



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. STC/15-311/OA/2021

DIN-20240364WT0000005E3F
आदेश की तारीख/Date of Order: - 15.03.2024
जारी करने की तारीख/Date of Issue :- 18.03.2024

द्वारा पारित/Passed by:- लोकेश डामोर /Lokesh Damor
अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 96/ADC/ LD /2023-24

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), 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 ST-4 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.

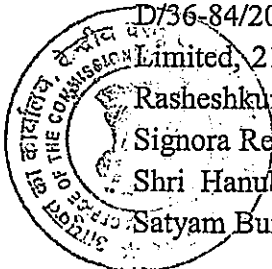
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

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

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

- (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 No. DGGI/AZU/Gr-D/36-84/2021-22 dated 22.10.2021 issued to (1) M/s. Sangani Infrastructure India Private Limited, 215, Signature Complex, 100 ft Road, Thaltej Ahmedabad, Gujarat-380059., (2) Shri Rasheshkumar V Limbasia, Director of M/s Sangani Infrastructure India Private Limited, C/504, Signora Residency, Vejalpur, Opp. Shyamal Row house, Ahmedabad City Vejalpur-380051., (3) Shri Hanubhai R Sangani, Director of M/s Sangani Infrastructure India Private Limited, 5, Satyam Bunglows, Opp. Karnavati Club, B/h. Wide Angle Ahmedabad-380015.



BRIEF FACTS OF THE CASE

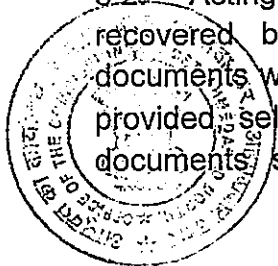
M/s Sangani Infrastructure India Pvt. Ltd., 215 Signature Complex, Opp Suvarna Bunglows, Thaltej, Ahmedabad 380058 [hereinafter referred to as 'M/s. SIPL' or the "service provider" or the "assessee" or the "Noticee" for the sake of brevity], were engaged in providing 'Construction of Residential Complex', 'Construction of Commercial Complex' service as defined in terms of Section 65 B(44) of the Finance Act, 1994. With effect from 01.07.2012, 'Construction of a Complex, Building, Civil Structure or a part thereof' service has been brought under "declared services" in terms of Section 66E(b) of the Finance Act, 1994 and all the services including the declared services are chargeable to Service Tax in terms of Section 66B of the Finance Act, 1994. M/s. SIPL were registered with erstwhile Service Tax Commissionerate, Ahmedabad and were holding Service Tax registration certificate bearing No. AALCS2604QSD001.

2. And whereas information was shared by Regional Economic Intelligence Council Committee, Ahmedabad (hereinafter referred to as "REIC") with Directorate General Goods & Service Tax Intelligence [here-in-after referred to as 'DGGI' for the sake of brevity] (formerly known as Directorate General of Central Excise Intelligence) which inter-alia indicated that Search and Seizure proceedings were conducted by DGIT (Inv.), Unit -2, Income-tax, Ahmedabad on 06.03.2018 against M/s Sangani Group. It was further reported that evidences of receipt of substantial cash (on estimation basis) were unearthed. The evidences found during the search conducted by DGIT (Inv.), Unit-2, Income-tax, Ahmedabad on 06.03.2018, indicated that in respect of construction of units, the Sangani group was receiving sale consideration in cash in addition to the amount received by cheque and the Sale Deeds for the same were drawn only for the amount paid through cheque. The information further revealed that only the amount paid through cheque was accounted for in the books of account of the firms of Sangani Group and the cash component was never recorded in the books of account. M/s SIPL was one of the companies of the Sangani group and the said company was also covered in the Search and seizure proceedings by Income Tax.

3. EXECUTIVE SUMMARY OF THE CASE OF M/s Sangani Infrastructure India Pvt. Ltd.,

3.1 Information received from the REIC indicated that M/s. SIPL have evaded Service Tax by resorting to recovering of substantial part of the taxable value of their services in cash from their clients and not accounting for the same in their regular accounts. Consequently, such unaccounted receipts were neither considered for computing the taxable value declared in their ST-3 returns nor paying the applicable Service Tax on such cash receipts. Accordingly, inquiry was initiated against M/s SIPL by DGGI, Ahmedabad Zonal Unit. In this regard, a statement of Shri Hanubhai R Sangani, Director of SIPL was also recorded (as detailed hereinafter) wherein he inter alia admitted on behalf of Sangani Group that they were recovering a substantial part of the taxable value of their services from the buyers of their residential flats/commercial properties/plots etc.

3.2 Acting on the above communication from REIC, documents seized and recovered by Income Tax authorities during their search proceedings, further documents were called for from the respective Income Tax authorities. The documents provided selectively, by the Income Tax authorities included soft copy of few of the documents seized by them during search proceedings conducted by them. On



verification of the said documents, it was found that for the period April 2016 to June 2017, M/s SIPL have received cash amount to the tune of Rs. 21,63,00,282/- towards Construction of 'Residential/Commercial services in their various construction projects viz. 'Sangani Residency', 'Sangani Skyz', 'Sangani Sqaure', 'Sammrudhi Residency', 'Sangani Platinum' and 'Dove Deck' and towards works contract services, rental income and business auxiliary services which was neither considered for computing the taxable value nor any Service Tax was paid on such cash receipts. The Service Tax involved on the said amount is Rs.1,06,81,057/-.

3.3. In view of the above it appeared that M/s SIPL had evaded payment of Service Tax to the tune of Rs. 1,06,81,057/- on all the projects which is liable to be recovered under the proviso to Section 73(1) of the Finance Act, 1994 along with applicable interest and penalty. Details of the investigations conducted by DGGI are discussed in the following paras:

4. Documents / records received from Income Tax Department and produced by M/s SIPL:

4.1 And whereas, acting on the information received from REIC, investigation was initiated in respect of M/s SIPL by this office to examine possibility of Service Tax evasion by way of suppression of consideration received through cash towards sale of flats/shops/properties and cash received towards work contract services provided to Govt. project and non-Govt. project in their various projects. Summons dated 04.08.2020, letter dated 11.05.2021 and Summons dated 20.09.2021 were issued to M/s SIPL and accordingly M/s SIPL vide letter dated 10.08.2020 informed that Panchnama was drawn in respect of M/s SIPL by DGGI Vadodara Regional Unit on 11.10.2018 and vide letter 10.06.2021 submitted the copy of SCNs:

- 1) **SCN dated 25.09.2020:** Demand of Rs. 1,91,35,261/- raised on the basis of non-reversal of credit as per Rule 6(3) of CCR,2004 and penalty of Rs. 47,200/- on late filing of ST returns for the period up to June 2017.
- 2) **SCN dated 16.12.2020:** Demand of Rs. 2,01,05,257/- raised on the basis of non-reversal of ITC as per Rule 42 of CGST Rules 2017, Rs. 1,60,40,493/- for wrong availment of Tran-1credit, Rs. 1,19,329/- for wrongly availed ITC against the exempted services, Rs. 25,679/- for excess ITC claimed, Rs. 2,29,754/- for interstate supplies, Rs. 31,01,544/- for not showing the actual taxable supply in month of Feb-2019.

