T017_आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर,
कस्टम हॉउस, प्रथम तल,
नवरंगपुरा ,अहमदाबाद- 380009

OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
CUSTOM HOUSE, 1ST FLOOR,
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निबन्धित पावती डाक द्वरा/By R.P.A.D

फा.सं./F.No. STC/15-87/OA/2020

DIN- 20221164WT0000704340

आदेश की तारीख़/Date of Order :- 10.11.2022

जारी करने की तारीख़/Date of Issue :- 10.11.2022

द्वारा पारित/Passed by:- लोकेश डामोर /*Lokesh Damor*

सयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 59/JC/ LD /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 विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 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।

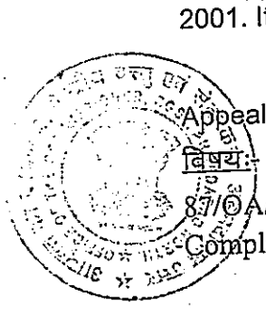
(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रूपये (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:

(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.5.00.



विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-87/OA/2020 dated 29.09.2020 issued to M/s Rajdeep Projects Force Pvt. Ltd., Ashatmangal Complex, 402, Shahibaug, Ahmedabad, Gujarat-380004.

BRIEF FACTS OF THE CASE

M/s. Rajdeep Projects Force Pvt. Ltd., Ashatmangal Complex, 402, Shahi Baug, Ahmedabad Gujarat (hereinafter referred to as the Assessee) holding Service Tax registration No.-AAECR5530MSD001.

2. Ongoing through the Third Party CBDT data for the Financial Year 2014-15, 2015-16 and 2016-17 it has been observed that the said Assessee has shown less amount of the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed with Service Tax Department than the 'Sales/Gross Receipts from Services (Value from ITR)', the 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' filed with the Income Tax Department. Therefore, the said assessee had mis-declared / suppressed the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed by them and consequently short paid / not paid the applicable Service Tax on whole amount of services provided by them. As per the details shared with the CBIC, is as under-

(Amt. in Rs.)

F. Y.	Value of Services declared in ITR	Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J'	Value of Services provided as per Service Tax Returns	Highest Difference	Service Tax (Including Cess)
2014-15	Rs.4,83,72,070/-	Rs.3,98,00,746/-	Rs.1,29,53,751/-	Rs.3,54,18,319/-	Rs.43,77,704/-
2015-16	Rs.6,07,44,164/-	Rs.5,50,14,058/-	Rs.2,88,11,086/-	Rs.3,19,33,078/-	Rs.46,30,296/-
2016-17	Rs.5,54,42,655/-	Rs.4,80,64,728/-	Rs.2,83,79,405/-	Rs.2,70,63,250/-	Rs.40,59,488/-
Total	Rs.16,45,58,889/-	Rs.14,28,79,532/-	Rs.7,01,44,242/-	Rs.9,44,14,647/-	Rs.1,30,67,488/-

3. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns, letters dated 08.02.2018, 25.06.2019 and 17.07.2020 were issued to the said Assessee. However, the said assessee neither submitted any details / documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard.

4. The Total Value of Services declared in ITR filed by the assessee for Financial Year 2014-15, 2015-16 and 2016-17 was Rs.16,45,58,889/- and that the Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' for Financial Year 2014-15, 2015-16 and 2016-17 was Rs.14,28,79,532/- and whereas the Total Value of Services provided as per Service Tax Returns was Rs.7,01,44,242/-. And since the said notice has not provided any details/data for such difference, the reasons for such difference cannot be ascertained and therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns and (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference of Rs.9,44,14,647/- between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax of Rs.1,30,67,488/- (Including Cess) for Financial Year 2014-15, 2015-16 and 2016-17 is worked out.

5. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid service tax as worked out as above in Table-I.

6. Further, as per section 70 of the Finance Act,1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns).The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it was noticed that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

7. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

8. From the foregoing paras and discussion made herein above, it appears that the noticee has contravened the provisions of -

(i)Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2014-15;
(ii)Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the period 2014-15, to the credit of the Government account within the stipulated time limit;
(iii)Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the period 2014-15.
(iv) Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.

