibid* every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed .In the instant case, the said assessee has not discharged their Service Tax liability and hence is liable to pay interest under Section 75 as amended of the Finance Act, 1994.

11. As the said assessee has failed to discharge their service tax liability on services provided by them, hence, they are required to pay total service tax of Rs.1,73,32,147/- (including Education cess and S & H Edu. Cess) for the period from 2014-15 to 2015-16 along with interest as applicable for the services provided by them. Thus, the service tax of Rs.1,73,32,147/- (including Education cess and S & H Edu. Cess)for the period from 2014-15 to 2015-16 is required to be recovered from them under Section 73 of Finance Act, 1994 and applicable interest under Section 75 of Finance Act, 1994. From the evidence, it appears that the said assessee had not taken Service Tax Registration and not discharging Service Tax for all the incomes received by them for rendering taxable services for the purpose of payment of service tax and thereby not fulfilled their tax liabilities. The deliberate efforts leading to non-payment of the correct amount of service tax in utter disregard to the requirements of law and breach of trust deposed on them. Such outright act in defiance of law appears to have rendered them liable for penal action as per the provisions of Section 78 of Finance Act 1994 for non-fulfilling the service tax liabilities of the value of taxable service and for suppression or concealment of taxable service with intent to evade payment of service tax.

12. M/s. Ankita Infraprojects Pvt. Ltd. has committed contraventions, namely evasion of service tax & failure to pay amount as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

Unquantified demand at the time of issuance of SCN:

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

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

*stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'*

13. From the facts, the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the Financial year 2016-17 to 2017-18 (Up to June-2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the nondisclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letters and summons from the Department. Therefore, the assessable value for the financial year 2016-17 to 2017-18 (Up to June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period Financial year 2016-17 to 2017-18 (Up to June-2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

14. Pre Show Cause Consultation in the matter was fixed on 28.12.2020 at 11:30 Hrs but no one appeared for the same neither any submission has been made by the said assessee. Therefore, Show Cause Notice dated 30.12.2021 was issued to the said assessee called upon to show cause as to why:-

- i. Service Tax of Rs.1,73,32,147/- (including Cess) (Rupees One Crore Seventy Three Lakhs Thirty Two Thousand One Hundred Forty Seven only) should not be considered service tax payable amount, thereon for the period from FY 2014-15 to 2015-16 should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No. 450/61/2020-Cus(Part-I).
- ii. Service Tax liability not paid during the Financial Year 2017-18(Upto June 2017), ascertained in future, as per paras 33 & 34 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- iii. Interest, as applicable, should not be recovered from them for the not making the payment, under Section 75 as amended of the Finance Act, 1994;
- iv. Penalty should not be imposed upon them under Section 70 of the Finance Act, 1994, as amended, as they have failed to file ST-3 Returns, for the period from F.Y. 2014-15 & 2015-16.
- v. Penalty should not be imposed upon them under Section 77(1)(a), 77(1)(c) of the Finance Act, 1994, as amended, should not be imposed on them.
- vi. Penalty should not be imposed upon them under the provision of Section 78 ibid for contravening of the provisions and not disclosing the amount of Service Tax for taxable service provided by them with an intent to evade the payment of Service Tax ;

#### DEFENCE REPLY

15. Vide letter dated 01.02.2021, the said assessee submitted that they are providing works contract service to DRA Ankita JV. DRA Ankita JV is further providing works contract service to Executive Engineer, Public Health Works Division, Gujarat water and supply and sewage board, Himatnagar which is a government authority. As defined in clause 44 of section 65 of the Finance Act,1994 the works contract service defined as works contract" means a contract wherein,—

(i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) Such contract is for the purposes of carrying out,—

(a) Erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. DRA Ankita JV has entered into a contract with Gujarat Water and Sewage Board for providing and laying sewer collection system with allied works Hence services provided by main contractor is of nature of works contract service. As per mega exemption Notification No.25/2012-service tax dated 20.06.2012 services provided to govt. authority by way of construction, (d) Completion and finishing services, repair, alteration, renovation or restoration of, ) Erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of pipe line, conduit or plant for water supply, water treatment, sewage treatment is covered under negative list of services. Hence services provided by DRA Ankita JV is not liable to tax under the provisions of Finance Act, 1944. As per clause 26(h) of Mega Notification No.25/2012 service provided by subcontractor by way of works contract to another contractor providing works contract service are exempt under service tax. Hence service provided by M/s. Ankitra Infa Projects P.Ltd is exempt service as the main contractor engaged in providing works contract to the govt. They provided copy of contract between DRA Ankita JV (Main Contractor) and executive Engineer Public Health Gandhinager and agreement between them and M/s. DRA Ankita JV (Main contractor).

#### PERSONNEL HEARING

16. Personnel hearing in this case was granted on 18.11.2021 and Shri Milan Bhambhani, CA, appeared and reiterated the written submission dated 20.08.2021 and requested to drop the proceedings.