Further, SIPL vide letter dated 02.09.2020 submitted various documents:

- i) ST-2 for Service Tax registration no.
- ii) GST Reg-06 for GST Registration no.
- iii) List of projects and its details.
- iv) Copy of 26 AS for FY 2014-15 to 2017-18.
- v) Copy of Service Tax audit reports upto March-2016.
- vi) Project wise details of-
 - a. Ledger account showing month wise advances received from customer in soft copy.
 - b. Ledger account in respect of each customer in soft copy.
 - c. ST-3 wise working.



- d. List of projects details executed /in operation with details like commencement, date of completion, number of flats/shops etc.(RUD-1)
- e. BU certificates/completion certificate.(RUD-2)

Documents/records forwarded by Income Tax Department:-

4.2. And whereas, letters dated 14.01.2020, 14.02.2020, 17.06.2020 were written to various authorities of Income Tax (Inv.), Ashram Road, Ahmedabad requesting to provide documents/evidences seized by them in case of Sangani group. Accordingly, Assistant Commissioner, Income Tax, Central Circle-2(2), Ahmedabad vide letter dated 29.06.2020 (RUD-3) had forwarded a USB which contained Appraisal Report alongwith its Annexures, soft copy of seized material alongwith search/survey folder, Assessment order passed in group cases.

Further, letters dated 06.04.2021, 11.05.2021, 11.06.2021 was written to Assistant Commissioner, Income Tax, Central Circle-2(2), Ahmedabad to provide the remaining assessment orders, digital data and the Special Audit Report in the concerned matter and a letter dated 29.06.2021 was written to Assistant Commissioner, Income Tax, Central Circle-2(2), Ahmedabad to provide the digital seized data in 8 main entities. After continuous follow-up and persuasion with the Income Tax Department, few assessment orders, including the assessment order of M/s SIPL, which were to be finalized till March-2021 were provided in soft copy on 19.08.2021 by Assistant Commissioner, Central Circle 2(2), Income Tax, Ahmedabad.

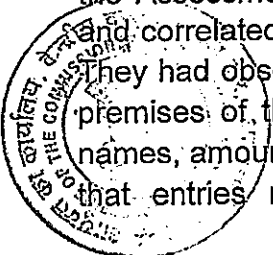
However, the Income Tax Department has not provided the digital data and Special Audit Report (the basis on which the Income Tax has issued the assessment orders).

4.3 The documents/evidences and assessment orders received from Income Tax were carefully examined and it was found that evidences/documents received from Income Tax contained assessment orders in respect of M/s SDL for the period A.Y.2013-14 to A.Y. 2018-19 and also some crucial information regarding unaccounted on-money receipts collected in cash by M/s SDL in respect of sale of flats/shops/properties in its various projects developed by M/s SIPL and in respect of works contract service. Further, as the assessment orders were provided on 19.08.2021, therefore, the period before F.Y.2016-17 is hit by the time barred limitations.

5. SCRUTINY OF DOCUMENTS RECEIVED FROM THE INCOME TAX DEPARTMENT AND SUBMITTED BY M/S SIPL:

5.1 Assessment orders issued by Income Tax Department (RUD-4):-

5.1.1 Whereas, upon scrutiny of documents received from Income Tax, it was found that assessment orders for the A.Y 2017-18 and A.Y 2018-19 had been issued by the Income tax to the Noticee regarding unaccounted cash receipts from sale of shops/units in their various project 'projects viz. 'Sangani Residency', 'Sangani Skyz', 'Sangani Sqaure', 'Sammrudhi Residency', 'Sangani Platinum' and 'Dove Deck'. It appeared from the Assessment Orders of Income Tax authorities that they had thoroughly analyzed and correlated the seized incriminating documents and finally arrived at the conclusion. They had observed that the evidences in the form of diaries seized from the residential premises of the directors and employee of the group was written in coded form for names, amount, dates and headlined many a times as estimates for actual transactions; that entries recorded in these diaries were verified by the signatures/names of



employees of Sangani Group; that these diaries contain information of cash receipts from sale of units/shops in their projects; that the directors and employee had admitted in their statements recorded u/s 132 (4) of the Income Tax Act that the customers diaries recovered from them were maintained in respect of project constructed by Sangani Group.

Few evidences reproduced & discussed in the said assessment orders wherein cash transactions related to Sangani Group were recorded has been briefly described as below:

5.1.2 Evidence Type-1: Loose Papers/diaries seized from residential premises of Shri Sandip K Andani

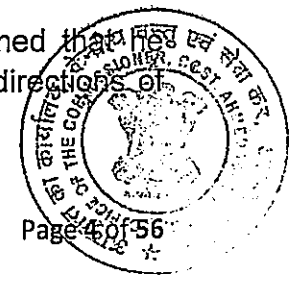
5.1.2.1 Whereas, during the search proceedings at the residential premises of Shri Sandip K Andani (one of the most trusted employees of Sangani group) certain loose papers/cash diaries containing details of cash receipts in respect of various projects of Sangani Group were found and seized by the Income Tax Department. The relevant portion of Cash book is reproduced below:-

Further a statement dated 06.03.2018 of Shri Sandip K Andani was recorded u/s 132 (4) of the IT Act wherein he inter-alia admitted that material found and seized from his residence was in relation to the booking of shops/units in various projects developed by SIPL. The relevant portion of his statement is reproduced below :

मामल 10 आज तारीख 06/03/2018 आपके घर से सर्व प्रोसिडिंग्स के दौरान पवेल नाम की लाल रंग की डायरी मिली है जिसको एगनरकजर ए. ए. नाम दिया गया है जिसको हमने इन्वेस्टिगेशन करके सीज किया है और उसमें कुल रिटर्न पेज नं. 1 व 324 है इसे सत्यापित कीजिए की ये सर्व प्रोसिडिंग्स के दौरान आपके घर से मिली है तथा इसमें लिखे हुए रेकॉर्डिंग आपकी है या नहीं बताइए। एवं उसमें लिखे राजकेशन के बारे में बताएं तथा यह सारे राजकेशन किस कंपनी के एवं व्यक्ति के है तथा यह सारे राजकेशन बुक्स ऑफ अकाउंट में रिफ्लेक्ट है के नहीं इसके बारे में बताइए।

उत्तरजी हाँ मैं यह सत्यापित करता हूँ की यह डायरी मेरे घर से सर्व प्रोसिडिंग्स के दौरान मिली है तथा इसमें जो भी राजकेशन मेरे द्वारा ही लिखे गए है तथा यह सारे राजकेशन संगणी इन्फोस्ट्रक्चर इंडिया प्राइवेट लिमिटेड के है इसमें जो कुछ राजकेशन संगणी इन्फोस्ट्रक्चर इंडिया प्राइवेट लिमिटेड के बुक्स ऑफ अकाउंट में रिफ्लेक्ट नहीं है तथा कुछ राजकेशन बुक्स ऑफ अकाउंट में रिफ्लेक्ट है इसी डायरी के जो राजकेशन बुक्स ऑफ अकाउंट में रिफ्लेक्ट नहीं है वह क्या मैं हुए है

5.1.2.2 As per the above statement of Shri Sandip K Andani, he informed that he handles the cash of the SIPL and he receives and submits the cash on directions of



Flat No.	Basic Cost	Paid cheque Rs	(Cash) 31.03.2017
Shop-1	1313000	700000.00	613000.00
Shop-2	1421800	692000.00	729800.00
Shop-4	1406600	731000.00	675600.00
Shop-6	1451200	561000.00	890200.00
Shop-9	1421600	700000.00	721600.00
Shop-16	851000	351000.00	500000.00
	179635039	168688941.00	10946098.00

Reference 1: Page no. 115 of Annexure-3 of Party A-29(A-9A)

The above extract is showing that Shop No. 2 in Sangani Residency (as submitted by the assessee to Income Tax Department), amount of Rs. 6,92,000/- has been accounted for. Further, Rs. 7,29,800/- has been received in cash by SIPL which is never accounted in Regular books of accounts, as confirmed through the ledgers submitted by the Noticee, and Service Tax has never been collected and paid on the cash component received.