9. 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 noticee 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 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 along with applicable interest. All these acts of contravention of the provisions of Section 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 on part of noticee appears to have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

10. It has been noticed that at no point of time, the Assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015, 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs.13067488/- (including Cess). The above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994, and penalty under provisions of Rule 7C of the Service Tax Rules, 1994;

11. Therefore Show Cause Notice No.STC/15-87/OA/2020 dated 29.09.2020 was issued to M/s. Rajdeep Projects Force Pvt.Ltd called upon to show cause as to why:-

(i) The said differential amount should not be considered as taxable value and the Service tax involved in the said amount to the extent of Rs.13067488/- (Including Cess) (Rupees One Crore Thirty Lakh Sixty Seven Thousand Four Hundred Eighty Eight only) short paid /not paid by them, should not be recovered from them under the provisions of Section 73 of the Finance Act, 1994;

(ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

(iv) Penalty should not be imposed upon them under the provisions of Section 77(1) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994.

(v) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

(vi) Penalty should not be imposed upon them for late filing ST-3 return for the period April'2014-September'2014 under the provisions of Rule 7C of the Service Tax Rules, 1994.

DEFENCE REPLY

12. The assessee vide letter dated 12.11.2021 & 18.10.2022 submitted their reply to SCN wherein they rejected all the allegations and averments made in the notice. The service tax has been demanded without specifying the service rendered by the noticee and even calculation made for different of value is also not in consonance with the ledger in which the assessee has shown the gross amount. The details of various services and amount received for the year 2014-15, 2015-16 and 2016-17 are as under:

April 2014 to March 2015

1	Services of cleaning and housekeeping rendered various departments of state government	5975462
2	Services of cleaning, Housekeeping sanitation & loading and unloading provided to body corporate	10141671
3	Services of cleaning and housekeeping provided to Educational Institute	16732621
4	Services of cleaning and housekeeping provided to District Courts	2510993
5	Services provided to various authorities for which the noticee have paid tax	13011325
	Total	48372072

April 2015 to March 2016

1	Services of cleaning and housekeeping rendered various departments of state government	16422343
2	Services of cleaning, House keeping sanitation & loading and unloading provided to body corporate	3958679
3	Services of cleaning and housekeeping provided to Educational Institute	7635855
4	Services of cleaning and housekeeping provided to District Courts	3027950
5	Services provided to various authorities for which the noticee have paid tax	29699337
	Total	60744164

April 2016 to March 2017

1	Services of cleaning and housekeeping rendered various departments of state government	13792457
2	Services of cleaning, House keeping sanitation & loading and unloading provided to body corporate	3901951
3	Services of cleaning and housekeeping provided to Educational Institute	4302228
4	Services of cleaning and housekeeping provided to Hospitals and health centres	58617
5	Services of cleaning and housekeeping provided to District Courts	5076980
6	Services provided to various authorities for which the noticee have paid tax	28310423
	Total	55442655

13. They further stated that they have provided services of housekeeping, cleaning to the Govt. Department as well as education institutes which are not manpower services but said services are exempted and they are not liable to pay service tax on differential value on which demand of Rs.1,30,67,488/- is demanded. It was also stated that prior to 01.07.2012 the said service provided to non commercial or industrial building was not taxable. Even after introduction of amendments made w.e.f. 01.07.2012 the services provided to educational institutions, govt, local authority or a govt. authority in relation to cleaning are exempted. It was further submitted that as per Sl.No.25 of Noti.No.25/2012 dated 20.06.2012 any services provided to Govt., local authority or a governmental authority n relation to water supply, public health, sanitation conservancy, solid water management or slum improvement and up gradation is exempted. Further the intention of the legislature is more evident from the amendment made in the Sl.No.25 of the said notification No.06/2014 dated 11.07.2014 thereby the govt. has consciously removed the ambiguity in the said notification which created doubt that only the activities carried out by a municipality is exempted from service tax and become clear that any service provided to Govt., Govt. bodies and Govt, authorities by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation is covered under the exemption.

14. Further the assessee stated that the SCN has demanded service tax on housekeeping service provided to Govt. educational institutions, but the demand has been made under the category of man power supply. It was submitted that the service provided to an education institution is exempted from service tax by Sl.No.9 of Notification No.25/2012 and further amended vide notification dated 11.07.2014 according to which cleaning services, housekeeping services and security services provided to an educational institution is exempted from service tax. They have provided housekeeping services and the bill raised is also mentioned the same. Hence they stated that the services are not falling under man power supply services but under housekeeping service. Similarly the housekeeping services provided to the ITI is also exempted in view of Section 6 D of Finance Act, 1994 and therefore the demand is also required to be dropped.

