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
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निबन्धित पावती डाक द्वरा/By R.P.A.D DIN-20220364WT000000F8E2

फा.सं./F.No. STC/15-69/OA/2020 आदेश की तारीख़/Date of Order :- 09-03-2022

जारी करने की तारीख़/Date of Issue :- 09-03-2022

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

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 71-72/ADC/ GB /2021-22

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

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 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/15-69/OA/2020 dated 29.09.2020 and Show Cause Notice No. STC/15-138/OA/2020 dated 22.10.2020 issued to M/s Project Force, 812-813, J.B. Tower, Opp. Doordarshan Kendra, Drive-in Road, Ahmedabad Polytechnic, Ahmedabad, Gujarat-380015.

BRIEF FACTS OF THE CASE

M/S. Project Force, 812-813, J.B. Tower, Opp. Doordarshan Kendra, drive In Road, Polytechnic, Ahmedabad, Gujarat,380015 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.- ADDPD1528JST001 & are engaged in the business of Providing Consulting Engineering Service, Manpower Recruitment /Supply Agency Service, Maintenance And Repair Service and Technical Testing And Analysis Services.

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 22AS) for the Financial year 2014-15 & 2015-16. On scrutiny of the said data, it was noticed that the assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2014-15 & 2015-16 as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

#	F.Y.	Taxable Value of services provided as per ST-3 returns (In Rs.)	Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided or Higher value of Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided, as applicable(In Rs.)	Rate of Service Tax (in %)	Resultant Service Tax short paid, including Cess (in Rs.)
1	2014-15	114837574	8442581	12.36	1043503
2	2015-16	98197555	60413423	14.50	8759946
	Total	213035129	68856004		9803449

4. With reference to the above, 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 for the Financial Year 2014-15 & 2015-16, Letter dated 13.02.2018, 03.05.2018, 30.09.2019, 06.07.2020, 06.10.2020 and summons dated 14.10.2020 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 by the department.

5. Since the assessee has not submitted the required details of services provided during the Financial Year 2014-15 & 2015-16, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the Income Tax returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994. Further, no data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

7. With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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."

8. From the data received from CBDT, it appears that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2016-17 to 2017-18(upto June 2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure 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 year 2017-18 (upto June-2017) was 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 2016-17 to 2017-18 (upto-June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

9. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider have made deliberate efforts to suppress the value of taxable service to the department and have not paid the liable service tax in utter disregard to the requirements of law and the trust deposed in them. Such outright act in defiance of law, have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax. The above said service tax liabilities of the assessee has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16.

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 to 2015-16. 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. 98,03,449/-(including Cess). It was found that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same was recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

11. Accordingly Show Cause Notices dated 29.09.2020 was issued for the period 2014-15 & 2015-16 to M/s.Project Force called upon them to show cause as to why :

(i) the demand of Service Tax to the extent of Rs.98,03,449/-(including cess) short paid /not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994.

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

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

(iv) Penalty should not be imposed upon them for late filing of ST 3 returns under the provisions of.Section 70 of Finance Act, 1994, if any

Further Show Cause Notice dated 22.10.2020 was issued for the period 2015-16 to M/s.Project Force called upon them to show cause as to why :

(i) The service tax to the extent of Rs.87,59,946/- short paid /not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;

(ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017),ascertained in future, as per paras no. 7 and 8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.

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

(iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.

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

DEFENCE REPLY

12. The said assessee vide their letter dated 02.11.2020 submitted that the department has computed demand of service tax for the period 2014-15 & 2015-16 on the basis of reconciliation of ST 3 returns with financial statements. At the outset they submitted that they are having Service Tax Registration and engaged in providing Consulting Engineer Service, Manpower Recruitment Agency Service and Maintenance or repair service. They contended that Department has computed demand of service tax for the period 2014-15 & 2015-16 on the basis of reconciliation. They have submitted a reconciliation statement wherein they stated that there is no such short

payment of service tax. While doing the reconciliation of income with books of accounts, the department has not taken into factual details and without considering the factual details, the department has raised the demand which is not justifiable at all. They have relied upon the following case laws in their support.