5.1.5 Evidence Type-4: Evidences seized from site office of Sangani Skyz.

July	S.K. Mehrotra (92)	2015
22 Wednesday	Basic = 3486000	
Rec Amt = 3745000	Doc = 2092000	
Adv = 510000	S Tax = 64630	
Paid till today = 3694000		2156087

5.1.5.1 Whereas, during the search proceedings at the site office of Sangani Skyz (one of the Schemes in SIPL) certain loose papers/cash diaries containing details of cash receipts in respect of various projects of Sangani Group were found and seized by the Income Tax Department. The relevant portion of Unit C-1001 in Sangani Skyz project showing Basic cost, Received Amount, Advance, Doc amount and Service Tax. Further on the verification of ledger of unit C-1001 of Sangani Skyz, it is found that unit C-1001 is sold to Shri S.K.Mehrotra for Rs.20,92,000/- only.

Evidence Type-5: Coding of amount:

It was adequately explained by Shri Sandeep K Andani in his statement recorded u/s 132 (4) of the IT Act that the amount written in these customer/pocket diaries are in coded form. The amounts are written in codes. For example 170812=51 means amount of Rs. 1,70,81,251/- and so on. Relevant part of statement u/s 132(4) dated 06.03.2018 of Shri Sandeep K Andani for a diary seized during search proceedings is reproduced below:



प्रश्न 11 उपरोक्त प्रश्न संख्या 10 में बताइए कि धवल डायरी जो की आज रोज सच की कार्यवाही के दौरान सीज की गई है जिसमें जो भी अमाउंट लिखी है उसमें बराबर के निशान के बाद 00 या कुछ अमाउंट लिखी हुई है तो कृपया यह स्पष्ट करे की बराबर के निशान के बाद 00 या कुछ अमाउंट लिखी है उसे आप उसे कैसे ट्रीट करते हो।

उत्तर में आपको बताना चाहता हूँ कि इस उपरोक्त डायरी में जो भी अमाउंट में बराबर के निशान के बाद 00 या कुछ अमाउंट लिखी है वह उसकी पूरी अमाउंट है उदाहरण के तौर पर यह डायरी में पेज नंबर 22 पर डेट 29/11/2016 पर जो अमाउंट लिखा है 22,81,251 = 51 लिखा है इसका मतलब यह अमाउंट रूपय 22,81,251 (Twenty two lakhs Eighty one thousand two hundred fifty one) है तथा उसका क्रेडिट डेटल 1,70,81,251 = 51 जिसका कुल अमाउंट रूपय 1,70,81,251 (One crore seventy lakhs eighty one thousand two hundred fifty one) है।

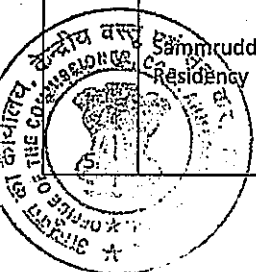
5.1.6 Whereas, based on collated evidences reproduced and discussed in the assessment orders, it was conclusively established by the Joint Commissioner, Income-Tax (OSD), Central Circle-2(2), Ahmedabad that the Noticee had received unaccounted cash receipts during the F.Y 2016-17 and F.Y 2017-18 from their prospective buyers against sale of shops/units in projects developed by the Noticee and towards works contract services provided by the Noticee.

5.1.7 Whereas, the above income of Noticee on account of consideration received in cash from the prospective buyers of shops/units in their various projects was neither recorded by them in regular books of account nor declared in the ST-3 returns filed by them for the corresponding tax period. Accordingly, it appeared that the noticee has suppressed their actual taxable turnover in ST-3 returns by resorting to acceptance of substantial part of consideration in cash from their prospective buyers.

5.2. Scrutiny of documents submitted by the Noticee:

5.2.1 Whereas, scrutiny of documents submitted by the Noticee during the course of investigation revealed that M/s SIPL develops various kind of schemes such as residential, commercial and mixed. Scheme wise/ Project wise discussion, which have been included as a part of assessment orders for AY 2017-18 and AY 2018-19 is as follows:

Sr. No	Name of the Project	Type of the Project	Date of Commencement of the project	Date of Completion of the project	No. of Flats /shop s/plo ts/un its	Location of the project.
1	Sangani Residency	Residential + Commercial	03/04/2013	ABCDE- 09/11/2015	243	Narol- No- Gujarat 382 405 Narolgam, Rudra Status, Narol, National Highway 8, Aslali, Ahmedabad, Gujarat 382405
2	Sangani Skyz	Residential	18/07/2014	ABCDE- ongoing	240	Vasna - Bhayli Main Rd, Bhayli, Vadodara, Gujarat 390007
3	Sangani Square	Commercial	08/05/2012	A-18/06/2015	143	Vatva, Ahmedabad, Gujarat 382440
4	Sangani Platinum	Residential + Commercial	18/01/2012	ABCD-03/06/2014 EFG-07/08/2015 HI -22/08/2016 JKL -11/02/2016	303	Vatva, Ahmedabad, Gujarat 382440
	Sammruddhi Residency	Residential + Commercial	13/07/2011	AB-07/10/2014 CD-05/11/2012 EF-15/04/2013 GH-29/06/2013 IJ-07/10/2014 KLM-02/12/2014 NPQRST- 07/10/2014 U-19/10/2016	589	Vatva, Ahmedabad, Gujarat 382440



				V-15/04/2013		
6	Dove Deck	Residential	20/12/2013	ongoing	336	Ajwa Road, Vadodara., 390019

Further, M/s SIPL has submitted two copies of SCN issued by DGGI Vadodara Regional Unit on 10.06.2021:

1) SCN dated 25.09.2020: Demand of Rs.1,91,35,261/- raised on the basis of non-reversal of credit as per Rule 6(3) of CCR,2004 and penalty of Rs. 47,200/- on late filing of ST returns for the period up to June 2017.

2) SCN dated 16.12.2020: Demand of Rs.2,01,05,257/- raised on the basis of non-reversal of ITC as per Rule 42 of CGST Rules 2017, Rs. 1,60,40,493/- for wrong availment of Tran-1credit, Rs. 1,19,329 for wrongly availed ITC against the exempted services, Rs. 25,679/- for excess ITC claimed, Rs. 2,29,754/- for interstate supplies, Rs. 31,01,544/- for not showing the actual taxable supply in month of Feb-2019.