15. It is a settled law that any exemption notification has to be interpreted based on language used therein. They relied upon the following case laws in support of their claim

- Hemraj Gordhandas Vs.H.H.Dave, Asst.Collector C.E & C (1978 (2) ELT (J350) (SC)
- Manglore Chemicals & Fertilisers Ltd Vs.Dy commissioner 1191(55) ELT 437 (SC)
- Bombay Chemical P.Ltd V CCE, Bombay in 1995 (77) ELT 3(SC)
- Gujarat State Fertilizers Co. Vs CCE 1997(91) ELT 3 (SC)
- Novopan India Ltd 1994 (73) ELT 769 (SC)

16. They further stated that SCN has been issued without considering the legal provision and factual facts by investigating officers. They arbitrarily demanded service tax on clearing services defeating the purpose and intention of the legislature granting exemption to those services provided to non commercial and Govt. offices. They contended that as per section 67 of the Finance Act 1994, the gross value charged should be considered as the value

inclusive of service tax. But in the instant case the benefit granted by the statute itself has not been given while computing the service tax liability after removing the value of services which have already been suffered service tax after giving the benefit of cum tax price as per section 67 of the Finance Act, 1994 and after reducing the service tax which they have already paid. As far as charge of suppression is concerned, they stated that as they have already filed ST3 Return regularly and therefore no suppression can be alleged. They have no intention to evade any service tax and paid service tax wherever it appeared to be liable. They had neither charged nor paid service tax on the services provided to Govt. Hospital/health centre, Govt. offices and educational institutions on the understanding and belief that service provided to these offices/institution are not liable to tax. They further contended that demand of extended period for the year 2011-12 to 2005-16 (upto 30.09.2015) has already been issued vide SCN dated 13.10.2016 hence further extended period SCN cannot be issued for extended period when once it was already been issued and even various higher authorities i.e.Hon'ble CESTAT and Hon'ble SC.

17. As far as charges of suppression is concerned, it was stated that mere mention of word suppression in the notice does not make a case of invoking extended period They have not withheld any information from the department hence there is no question of suppression. They have relied upon the following case laws in support of their claim.

- Pashwa Chemicals P.Ltd 2005 (19) ELT 257 (SC)
- Continental foundations Jt venture 2007(216)ELT (SC)
- Mysore Kirloskar Ltd 2008(226)ELT 161(SC)
- Cosmic Dye Chemical 1995 (75) ELT 721(SC)
- HMM Lts 1995 (76)ELT 497 (SC)

18. Further with regard to imposition of penalty they stated that no penalty should be imposed where the mens rea is absent. In support of their argument they have relied upon a number case in support of their claim

19. In view of the above submissions the assessee requested to set aside the proceedings as they are not sustainable under law and they are under bonefide belief that they are not legally bound to pay service tax. They have also invited attention to the OIO No.AHM-EXCUS-003-COM-002 to 004-20-21 dated 10.06.2020 issued by the Commissioner, CGST & CE, Gandhinagar in the case M/s.Rajdeep Enterprises and M/s.Lucky Management Services wherein the Hon'ble Commissioner, CGST & C.Ex , Gandhinagar, has held that the said services are exempted and not liable to service tax. This being an identical case ratio thereof is squarely applicable and demand issued may be vacated. They further requested to vacate the SCN as the same is not sustainable on merit as well on limitation.

PERSONNEL HEARING

20. Personal Hearing in this case has been granted to the assessee on 18.10.2022 and Shri M.H.Raval, authorised representative attended the P.H and reiterated their written submissions dated 09.11.2021. They submitted further written submissions dated 18.10.2022 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

21. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding to adjudicate the Show Cause Notice.

22. I have carefully gone through the Show Cause Notice, Reply to SCN dated 09.11.2021 & 18.10.2022. In the instant case, Show Cause Notices was issued to the assessee demanding Service Tax of Rs.1,30,67,488/- for the Financial Year 2014-15, 2015-16 & 2016-17 on the basis of Form 26AS/ITR data received from Income Tax authorities. On perusal of the above referred records, I find that the assessee is registered under Service Tax and also filed STR for the relevant period. The Show Cause Notice alleged non-payment/short payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77(1), 77(2), 78 & Rule 7C of the Finance Act, 1994.