- Tobacco Board Vs Commr.C.EX.Mysore 2013(31)STR673(Tri-Ban)
- Anvil Capital Management (p) Ltd Vs. Commr.of S.Tax, Mumbai 2010(20)STR789(Tri-Mumbai)
- Commr.of S.Tax, Ahmedabad Vs.Purani Ads P.Ltd 2010(19)STR(Tri.Ahmedabad)
- Sify Technologies Ltd Vs.Com.S.T 2009 (16) STR63(Tri-Chennai)

13. Regarding invocation of extended period the said assessee contended that department has computed demand if service tax for the period 2014-15 to 2016-17 on the basis of income tax return data. The department has not considered the fact that the assessee has worked as a sub consultant for exempt project. Without considering the factual details the department has raised the demand which is not justifiable at all. They further stated that they are filing STR & ITR regularly from time to time and submitted that extended period cannot be invoked in this case since there is no suppression of the fact and wilful misstatement from the party of the assessee. As far as penalty u/s.78 is concerned , the assessee submitted that SCN has not given any reason for imposing penalty under section 78 of the Act. The SCN merely alleging that there is suppression on the part of the appellant. They further contended that the issue involved is of interpretation of statutory provisions for that reason penalty cannot be imposed They further submitted that there will not any penalty if the dispute is arising due to interpretation of provisions or statute. They have relied upon the decisions of. They have produced detailed reconciliation on 04.02.2022 wherein they claimed that they are eligible for abatement under Noti.No.25/2012 along with contact receipt ledger account for the year 2014-15 and 2015-16.

PERSONNAL HEARING

14. Personnel Hearing was granted to the said assessee on 23.09.2021 & 09.12.2021 which was attended by Shri Vipul Kandhar CA and duly authroised representative. He reiterated the written submission submitted on 02.11.2020 and also submitted additional documents such as ST 3 returns , audited Balance Sheet, ledger accounts. He has submitted reconciliation statements and has further requested time to submit "voluntary disclosure scheme" certificate to take into account for reconciliation.

DISCUSSION AND FINDINGS

15 On perusal of the SCNs, I find that the Show Cause Notice dated 29.09.2020 is covered both the years 2014-15 & 2015-16 and the SCN dated 22.10.2020 is covered under the period 2015-16, hence I intend to adjudicate both the SCNs simultaneously.

16. 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 for the period 2014-15, Balance sheet for the year 2014-15 to 2015-16. In the present case, two Show Cause Notices dated 29.09.2020 and 22.10.2020 were issued to the noticee demanding Service Tax of Rs.98,03,449/- for the financial year 2014-15 to 2015-16 on the basis of data received from Income Tax authorities. 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 Department has computed demand of service tax for the period 2014-15 & 2015-16 on the basis of reconciliation. They have submitted a reconciliation statement wherein they stated that there is no such short payment of service tax and while doing the reconciliation of income with books of accounts, the

department has not taken into factual details and without considering the factual details, the department has raised the demand which is not justifiable at all. They have produced reconciliation statement on 04.02.2022 wherein they claimed that they are eligible for abatement under Noti.No.25/2012 along with contact receipt ledger account for the year 2014-15 and 2015-16.

17. On perusal of the reply to the SCN and reconciliation statement submitted by the assessee alongwith the reply to SCN, I find that the assessee are providing Consulting Engineering Service, Manpower Recruitment /Supply Agency Service, Maintenance And Repair Service and Technical Testing And Analysis Services for which registered with Service tax paid service tax and file ST 3 return accordingly. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as ***"service"*** *means any activity carried out by a person for another for consideration, and includes a declared service. 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

18. In view of the above, I find that the activities carried out by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List the security service provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act. Therefore, I find that the said service provider is liable to pay Service Tax on income earned from provision of various taxable services provided for the period 2014-15 to 2016-17. Further the liability to pays service tax has been notified at Sr.No.8 of *Noti.30/2012 provides that the extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable service specified in (I) shall be as specified in the following table.*

Sl.No.	*Description of Services*	*Percentage of service tax payable by the person providing service 01.04.2015*	*Percentage of service tax payable by the person receiving service 01.04.2015*	*Percentage of service tax payable by the person providing service .F.Y.2014-*	*Percentage of service tax payable by the person receiving service F.Y.2014--*

		onwards	*onwards*	*15*	*15*
1	*In respect of services provided or agreed to be provided by way of supply of manpower for any purpose*	*NIL*	*100%*	*25%*	*75%*