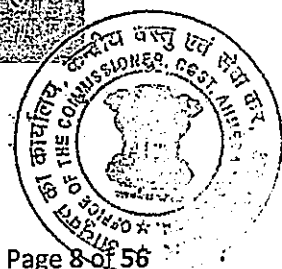
6. Statements of Shri Sandeep K Andani (RUD-5), key employee of the Noticee:

6.1 A search dated 06.03.2018 was conducted by Income Tax Department, Ahmedabad at the residential premises of Shri Sandip K Andani, who is a key employee of the Noticee. During the search various incriminating documents such as loose papers/3 diaries/digital data was seized and further a statement was recorded on 06.03.2018 wherein Shri Sandip K Andani inter alia admitted the fact that he handles the cash and cash related work as per the directions of Shri Hanubhai R Sangani and Shri Rashesh V Limabsia (both key Directors of M/s SIPL) and the extract of the same is produced below for reference:

प्रश्न 9 आपको संगणी इन्फ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड के उसके नाम पर जो भी केश या चेक मिलता है वह किस व्यक्ति से मिलता है तथा आपके पास जो चेक रहता है आप वह किसे हस्तान्तर करते हैं।
 उत्तर मुझे संगणी इन्फ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड की साइट से अनिरुद्ध गुडवी तथा मनोश संगणी के पास से केश मिलता है जो मैं हनुभाई संगणी के द्वारा दिए गए निर्देश के अनुसार बताए गए व्यक्ति को केश देता हूँ और जो भी केश बचता है मैं वह हनुभाई को वापस दे देता हूँ कभी कभी मुझे राशेशभाई लिवासिया से भी मुझे उपरोक्त बताए गए निर्देश मिलते हैं जिनका मैं पालना करता हूँ कंपनी के खर्च के लिए जो पैसा देना होता है वो मैं हनुभाई के कहने के अनुसार भारत भाई कोया कंपनी की साइट ऑफिस पर खर्च के लिए देता हूँ।

प्रश्न 10 आज राज 06/03/2018 आपके घर से सच प्रोसिडिंग्स के दौरान धवल नाम की लाल रंग की डायरी मिली हुई है जिसको एमनमक्कर ए 1 नाम दिया गया है जिसको हमने इन्वेन्ट्राइज करके सीज किया है और उसमें कुल रिटन पेजज 1 से 324 हैं इसे सत्यापित कीजिए की ये सच प्रोसिडिंग्स के दौरान आपके घर से मिली है तथा इसमें लिखे हुए हेन्डराइटिंग आपकी है या नहीं बताइए। एवं उसमें लिखे टाजकेशन के बारे में बताइए तथा यह सारे टाजकेशन किस कंपनी फर्म एवं व्यक्ति के है तथा यह सारे टाजकेशन बक्स ऑफ अकाउंट में रिफ्लेक्टड है के नहीं इसके बारे में बताइए।

उत्तर जी हाँ मैं यह सत्यापित करता हूँ की यह डायरी मेरे घर से सच प्रोसिडिंग्स के दौरान मिली है तथा इसमें जो भी टाजकेशन मेरे द्वारा ही लिखे गए है तथा यह सारे टाजकेशन संगणी इन्फ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड के है इसमें से कुछ टाजकेशन संगणी इन्फ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड के बक्स ऑफ अकाउंट में रिफ्लेक्टड नहीं है तथा कुछ टाजकेशन बक्स अकाउंट में रिफ्लेक्टड है इसी डायरी के जो टाजकेशन बक्स ऑफ अकाउंट में रिफ्लेक्टड नहीं है वह केश में हुए है।



6.2 Further, a statement dated 29.09.2018 (RUD-6) of Shri Sandip K Andani was also recorded by Income Tax Department wherein at Ans.6 he has admitted the fact that Sangani Group has received unaccounted on money against the sale of units in its various projects and himself has submitted a working of on-money project wise (attached to the statement from Page No. 1 to 3). However, the working produced was rejected by the Income Tax Department, as he has represented the amount much lower than that quantified by the Income Tax Department.

6.3 Further, a statement of Shri Sandip K Andani (RUD-7) dated 09.06.2021 was recorded by the DGGI as well and he admitted the fact that M/s SIPL is engaged in taking cash from the customer as on-money and the same is never reflected in books of accounts. An extract of the same is produced below:

प्रश्न 15. कृपया टिप्पणी करें, उपरोक्त वर्णित तीन डायरीयों में दर्ज जो प्रविष्टियां मेसर्स संगानी इंफ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड के books of accounts में रिफ्लेक्टेड नहीं हैं अर्थात् कैश में किये गये ट्रांजेक्शन हैं। क्या यह कैश ट्रांजेक्शन मेसर्स संगानी इंफ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड के द्वारा "on-money" के तौर पर फ्लैट खरीदारों से प्राप्त की गई राशि है।

उत्तर 15. जी, उक्त उल्लेखित तीन डायरीयों में दर्ज जो प्रविष्टियां मेसर्स संगानी इंफ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड के books of accounts में रिफ्लेक्टेड नहीं हैं अर्थात् कैश में किये गये ट्रांजेक्शन हैं, वह मेसर्स संगानी इंफ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड के द्वारा "on-money" के तौर पर फ्लैट खरीदारों से प्राप्त की गई राशि है। जिसका स्वरूप/रेश्यो हर स्कीम में अलग अलग रहता है जिसकी जानकारी मुझे नहीं है। यह जानकारी हनुमाई और रफेसभाई को ही होती है।

7. Statement of Shri Hanubhai R Sangani (RUD-8), Director in SIPL :

Whereas, considering the above evidences, a summons dated 20.09.2021 was issued to M/s SIPL to appear for the statement and submit documents. In response, Shri Hanubhai R Sangani, Director of M/s SIPL appeared for the statement on 15.10.2021 and submitted the documents viz. flat wise ledgers in soft copy for the project developed by M/s SIPL. Accordingly, a statement of Shri Hanubhai R Sangani, Director of M/s SIPL was recorded under Section 14 of the Central Excise Act, 1994 read with Section 83 of the Finance Act, 1994 read with Section 174 and Section 70 of Central Goods and Services Act, 2017 on 15.10.2021. The statement of Shri Hanubhai R Sangani, Director of M/s SIPL was recorded in question-answer form and the relevant portion of his statement is reproduced as under:-

Q.1. Have you been explained as to why your statement is being recorded?

A.1. Yes. I have been explained that my statement is being recorded in connection with the Service Tax Inquiry being conducted against M/s Sangani Infrastructure India Pvt. Ltd. I state that I am one of the Directors of M/s Sangani Infrastructure India Pvt. Ltd. and therefore I present myself before you to tender my statement.

Q.2. Please explain the constitution and business activities of M/s SIPL?