21. On perusal of the reply to SCN and other documents available on record, I find that the assessee is engaged in providing cleaning and housekeeping services to various departments of state government, body corporate, educational institute, district court, hospitals and health centers and for which they have taken service tax Registration and accordingly filed ST 3 Returns for the relevant period. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified and defined according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or

(iii) a transaction in money or actionable claim.

(b) A provision of service by an employee to the employer in the course of or in relation to his employment.

(c) fees taken in any court or tribunal established under any law for the time being in force.

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service.

Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 194 as under:

(51) taxable service means any service on which service tax is leviable under Section 66B.

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided r agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"

22. According to which service tax is levied on all services other than those specified in negative list (Section 66D of Finance act, 1994) in the taxable territory by one person to another. In this context the 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*

23. Thus with effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. It is not disputed that the assessee has provided taxable service and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance Act, 1994. The assessee in their reply to SCN are not contending that the taxable nature of service provided by them however they are contending that the services provided by them are exempted by Mega Notification No.25/2012 dated 20.06.2012 as amended, as they are providing services to departments of state government, body corporate, educational institute, district court, hospitals and health centers.

24. In view of the above, I find that the services provided by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List as the services provided by the

assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act.

25. In the instant case, I have gone through the SCN and reply to SCN filed by the assessee. On perusal of the same, I find that third party data was received from Income Tax Department for the Financial Year 2014-15, 2015-16 & 2016-17. On perusal of the data, it was revealed that the assessee declared Rs.9,44,14,647/- less in their ST 3 Return in comparison to their ITR for the above period. To explain the reasons of said difference and to submit documents in support thereof viz. Balance Sheet, P & L Account, ITR, Form 26 AS, Service tax Ledger and STR, letters dated 08.02.2018, 25.06.2019 and 17.07.2020 were issued to the assessee. However the assessee neither submitted any details/ documents explaining such difference not responded to the letters in any manner. Therefore the instant SCN dated 29.09.2020 was issued to the assessee to ascertain the reasons for shortfall. In response to the SCN, the assessee has filed reply to SCN wherein it was denied the short payment of service tax as alleged in the said SCN. They claimed that they are providing cleaning and housekeeping services to various departments of state government, body corporate, educational institute, district court, hospitals and health centers and for which they have taken service tax Registration and accordingly filed ST 3 Returns for the relevant. They in their reply to SCN provided year wise details of services provided to various entities such as state government, body corporate, courts, educational institutions etc and claimed that these services are falling under cleaning services and are exempted from payment of service tax in view of Sl.No.25 of Notification No.25/2012 dated 01.07.2012 as amended by Notification No.06/2014 dated 11.07.2014.

26. I have gone through the details of revenue received by the assessee by providing various services as mentioned above to various services receivers. In their reply to SCN, the assessee claimed that they are providing cleaning and housekeeping services to various departments of state government which is not taxable under Service Tax. In this case they claimed that in view of the Notification No.25/2012 dated 20.06.2012, any service provided to Government, a local authority or a governmental authority in relation water supply, public health, sanitation conservancy etc is eligible for exemption from payment of service tax. In the instant case the assessee claimed that the services of cleaning and housekeeping rendered to various department so state government, district courts etc are exempted from payment of service tax in view of entry No.25 of Notification No.25/2012 dated 20.06.2012 which reads as under:

Sl.No.25. Services provided to Government, a local authority or a government authority by way of :-

(a) Carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy solid waste management or slum improvement and up gradation or

27. In view of the above Serial No.25, the assessee claimed that the service of cleaning and housekeeping are exempted from the ambit of service tax if provided to Government, local authority or a government authority. In the said Serial No. it is clearly mentioned that the service Carrying out any activity in

relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy solid waste management or slum improvement and up gradation or is exempted from service tax. However in the instant case, the cleaning and housekeeping services are provided by the assessee only and they cannot claim that these activity are ordinarily entrusted to a municipality. Moreover, on perusal of the documents submitted by the assessee, it cannot be concluded that the said services of cleaning and housekeeping are exclusively provided to Government, local authority or government authority claiming exemption from payment of service tax.