19. Further, I find that as per Noti.No.30/2012-ST dated 20.06.2012 vide Sr.No.8 Service Tax shall be payable in respect of service provided or agreed to be provided in the case of security service by service provider to the extent of service tax on 25% of value of taxable service and balance service tax on 75% of value of taxable service to be paid by the person receiving the service under partial reverse charge mechanism, if service are provided by any individual/HUF/proprietary concern/partnership firm to the business entity registered as Body corporate. Subsequently the said Noti. No. 30/2012-ST dated 20.06.2012 was amended through Noti.7/2015 dated 01.03.2015 and according to which if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver with effect from 01.04.2015.

20. In the instant case the assessee was providing Consulting Engineering Service, Manpower Recruitment /Supply Agency Service, Maintenance And Repair Service and Technical Testing And Analysis Services. In reply to SCN, they have stated that while doing the reconciliation of income with books of accounts, the department has not taken into factual details and without considering the factual details, the department has raised the demand which is not justifiable at all. The assessee could not explain in their reply the factual details with documentary support. They simply state that the department has not taken into factual details and without considering the factual details the demand has been raised by the department. In their reply they have not mentioned whether they are eligible for any exemption Notification. They are providing various taxable services and are paying service tax on the same also. While filing their ST 3 returns for the year 2014-15, they have mentioned the above referred services, however the details have not been tallied with reconciled figures furnished by them. Further they have also not provided any documents in support of their reconciliation statement for the year 2015-16. During the personnel hearing they have agreed to provide certificate regarding voluntary disclosure scheme, but have not produced the same for verification. Further they have relied upon a number case laws in support of their claim. However on perusal of the same , I find that none of the case laws is exactly match the instant case as in this case the assessee himself have not furnished neither any proper detailed reconciliation statement stating all the relevant facts nor filed any reply explaining the reasons for differential value.

21. On perusal of audited balance sheet, ledger account and other documents submitted by the assessee, I find that they have earned an income of Rs.12,32,80,155/- under the head operating income during the year 2014-15. However, in their STR they have shown 11,48,37,574/- as shown in the SCN and show cause notice has been issued to recover service tax on the differential amount of Rs.84,42,581/-. I have carefully gone through the reply to SCN filed by the assessee and find that they have not given any explanation or reasons along with supporting documents the reason for such a difference between the income shown in their ITR and STR. They have mentioned that they are providing services such as Consulting Engineering Service, Manpower Recruitment /Supply Agency Service, Maintenance And Repair Service and Technical Testing And Analysis Services and are earning income. By providing the said services they have earned income of Rs.12,32,80,155/- during the year 2014-15 and was correctly shown in their ITR. However they did not show the said income in their STR even though the entire income is chargeable to service tax and the liability to pay service tax falls upon the said assessee. If the assessee is eligible for any exemption/concession/abatement from payment of services

tax, they are liable to show in their respective STR for claiming the relief. However in the instant case the assessee failed to show/mention the relevant section/notification/clause under which they are eligible for any exemption/abatement from payment of service tax. Further they have mentioned RS.3,41,68,641/- as their taxable value as per ST 3 returns, however in the Show Cause Notice the Taxable value of services provided as per ST 3 return is Rs.11,48,37,574/- Here this case also the assessee could not explain the reconciliation on this difference. In view of the above facts, the contention of the assessee that the department has not taken factual fact into account is not correct. From the records available, I find that the assessee is failed to discharge service tax on the differential amount of Rs.84,42,581/- and therefore I confirm the service tax demand of Rs.10,43,503/- on the differential value of Rs.84,42,581/- along with interest and penalty.