A.2 M/s Sangani Infrastructure India Pvt. Ltd. is a Private Limited Company incorporated under the Companies Act, 1956. M/s Sangani Infrastructure India Pvt. Ltd. is into the business of real estate viz. construction of residential and commercial complexes, works contract services for Govt. and Non-Govt. Projects and buying and selling of lands. I state that M/s Sangani Infrastructure India Pvt. Ltd. is primarily engaged in providing services of construction of residential and commercial complexes.



Q.3 Please explain the roles and responsibilities looked after by you in M/s Sangani Infrastructure India Pvt. Ltd. [hereinafter referred to as 'M/s. SIPL' for the sake of brevity].

A.3 I state that I am one of the Directors in M/s SIPL. I look after matters related to land purchase, its architectural design, planning and design of schemes constructed by M/s SIPL. I further state that I also take care of the decision of finance in the company.

Q.4 Please state the names of directors of M/s SIPL and their roles in detail?

A.4 The Company has two (02) directors and their roles and responsibilities are as under:-

1. Shri Hanubhai R Sangani:- He is the managing director of the company and mainly looks after the all construction activities viz. plan passing, awarding contracts for construction, planning and design of schemes in respect of all projects developed by M/s Sangani Infrastructure India Pvt. Ltd..

2. Shri Rasheshkumar V Limbasia:- He is the managing director of the company and mainly looks after the finance activities of the company namely transactions with banks, service tax and income tax related issues. He also looks after the site management activities.

Q.5 Have you submitted the documents asked vide summons dated 04.08.2020 issued to M/s SIPL.?

A.5 Yes, we have submitted the documents in soft copy viz. list of group firms, 26AS, Service Tax Audit Report, ledger account showing month-wise advance from customer, reconciliation of calculation and payment of Service Tax from April 2014 onwards, reconciliation of calculation and payment of GST from July 2017 onwards upto March 2018, list of project details with commencement date, completion date, number of flats/shops.

Q.6 Please state, whether your company was registered with the erstwhile Service Tax Department and were you properly discharging all the Service Tax liabilities and filing ST-3 Returns regularly, or, otherwise?

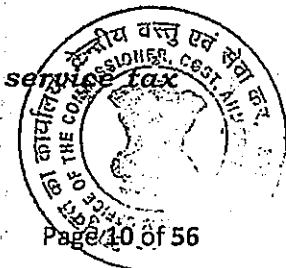
A.6 M/s SIPL was registered with the erstwhile Service Tax Department and holding valid STC No. AALCS2604QSD001. I further state that we had regularly filed the ST-3 Returns in service tax regime and further the service tax liability had been discharged by us under the erstwhile service tax regime. We have also gotten our books of accounts audited from the department for the period upto March 2016. Further, we have been given 2 Show Cause Notices dated 25.09.2020 and 16.12.2020 by DGGI, Vadodara Regional Unit and we have submitted the copy of SCNs to this office vide letter dated 10.06.2021.

1) **SCN dated 25.09.2020:** Demand of Rs.1,91,35,261/- raised on the basis of non-reversal of credit as per Rule 6(3) of CCR,2004 and penalty of Rs. 47,200/- on late filing of ST returns for the period up to June 2017.

2) **SCN dated 16.12.2020:** Demand of Rs.2,01,05,257/- raised on the basis of non-reversal of ITC as per Rule 42 of CGST Rules 2017, Rs. 1,60,40,493/- for wrong availment of Tran-1 credit, Rs. 1,19,329 for wrongly availed ITC against the exempted services, Rs. 25,679/- for excess ITC claimed, Rs. 2,29,754/- for interstate supplies, Rs. 31,01,544/- for not showing the actual taxable supply in month of Feb-2019.

Further, we have voluntarily deposited the amount of Rs.1,00,00,000/- on the date of Panchnama dated 11.10.2018.

Q.7 Please state as to whether M/s SIPL has project wise service tax registration or otherwise?



A.7 No, M/s SIPL have obtained single centralized registration bearing no. STC No. AALCS2604QSD001. We don't have separate registrations for each project. However, there are other companies as well in the Sangani Group which have separate ST registrations.

Q.8 Please peruse copy of the Assessment Orders under Section 143(3) by Jt. Commissioner, Income Tax (OSD), Central Circle-2(2), Ahmedabad for AY 2017-18 and AY 2018-19 to M/s SIPL post search proceedings in case of Sangani Group submitted by Income Tax Department Ahmedabad. In this regard, please submit the details of projects covered by Income Tax in the said assessment orders?

A.8 In this regard, I hereby peruse the aforesaid Assessment Orders for AY 2017-18 and AY 2018-19 received by M/s Sangani Infrastructure India Pvt. Ltd. from Jt. Commissioner (OSD), Income Tax, Central Circle-2(2), Ahmedabad and as a token of having seen and its authenticity I hereby put me dated signature on the first and last page of the said assessment orders.

Q.9. Please provide the details in respect of the projects developed by M/s SIPL viz. name of projects, type of project (residential/commercial/plotting), No. of Flats/Shops/Plots, date of commencement of project, BU date and location of the project?

A.9 I hereby submit the aforesaid details of all the projects as under:-

Sr. No	Name of the Project	Type of the Project	Date of Commencement of the project	Date of Completion of the project	No. of Flat s/sh ops/ plots /units	Location of the project.
1	Sangani Residency	Residential + Commercial	03.04.2013	09.11.2015	243	Narol- No- Gujarat 382 405 Narolgam, Rudra Status, Narol, National Highway 8, Aslali, Ahmedabad, Gujarat 382405
2	Sangani Skyz	Residential	18.07.2014	ongoing	240	Vasna - Bhayli Main Rd, Bhayli, Vadodara, Gujarat 390007
3	Sangani Square	Commercial	08.05.2012	16.08.2015	143	Vatva, Ahmedabad, Gujarat 382440
4	Sangani Platinum	Residential + Commercial	18.01.2012	22.08.2016	303	Vatva, Ahmedabad, Gujarat 382440
5	Sammrudhi Residency	Residential + Commercial	13.07.2011	19.10.2016	589	Vatva, Ahmedabad, Gujarat 382440
6	Dove Deck	Residential	20.12.2013	ongoing	336	Ajwa Road, Vadodara., 390019

As per the assessment order, below mentioned projects are projects which have been offered to our company through tenders.

Sr.No.	Govt. Project approved by Tender
1	Sales - Boys Hostel Animal - Navsari
2	Sales - Boys Hostel Fisheries - Navsari



3	Sales - Girls Hostel Veterinary - Navsari
4	Sales - Palitana Dharmashala
5	Sales - Polytechnic College - Pariya
6	Sales - Works Contract Receipt - Valthan Surat

Q.10 Please peruse your statement dated 06.03.2018 taken by Income Tax Department Ahmedabad?

A.10 I have perused the statement dated 06.03.2018 taken by Income Tax Department Ahmedabad and in token of having seen the same I put my dated signature on the same.

Q.11 Please peruse the statement of Shri Sandip K Andani dated 06.03.2018 taken by Income Tax Department Ahmedabad.

A.11 I have perused the statement of Shri Sandip K Andani dated 06.03.2018 taken by Income Tax Department Ahmedabad and in token of having seen the same I put my dated signature on the same.