#### DISCUSSION AND FINDINGS

17. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice, Form 26AS, ITR, ST-3 Returns, Balance sheet for the year 2014-15 & 2015-16. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs. 1,73,32,147/- for the financial year 2014-15 & 2016-17 on the basis of data received from Income Tax authorities and finding that the noticee had not obtained Service Tax registration and also not 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 works contract Service as a sub contractor to main contractor which is exempted from payment of service tax vide clause (h) of Mega Exemption Notification No.25/2012 and therefore they have not obtained any registration. 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 notice alleges that they have short paid service tax of Rs. 1,73,32,147/- have issued SCN.

18. The taxability of service tax on works contract service is governed by Section 65(105)(zzzm) of the Finance Act which reproduced as below :

Definition and scope of service: "Taxable Service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams. Explanation.—For the purposes of this sub-clause, "works contract" means a contract wherein,—

(i) Transfer of property in goods involved in the execution of such contract is liable to tax as sale of goods, and

(ii) Such contract is for the purposes of carrying out,—

(a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) Construction of a new residential complex or a part thereof; or

(d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) Turnkey projects including engineering, procurement and construction or

(f) Commissioning (EPC) projects; (Section 65 (105) (zzzza) of Finance Act, 1994).

19. On perusal of para 5 of the SCN, I find that the levy of service tax for FY 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, I however, do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part of the SCN. As the same is not discussed in the Charging Para of the Show Cause Notice. On perusal of SCN, I further 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.

20. On scrutiny of relevant ST 3 returns for the year 2014-15 & 2015-2016, I find that the said assessee had failed to disclose the above details in their ST-3 Returns during the period under dispute. Thus, they have suppressed the material facts from the Department by not disclosing in their ST-3 Returns, the fact about providing Woks Contract Service. This appears to be done intentionally so as not to bring their activities to the notice of the Department, though they were registered for providing various taxable services, as discussed earlier. 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. Ankita Infra Project P.Ltd deliberately not shown in their ST-3 Returns, 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. The said assessee himself admits in their reply to SCN dated 02.02.2021 that they were providing works contract service, which is exempted vide Noti.No.25/2012. They never disclosed that they are providing works contract service to and availing the benefit of any Notification. When the assessee is providing a taxable service and availing benefit of Notification for exemption from payment of service tax. As they have not disclosed the entire fact that they are works contract service, data provided by CBDT helped to



find out the suppression of the assessee and subsequent issuance of Show Cause Notice to recover the 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 priori 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.

20. 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 the 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 during the relevant period. Consequently, this amounts to willful suppression of facts with the deliberate intent to evade payment of Service Tax.

21. I further find that M/s.Ankita Infra Projects P.Ltd had 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 01.04.2014 to 31.03.2016:

- (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.

22. 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 of the Act, *ibid*, for failing to furnish proper periodical returns in form ST-3. Therefore, I hold that the assessee is liable to pay penalty u/s.77 of Finance Act, 1994.

23. 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 Finance Act, 1994 as they failed to pay the correct duty with the intent 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 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.

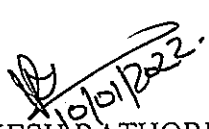
24. Further, all the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, 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.

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

**ORDER**

- (i) I confirm the Service Tax amounting to Rs. 1,73,32,147/- (Rupees One Crore Seventy Three Lakhs Thirty Two Thousand One Hundred Forty Seven only) 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. Ankita Infra Projects P.Ltd to pay up the amount immediately.
- (ii) I order that interest be recovered from M/s. Ankita Infra Projects P.Ltd on the service tax on Rs. 1,73,32,147/- (Rupees One Crore Seventy Three Lakhs Thirty Two Thousand One Hundred Forty Seven only) under the provisions of Section 75 of chapter V of the Finance Act, 1994.
- (iii) I impose penalty of Rs. 10,000/- (Rupees Ten Thousand only) on M/s. Ankita Infra Projects P.Ltd under Section 70 of the Finance Act, 1994.
- (iv) I impose penalty of Rs. 10,000/- (Rupees Ten Thousand only) on M/s. Ankita Infra Projects P.Ltd under Section 77(1)(a) of the Finance Act, 1994.
- (v) I impose penalty of Rs. 10,000/- (Rupees Ten Thousand only) on M/s. Ankita Infra Projects P.Ltd under Section 77(1)(c) of the Finance Act, 1994.
- (vi) I impose a penalty of Rs. 1,73,32,147/- (Rupees One Crore Seventy Three Lakhs Thirty Two Thousand One Hundred Forty Seven only) on M/s. Ankita Infra Projects P.Ltd 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/s. Ankita Infra Projects P.Ltd 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. Ankita Infra Projects P.Ltd 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.

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

By Regd. Post AD./Hand Delivery

F.No.STC/15-199/OA/2020

Date: 10.01.2022

To

M/s. Ankita Infraproject P.Ltd,  
 408, 4TH FLOOR, DEVRAJ MALL,  
 NR TRIMURTI COMPLEY, OPP HAVELI THAKKAR, BAPANAGAR,  
 AHMEDABAD-382350

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. Guard File.