28. However the assessee did not furnish any documents to prove that they have provided the services to various Departments of state government. In the absence of any works orders, invoices or documentary evidence to substantiate that the work was originally allotted to them and have performed by them and also have received consideration against the said services provided by them, no benefit of exemption notification can be granted from payment of service tax. The assessee is bound produce the supporting documents to claim any benefit under any Notification and also has to prove that the conditions for exemption was also fulfilled by them. In the absence of the same, the benefit of exemption notification claimed by the assessee cannot be granted. On perusal of the nature of activity carried out by the assessee, I find that the activity carried out by the assessee is covered under the definition of service tax and not covered under the negative list as given in Section 65D of the Finance Act,1994 and not exempted under mega Exemption Notification No.25/2012-ST dated 20.06.2012, as amended. Therefore the amount of services provided by the assessee to Government, a local authority or a governmental authority in relation water supply, public health, sanitation conservancy etc is subjected to service tax.

29. As far as the cleaning and housekeeping provided to educational institution is concerned, the assessee claimed that in their bill the same is mentioned as housekeeping service and has given the name of work performed. Accordingly the work is appropriately fall under house cleaning services and are exempted by virtue of Sl.No.9 of Notification No.25/2012. They have also claimed that they have provided services to ITI which is exempted from service tax as the same in included in the negative list of Section 66 D of Finance Act, 1994. They also mentioned Board Circular No.172/7/2013-ST dated 19.09.2013 according to which cleaning services, housekeeping service and security service provided to an educational institution is exempted fro m service tax.

30. In the instant issue, the assessee simply claims that they have mentioned housekeeping and cleaning services in their Bill, therefore they are exempted from payment of service tax. In this connection, I would like to go through the relevant portion i.e.Sl.No.9 of Notification No.25/2012 dated 20.06.2012 which reads as follows:

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of

(a) auxiliary educational services or

(b) renting of immovable property:

Definition of auxiliary educational services as per the Notification is as under

(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development ofcourse content or any other knowledge - enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person,including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

Board vide Circular No.172/7/2013 dated 19.09.2013 has clarified that :

Further section 93(1) of the Finance Act, 1994, enables the Government to exempt generally or subject to such conditionstaxable service of specified description.

By virtue of the said power, Government has issued a notification No.25/2012-STdated 20 th June, 2012, exempting certain services. Sl.no.9 thereof reads as follows:"Services provided to an educational institution in respect of education exempted from service tax, by way of,-(a) auxiliary educational services; or(b) renting of immovable property;".As defined in the said notification,
"auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

3. By virtue of the entry in the negative list and by virtue of the portion of the exemption notification , it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.

4. In addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services, canteen, etc

Entry No.9 has been substituted vide Notification No.6/2014-ST dated 11.07.2014 w.e.f 11.07.2014 and the exemption entry No.9 reads as follows:

9. Services provided (a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of,-
(i)transportation of students, faculty and staff;
(ii)catering, including any mid-day meals scheme sponsored by the Government;
(iii)security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by such institution;

31. On perusal of the same, I find that exemption is restricted to the specific services listed in substituted entry No.9 and accordingly the concept of educational auxiliary service stands deleted by the said Notification No.6/2014. Therefore the clarification dated 19.09.2013 issued by the Board is not applicable to the present case. The assessee has wrongly relied on the said circular of Board holding that auxiliary education service include even housekeeping service is exempted from service tax. In view of the above, the claim of the assessee that the cleaning services and house keeping services provided to educational institution are not entirely exempted from service tax.

32. Further on perusal of the documents submitted by the assessee, it cannot be ascertained the nature of service provided to the educational institutions by the assessee. They could not produce any documentary evidence like works orders, invoices, bills, ledger account or bank details or any document to substantiate their claim that they have provided the said services to ITI/ educational institution and claimed exemption from payment of service tax under Sl.No.9 of Notification No.25/2012 dated 20.06.2012 as amended. In the absence of the same, the benefit of exemption notification claimed by the assessee cannot be granted. On perusal of the nature of activity carried out by the assessee, I find that the activity carried out by the assessee is covered under the definition of service tax and not covered under the negative list as given in Section 65D of the Finance Act,1994 and not exempted under mega Exemption Notification No.25/2012-ST dated 20.06.2012, as amended. Therefore the amount of services provided by the assessee to ITI/Educational Institute is subjected to service tax.

33. As the SCN is based on the total value declared in ITR for all the three years, the assessee is required to produce the documents regarding the value declare in ITR and the question of taxability of the said amount. However the assessee did not produce copies of Balance Sheet/ITR/STR or any other documents to clarify the amount credit in their ITR. They have also failed to state the reasons for such difference between the figures shown in ITR and the figures shown in their STR filed.