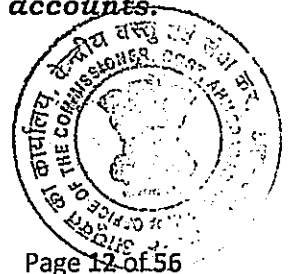
Q.12 As per the Q.No. 7 (extract of the same is produced below) of statement, taken by Income Tax Department Ahmedabad, of Shri Sandip K Andani who is a key employee of Sangani Group, Shri Sandip K Andani informs that he does the accounting work in M/s SIPL and handles the cash on the daily basis and reports the same to Shri Hanubhai Sangani and Shri Rasheshbhai Limbasia. Do you agree with the facts?

प्रश्न 7/कंपनी सांगणी इन्फास्ट्रक्चर इंडिया प्राइवेट लिमिटेडमें आपके काम के स्वरूप को विस्तार से बताइए

उत्तर सांगणी इन्फास्ट्रक्चर इंडिया प्राइवेट लिमिटेडमें मेरा प्रमुख का अकाउंटिंग का है तथा मुझे कंपनी के डायरेक्टरों हनुभाई सांगानी एवं रशेशभाई लिबाशिया को रिपोर्ट करना होता है एवं मुझे उनसे निदेश प्राप्त होते हैं इसके अलावा मेरे साथ अकाउंटिंग टीम में भरतभाई चौवटिया, अंकरभाई पडसाला एवं कृपाल भाई विराणी काम करते हैं इसके अलावा बैंकिंग बैंक का काम में देखता हूँ बैंक में केश डालना बैंक में से केश निकालना एवं लोन से संबंधित बैंक के काम देखता हूँ मैं अकाउंटिंग करके भरतभाई को एकाउंट्स दे देता हूँ और वो अकाउंट्स फाइनल करते हैं इसके अलावा कंपनी का जो डे टू डे केश आता है वह मेरे पास आता है और उसका पूरा हिसाब मैं हनुभाई सांगानी एवं रशेश भाई लिबाशिया को दे देता हूँ

A.12 Yes, I agree with the facts that Shri Sandip K Andani does the accounting work in M/s SIPL and look after the deposit and withdrawal of cash in banks and also handles the cash on the daily basis and reports the same to me (Shri Hanubhai Sangani) and Shri Rasheshbhai Limbasia.

Q.13 As per the Q.No. 10 (extract of the same is produced below) of statement of Shri Sandip K Andani wherein he admitted that the diaries withdrawn from his premises during the search, conducted by IT Department, contains the transactions which have been handwritten by him and of all the transactions many transactions are cash transaction which have not been accounted in their books of accounts. Do you agree with the facts?



प्रश्न 10 आज तारीख 06/03/2018 आपके घर से सर्व प्रोसिडिंग्स के दौरान भवन नाम की लाल रंग की डायरी मिली हुई है जिसको एमनमक्जर ए 1 नाम दिया गया है जिसको हमने इन्फ्रास्ट्रक्चर करके सीज किया है और उसमें कुल रिटर्न पेजज 1 से 324 है इसे सत्यापित कीजिए की ये सर्व प्रोसिडिंग्स के दौरान आपके घर से मिली है तथा उसमें लिखे हुए हेन्डराइटिंग आपकी है या नहीं बताइए। एवं उसमें लिखे टाजेक्शन के बारे में बताइए तथा यह सारे टाजेक्शन किस कंपनी फर्म एवं व्यक्ति के है तथा यह सारे टाजेक्शन बुक्स ऑफ अकाउंट में रिफ्लेक्ट है के नहीं इसके बारे में बताइए।

उत्तरजी हाँ मे यह सत्यापित करता हूँ की यह डायरी मेरे घर से सर्व प्रोसिडिंग्स के दौरान मिली है तथा इसमें जो भी टाजेक्शन मेरे द्वारा ही लिखे गए है तथा यह सारे टाजेक्शन संगानी इन्फ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड के है इसमें से कुछ टाजेक्शन संगानी इन्फ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड के बुक्स ऑफ अकाउंट में रिफ्लेक्ट नहीं है तथा कुछ टाजेक्शन बुक्स ऑफ अकाउंट में रिफ्लेक्ट है इसी डायरी के जो टाजेक्शन बुक्स ऑफ अकाउंट में रिफ्लेक्ट नहीं है वह कहां से हुए है

A.13 I agree with the facts that in past years in some of the units of certain schemes i.e. Samarthya Status, Samarthya Heights, Signor Residency, Sangani Platinum on-money were received for funding of land payments, however transactions stated in the diaries may not be entirely true and correct.

Q.14 As per the Q.No. 16 (extract of the same is produced below) of statement of Shri Sandip K Andani wherein he informs that the transactions which are not account for has been taken as on-money from the customers in their various projects and the ratio of on-money. Please peruse the statement of Shri Sandip K Andani recorded on 29.09.2018 by Income Tax Authorities wherein he himself had furnished working of on-money. Do you agree with the facts and explain.

प्रश्न 16 प्रश्न संख्या 10,12 एवं 14 में जो तीन डायरियों में जो टाजेक्शन संगानी इन्फ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड बुक्स ऑफ अकाउंट में रिफ्लेक्ट नहीं हुए है तो कृपया बताइए की क्या वह अमाउंट संगानी इन्फ्रास्ट्रक्चर इंडिया प्राइवेट लिमिटेड ऑन मनी के रूप में लेती है

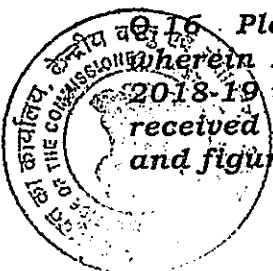
उत्तरजी हाँ जो अमाउंट बुक्स में रिफ्लेक्ट नहीं होती वह हम ऑन मनी के रूप में लेते है जिसका स्वरूप हर स्कीम में अलग अलग होता है तथा इस ऑन मनी रशिया के बारे में मुझे जानकारी नहीं है यह जानकारी हनुमाई सांगाणी और रशेश भाई लिबासिया बता सकते है

A.14 I agree with the facts that the on-money were received by Sangani Infrastructure Limited in past years in some of the units of certain schemes i.e. Samarthya Status, Samarthya Heights, Signor Residency, Sangani Platinum, in order to fund the land payments. However, facts written in the diaries need to be critically examined as everything stated therein were not true.

Q.15 Could you please explain the meaning of on-money received for funding the land payments as answered by you in Q.No. 13 & 14.

A.15 I would like to state that in real estate development industry, especially in earlier years, it was generally required to make some cash payments to landowners for purchase of land which the developer may not be in position to source at its own. In such circumstances, the developer was required to take certain amounts of price in cash from certain buyers of units in early stage, out of which pending payments towards land in cash was made.

Q.16 Please peruse the para 25(i) of assessment order for A.Y. 2017-18 wherein Rs.62,12,45,745/- and para 28(i) of assessment order for A.Y. 2018-19 wherein Rs.27,67,83,785/-, were added as unaccounted receipt, received by M/s SIPL in its various projects. Do you agree with the facts and figures?