22. Similarly on perusal of audited balance sheet, ledger account and other documents submitted by the assessee, I find that they have earned an income of Rs. 15,86,10,978/- under the head operating income during the year 2015-16. However, in their STR they have shown 9,81,97,555/- as shown in the SCN and show cause notice has been issued to recover service tax on the differential amount of Rs.6,04,13,423/-. I have carefully gone through the reply to SCN filed by the assessee and find that they have not given any explanation or reasons along with supporting documents the reason for such a difference between the income shown in their ITR and STR. They have mentioned that they are providing services such as Consulting Engineering Service, Manpower Recruitment /Supply Agency Service, Maintenance And Repair Service and Technical Testing And Analysis Services and are earning income. By providing the said services they have earned income of Rs. 15,86,10,978/- during the year 2015-16 and was correctly shown in their ITR. However they did not show the said income in their STR even though the entire income is chargeable to service tax and the liability to pay service tax falls upon the said assessee. If the assessee is eligible for any exemption/concession/abatement from payment of services tax, they are liable to show in their respective STR for claiming the relief. However in the instant case the assessee failed to show/mention the relevant section/notification/clause under which they are eligible for any exemption/abatement from payment of service tax. Further they have mentioned RS.2,45,49,389/- as their taxable value as per ST 3 returns , however in the Show Cause Notice the Taxable value of services provided as per ST 3 return is Rs.19,81,97,555/-. Here this case also the assessee could not explain the reconciliation on this difference. In view of the above facts, In the absence of specific point wise reply along with supporting documents, the argument of the assessee that the department has not taken factual fact into account is not correct. During the personnel hearing, it was also agreed to provide certificate on "voluntary disclosure scheme "for the year 2015-16, however the assessee failed to furnish any such certificate to establish their claim of relief under the so called claim. In the absence of the proper supporting documents, I am not in position to verify whether the claim of the assessee is genuine and accordingly eligible for benefit of any Notification or not. From the records available, I find that the assessee is failed to discharge service tax on the differential amount of Rs.6,04,13,423/- for the year 2015-16and therefore I confirm the service tax demand of Rs.87,59,946/- on the differential value of Rs. 6,04,13,423/- along with interest and penalty.

23. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate

on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider have made deliberate efforts to suppress the value of taxable service to the department and have not paid the liable service tax in utter disregard to the requirements of law and the trust deposed in them. Such outright act in defiance of law, have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

24. 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 to 2015-16. 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. 98,03,449/-(including Cess). It was found that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same was recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

25. 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.

26. On scrutiny of relevant ST 3 returns for the year 2014-15 & 2015-16, 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 various taxable services. 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. Project Force 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. When the assessee is a registered person and are regularly filing ST 3 return, it is his legal obligation to

disclose the full facts and material in their ST 3 returns. As they have not disclosed the entire fact that they are providing Manpower Supply service to others, data provided by CBDT helped to find out the suppression of the assessee and subsequent issuance of Show Cause Notice to recover the remaining service tax from the said assessee. The said assessee in their submissions referred various case laws against invoking of extended period, however, in view of the above facts and discussion, it is correctly invoked the extended period while issuing SCN. Moreover, the Hon'ble apex court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.

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

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

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

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

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

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

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

a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

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

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

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

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

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

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

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

27. Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period in the ST-3 Returns, nor did they have sought any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service in the ST-3 Returns during the relevant period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

28. I further find that M/s.Project Forces 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.

29. 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.

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

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

ORDER

(i) I confirm the Service Tax amounting to Rs.98,03,449/- (Rupees Ninety Eight Lakh Three Thousand Four Hundred Forty Nine only) under Section 73(1) of chapter V of Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST and order M/s. Project Force to pay up the amount immediately.

(ii) I order that interest be recovered from M/s. Project Force on the service tax on Rs.98,03,449/- (Rupees Ninety Eight Lakh Three Thousand Four Hundred Forty Nine 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. Project Force under Section 77(I)(c) of the Finance Act, 1994.

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

(v) I impose penalty of Rs.18,500/-(Rupees Eighteen Thousand Five Hundred only) for late filing of ST 3 returns under the provisions of Section 70 of Finance Act, 1994.

(vi) I impose a penalty of Rs.98,03,449/- (Rupees Ninety Eight Lakh Three Thousand Four Hundred Forty Nine only) on M/s. Project Force 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. Project Force 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. Project Force 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 Show Cause Notice No.STC/15-69/OA/2020 dt.29.09.2020 and No. STC/15-138/OA/2020 dt.22.10.2020 disposed off.

R. Gulzar BG 3/3/22

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

F.No. STC/15-69/OA/2020

Date:

To
M/S. PROJECT FORCE.,
812-813, J.B. TOWER,,OPP. DOORDARSHAN
KENDRA,DRIVE-IN ROAD,AHMEDABAD
POLYTECHNIC,AHMEDABAD,GUJARAT,380015

Copy to:

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