34. Further the assessee in their reply to SCN stated that OIO No.AHM-EXCUS-003-COM-002 TO 004-20-21 dated 10.06.2020 issued by the Commissioner, Central GST & Central Excise, Gandhinagar in the case of M/s. Rajdeep Enterprise and M/s.Lucky Management Services wherein the Hon'ble Commissioner has held that the said services are exempted and not liable to service tax. This being an identical case ratio thereof is squarely applicable and demand may be vacated following the judicial discipline. In this connection, while ascertaining the status of the said OIO, it was noticed that Department has gone in appeal to Hon'ble CESTAT(SERVICE TAX/10868/2020), Ahmedabad against the said OIO No. No.AHM-EXCUS-003-COM-002 TO 004-20-21 dated 10.06.2020. Therefore the clam of the assessee to drop the proceedings have no merits and therefore not acceptable.

35. According to Section 67 of the Finance Act, 1994 as amended from time to time where service tax is chargeable on any taxable service with reference to its value, then such value shall be the gross amount charged by the service

provider (subject to abatements prevailing) for such service provided or to be provided by him. 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. Thus, the value to be considered for calculation of service tax is the gross amount charged for providing the taxable services.

36. Further the onus is on the assessee to prove that they are eligible for any exemption Notification. In this connection the Hon"ble Supreme Court of India in the case of Commissioner of Central Excise New Delhi Vs. Hari Chand Shri Gopal reported in2010(260) ELT 3 (sc) clarified that the person claims exemption or concession has to establish that he is entitled to that exemption or concession. The relevant portion of the order is reproduced as under:

*"**22.** The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave - (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."* . Here in the instant case the assessee failed to prove that they are eligible for the exemption Notifications as claimed ion their reply to SCN.

37. Thus in view of the above facts and findings, I am of the opinion that the assessee could not explain with substantial supporting documents to establish that the differential income as detailed in the Show Cause Notice is exempted from payment of service tax. In view of the above, I find that the differential value of Rs.9,44,14,647/- for the year 2014-15, 2015-16 & 2016-17 is to be considered as taxable under the ambit of service tax and accordingly the service tax of Rs.1,30,67,488/- demanded is to be confirmed along with interest and appropriate penalty.

38. A taxable person is required to provide information/documents to the department as and when required. However, in this case the assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to service tax being the service tax provider. Even during the course of personnel hearing also the assessee failed to submit any documents proving that they are eligible for exemption from payment of service tax or abetment of value for the purpose of calculating service tax liability. In view of the above facts, it is proved that the assessee may not have the data of the service receivers or they might have been try to avoid furnishing the details which may have lead to proof that the service provider is liable to pays service tax.

39. In view of facts stated hereinabove, the value of services mentioned/declared in ITR for Financial Year F.Y. 2014-15, 2015-16 and 2016-17, after considering the value shown in STR, is considered as taxable Value of Services provided and since the said assessee has not provided any details/data and the reasons for non-payment of service tax, therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice, the Value of Services declared/mentioned in ITR filed by the assessee has been considered for Non-Payment of Total Service Tax, which comes to Rs.1,30,67,488/- including cess on differential value of RS.9,44,14,647/- for Financial Year F.Y. 2014-15, 2015-16 and 2016-17.

40. It is provided under section 68 of the Finance Act, 1994 that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as worked out above in Table-A.

41. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services provided by him, as discussed above, as they failed to file ST-3 Returns and thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994. From the foregoing paras and discussion made herein above, I find that the assessee has contravened the provisions of –

(i) Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the SCN period;

(ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the SCN period, to the credit of the Government account within the stipulated time limit;

(iii) *Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the SCN period.*

42. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. From the information/data received from CBDT, it appeared that the assessee has not discharged service tax liability in spite of declaring before Income Tax Department. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust

deposed on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax not paid by the assessee worked out in Tables supra for financial Year F.Y. 2015-16 & 2016-17 is required to be recovered from them under Section 73 (1) of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

43. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, I find that the assesse is liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

44. 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 behaviour. M/s.Rajdeep Projecet Force P. Ltd deliberately not supplied their documents, 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 that they were provided various services. They have also relied upon a number case laws against invoking extended period while issuing the SCN. On perusal of the same, I find that these case laws are not surely applicable in this case as the context of every case law is different from the instant SCN. Moreover, the Hon'ble High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.