A.16 I have perused the para 25(i) of assessment order for A.Y .2017-18 and para 28(i) of assessment order for A.Y. 2018-19 in token of having seen the same I put my dated signature on the same. We agree with the facts that some of the units of certain schemes i.e. Samarthya Status, Samarthya Heights, Signor Residency, Sangani Platinum on-money was received in initial period, in order to fund the land payments but we do not agree with the quantification of Rs.62,12,45,745/- and Rs. 27,67,83,785/-. It is to further submit that the amounts of additions made by the Income Tax Authorities were incorrect, erroneous, extrapolated and deviating from the real facts and which is also being challenged by us in the appellate authority.

Q.17 Please peruse Annexure: 1 showing the reference along with the extracts of the diaries seized (RUD-9) during the search by the Income Tax Authorities referred therein, regarding on-money received by SIPL in various schemes. Kindly explain the nature of receipts.

A.17 I have perused the Annexure: 1 along with the extracts and in token of having seen the same I put my dated signature. I do not agree with the contents of the said extracts and statements.

Further I have to state that the cash receipts shown in Annexure : 1 against scheme named as Dev Atelier were not actually received by M/s SIPL. I have to state that we have not received cash on-money from the buyers. I have to further state that the amounts received by us for the works carried out were already captured in the books of accounts and subjected to Service Tax in our ST-3 returns.

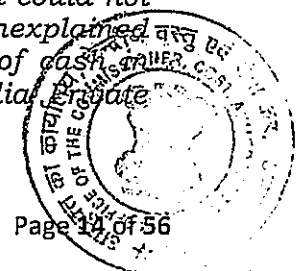
Further I have to state that the cash receipts shown in Annexure: 1 against schemes namely Sangani Platinum, Sangani Residency, Sangani Square are factually incorrect. None of the said amounts were received by SIPL in cash during the period stated therein. I have no idea as to how the said corresponding statements referred to in the said Annexure: 1 against each of the entries were drawn.

Further I have to state that the cash receipts shown in Annexure: 1 against the scheme namely Sangani Skyz were not representing the on-money regarding provision of services. I don't have exact idea as to what was the purpose and actual nature of such cash receipts if any, however I have to state that the same had no relevance of whatsoever nature with the services rendered by SIPL.

Further I have to state that the cash receipts shown in Annexure: 1 against the scheme namely Tender Co were not representing the on-money regarding provision of services. Some of the entries stated therein more particularly described as "devchandbhai" were relating to the movement of cash held by the SIPL. Some of the entries stated therein more particularly described as "palitana" were relating to movement of cash in order to meet site expenses. However, I have to state that none of the entries therein related to provision of services.

Q.18 As per the assessment order P.No. 193-195, AY 2017-18, there have been an addition of Rs.2,42,69,760/- as per Para 25(xii). Please explain the nature of income in this context.

A.18 I would like to state that one of the premises in Sangani Square project was rented out to a school for which we used to charge Rs.92000/- appx as rent per month from them and the same has been reflected in the books of accounts. Further, the amount of Rs.1,35,000/- mentioned in P.No.193-195, of assessment order, as school rent would have been received in cash and has not been reflected in books of accounts. Also for the marketing income received of Rs.2,41,700/- I state that due to some inadvertent error, the amount could not be booked in books of accounts. However, for the other income/ unexplained deposits I would like to state that the same were merely deposit of cash bank out of the cash-on-hand held by Sangani Infrastructure India



Limited. I am submitting the copy of the cash book of the company in which all the said transactions are duly covered. I therefore state that no services of whatsoever kind were provided against the said additions.

Q.19 As per the assessment order AY 2018-19, there have been an addition of Rs.2,68,51,670/- as per Para 28(xi). Please explain the nature of income in this context.

A.19 I would like to state that one of the premises in Sangani Square was rented out to a school for which we used to charge Rs.92000/- appx as rent from them and the same has been reflected in the books of accounts. Further, the amount of **Rs.3,15,000/-** mentioned in P.No.165-167, of assessment order, as school rent would have been received in cash and has not been reflected in books of accounts but for the other income/ unexplained deposits I would like to state that the same were merely deposit of cash in bank out of the cash-on-hand held by Sangani Infrastructure India Private Limited. I am submitting the copy of the cash book of the company in which all the said transactions are duly covered. I therefore state that no services of whatsoever kind were provided against the said additions.

Q.20 Do you agree with the fact that the amount added to income of M/s SIPL as on money as per the Assessment Order as described in Annexure: 1 have been received against the service provided in respect of construction of residential and commercial complexes.

A.20 I state that the certain of on-money were received in past years in some of the units of certain schemes i.e. Samarthyia Status, Samarthyia Heights, Signor Residency, Sangani Platinum, however the additions made by the Income Tax Authorities in the assessment order were not representing the actual amount of on-money received and the additions were inappropriate and disproportionate. Therefore, such additions shall not be treated as the amount received against the services provided in respect of the construction of residential and commercial complexes.

Q.21 Kindly explain whether you have paid the service tax on the additions made as on-money in the F.Y.2016-17 and F.Y. 2017-18 (upto June 2017).

A.21 No, we have not paid any service tax on such additions in the F.Y. 2016-17 and F.Y. 2017-18 (upto June 2017).

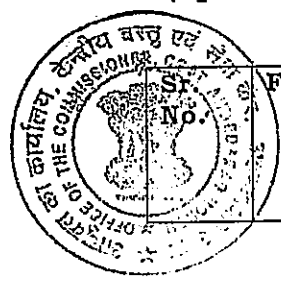
Q.22 Please inform whether the value of land is included in the sale deed of the booked unit or otherwise.

A.22 Yes, the value of land is included in the sale deed of the booked unit and we are submitting a sample deed developed by M/s SIPL during the statement.

Q.23 Please inform whether you have taken the Cenvat credit on the inputs used for providing taxable service in relation to construction of residential complex.

A.23 No, we have not taken any Cenvat credit on the inputs used and the same can be ascertained through the ST-3 returns filed by us for every applicable period.

Q.24 Do you agree to pay the applicable Service Tax on the income(s), as discussed above, received by M/s SIPL for FY 2016-17 and FY 2017-18 (upto June 2017) as per below Table:



F.Y.		On-money addition @14.5/15% as per Annexure-1		Taxable amount after Abatement/deduction as per notification		Service Tax liability	

Figures: (in Rs.)

1	April 2016- June 2017	21,56,09,082/-	7,06,93,651/-	1,05,78,563/-
Total (A)		21,56,09,082/-	7,06,93,651/-	1,05,78,563/-
Sr. No.	F.Y.	Rent Income @15%	Marketing Income @14.5%	Service Tax liability
1	2016-17	1,35,000/-	2,41,200/-	55224/- (20250+34974)
2	2017-18(UPTO June 2017)	3,15,000/-		47250/-
Total (B)		4,50,000/-	2,41,200/-	1,02,494/-
Grand Total (A+B)				1,06,81,057/-

A.24 No, we partially disagree with the quantification of the additions made and the tax liability determined therein.