> *"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.*
>
> *12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis - statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of Section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.*

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

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

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

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

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

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

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

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

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

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

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

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

45. 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 of the assessee 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 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 along with applicable interest. All these acts of contravention of the provisions of Section 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 on part of assessee have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

46. 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 Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994

47. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of fiancé Act, 1994 as they failed to pay the correct duty with the intend to evade the same. It is also a fact that they had deliberately not shown in their ST-3 Returns, the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided them, in respective ST-3 returns filed by them at the relevant period. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. Hence it is 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. The assessee has also relied upon a number of case laws against imposition of penalty u/s.78 of Finance Act, 1994. On perusal of the same, I find that the said case laws are not similar with the matter of the instant SCN hence I refrain from rely upon them while deciding the imposition of penalty. In this regard, I rely upon the decision of Larger Bench of Hon'ble Supreme Court in the case of UIO Vs Dharmendra Textile Processors -2008 (231)ELT 3(SC) and further clarification in the case of M/s Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C) wherein, it was, inter alia held that:

"23. The decision in Dharmendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no jurisdiction in quantifying the amount and penalty must be imposed equal to the duty determined under sub section (2) of Section 11 A. that is what Dharmendra Textile decides". With the above observation, the Hon'ble Apex court held that mens rea is not an essential ingredient to impose penalty under Section 11AC of the Central Excise Act, 1944 and there is no discretion available on quantum of penalty imposable under that section. As penal provisions of Section 78 of the Finance Act, 1944 and Section 11 AC of Central Excise Act, 1944 are pari

materia, the ratio of decision of the Apex court is applicable to Service Tax matters also.

48. Further as per the provisions of Section 70 (Furnishing of Returns) of the Finance Act,1994 :

"(1)Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed". According to which the assessee is liable to pay late fee for failure to file the ST 3 return for the period April 2014 to Sept.2014 and therefore I impose late fee accordingly on the said assessee.

49. On perusal of para 6 & 7 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. 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 income.

50. In view of the above facts and findings, I pass the following order.

ORDER

1. I confirm the demand of Service Tax of Rs.1,30,67,488/-(including cess) (Rupees One Crore Thirty Lac Sixty Seven Thousand Four Hundred Eighty Eight only), which was short paid during the period from 2014-15 to 2016-17 as per Table supra and order to recover from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;

2. I confirm the demand of Interest at the appropriate rate and order to recover from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;

3. I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s.Rajdeep Projects Force P.Ltd under Section 77(1) of the Finance Act, 1994.

4. I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s.Rajdeep Projects Force P.Ltd under Section 77(2) of the Finance Act, 1994.

5. I impose penalty of Rs.20,000/-(Rupees Twenty Thousand only) under section 70 read with Rule 7C of Service Tax Rules read with section 174 of the CGSTR Act, 2017 for late filing of ST 3 Returns for the period April 2014 to September 2014 on time as discussed above.

6. I impose Penalty of Rs.1,30,67,488/-(including cess) (Rupees One Crore Thirty Lac Sixty Seven Thousand Four Hundred Eighty Eight only), under Section 78 of the Finance Act, 1994, as amended M/s.Rajdeep Projects Force P. Ltd. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s.Rajdeep Projects Force P.Ltd pays the amount of Service Tax as determined at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by Rs.1,30,67,488/-(including cess) (Rupees One Crore Thirty Lac Sixty Seven Thousand Four Hundred Eighty Eight only) shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

Accordingly the Show Cause Notice bearing F.No. STC/15-87/OA/2020 dated 29.09.2020 is disposed off.

10/11/2022

(LOKESH DAMOR)
Joint Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-87/OA/2020 Dt.

To
M/s.Rajdeep Projects Force Pvt. Ltd.,
Ashatmangal Complex, 402, Shahi Baug,
Ahmedabad Gujarat.

Now
M/s.Rajdeep Projects Force Pvt. Ltd.,
316, Shukan Mall, Nr.Visat Petrol Pump,
Sabarmati, Ahmedabad – 380005.

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The DC/AC, Division-VII, CGST. & C.Excise, Ahmedabad North.
3. The Supdt, Range-V, Division-VII, C. Ex. & CGST, Ahmedabad North
4. The Supdt(system) CGST, Ahmedabad North for uploading on website.
5. Guard File