8. LEGAL PROVISIONS

It would be prudent to discuss some important legal provisions relevant to the case before coming to a conclusion in the said matter. Accordingly, some are reproduced below for ready reference:

8.1 Section 65B (44) of the Finance Act, 1994 defines 'service' as any activity carried out by a person for another person for a consideration, and not falling under the categories of activities stipulated under Section 66D of the Finance Act, 1994. The term 'service' also includes declared services stipulated under the provisions of Section 66E of the Finance Act, 1994.

8.2 Section 66E of the Finance Act, 1994 reads as;

SECTION 66E. Declared services. — The following shall constitute declared services, namely:—

(a) renting of immovable property

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority. Explanation.— For the purposes of this clause,—

(i) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(ii) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right; (d) development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;

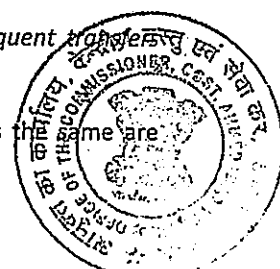
(g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;

(h) service portion in the execution of a works contract;

(i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

(j) assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfer thereof.

From the above provisions, it is clear that services provided in this case are taxable services as the same are covered under Section 66E of the Finance Act, 1994.



8.3 Clause (54) of Section 65B of the Finance Act, 1994 states that:

"(54) 'works contract' means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;"

8.4 Section 67 of the Finance Act, 1994 lays down the provisions for valuation of any taxable services and the same is as given below:

SECTION 67. Valuation of taxable services for charging Service Tax. —

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

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

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

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

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

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

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

Explanation. — For the purposes of this section, —

(a) "consideration" includes —

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

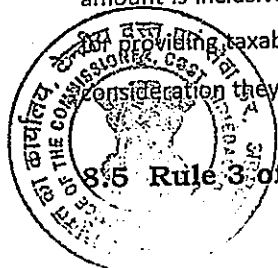
(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

*(b) [* * * *]*

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

The provisions under Section 67(2) provide for extension of benefit of treating a value as "cum-duty" value only in cases where it is specifically established that the amount charged is "inclusive of Service Tax payable". In the instant case, the amount has been collected in cash and no such evidence exists on record that this unaccounted amount is inclusive of Service Tax payable. Therefore, the consideration received by the noticee from their clients for providing taxable services cannot be treated as "cum-duty" value and the same is required to be added to the consideration they received through cheque to arrive at the actual taxable value.

8.5 Rule 3 of The Point of Taxation Rules, 2011 reads as



"3. Determination of point of taxation.-For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-

(a) the time when the invoice for the service provided or agreed to be provided is issued: Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Provided that for the purposes of clauses (a) and (b),-

(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service; of service;

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

Thus, Rule 6 of the Service Tax Rules, 1994, provides for payment of tax on the prescribed date immediately following the calendar month in which the service is deemed to be provided "as per the rules framed in this regard" or payment is received for the provision of service. Further, the relevant rules framed on the issue are the Point of Taxation Rules, 2011. Rule 3 of the Point of Taxation Rules, 2011 provides that in case where invoices are not issued within the specified time period prescribed under Rule 4A of the Service Tax Rules, 1994, then point of taxation shall be the date of completion of provision of service or any payment received in full or part for the provision of service whichever is earlier. In the instant case it is undisputed that the Noticee has not issued any invoice for the consideration received in cash, as the consideration itself was suppressed. Therefore, in terms of Rule 3 of Point of Taxations Rules, 2011 the point of taxation shall be the date of completion of provision of service or payment received in cash whichever is earlier. Accordingly, the amount of advances received in cash from the prospective buyers for the provision of construction of commercial complex service shall be taxable and the point of taxation shall be determined in terms of Rule 3 of Point of Taxation Rules, 2011.

8.6 Section 68 of the Finance Act, 1994 stipulates that every person providing taxable service to any person shall pay Service Tax at the specified rate within prescribed period.

8.7 Section 70 of the Finance Act 1994 read with Rule 7 of the Service Tax Rules, 1994 specify that every person liable to pay the Service Tax should himself assess the tax due on the services provided by him and file correct and proper prescribed returns.

9. Relevant provisions under 'The Central Goods and Service Tax Act, 2017:

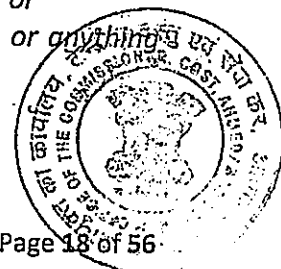
Repeal and Saving (Section 174 of the CGST Act, 2017)

(1) -----

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994(32 of 1994) (hereafter referred to as 'such amendment' or 'amended Act', as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered there under; or



(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

PROVIDED that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

Miscellaneous Transitional Provisions

Section 142 (8) (a): where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

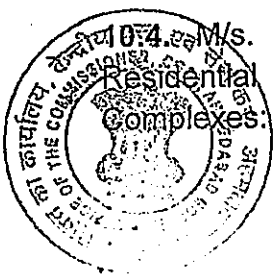
10. OUTCOME OF INVESTIGATIONS:

10.1 In view of the discussions in the foregoing paras and the evidences brought on record and the statements dated 20.10.2021 given by Shri Hanubhai R Sangani, Director in M/s SIPL during the course of investigation and various details/records resumed/submitted by M/s SIPL it appeared that:

10.2 M/s SIPL have provided 'Construction of Residential Complexes' and 'Construction of Commercial Complexes' and 'Works Contract Services' to various buyers. The above services provided by M/s SIPL are taxable services under the provisions of Section 65B (51) of Finance Act, 1994 and the definition of 'service' as enunciated in Section 65B (44) of the Act ibid (w.e.f. 01.07.2012) read with Section 66E (b) and (h) of the Finance Act, 1994.

10.3 M/s SIPL had obtained Service Tax Registration (ST-2) bearing No. AALCS2604QSD001 under the categories of "Construction of Residential Complex Services" & "Commercial or Industrial Construction services" from Service Tax Commissionerate, Ahmedabad;

10.4 M/s SIPL, being a builder/developer, has constructed following scheme of Residential Complexes, commercial complexes and Residential cum Commercial



Sr.No.	Type of Project	Name of scheme/project
1	Residential	Sangani Skyz
2		Dove Deck
3	Commercial	SANGANI SQUARE
4	Residential cum commercial	SANGANI PLATINUM
5		SANGANI RESIDENCY
6		SAMRUDDHI RESIDENCY

M/s SIPL, as a builder/ developer, had also collected amounts in cash over and above the transactions shown in their books of accounts for the above projects.

10.5 The Income Tax Department has made the additions in income of M/s SIPL for A.Y. 2017-18 and A.Y. 2018-19 as per below Table:

TABLE-A

(Figures : in Rs.)

Name of project	Addition of income in corresponding Assessment Years (A.Y) on account of cash receipts from their prospective buyers		
	A.Y 2017-18	A.Y 2018-19	Total
Sangani Residency	1248800	11545179	12793979
Sangani Skyz	3095772	63526458	66622230
Sangani Square	5028300	25656000	30684300
Samrudhi Residency	17266300	23051465	40317765
Sangani Platinum	12198395	10787434	22985829
Dove Deck	426659817	1585000	428244817
Dev Alteria	122339101	89582250	211921351
Sales -Works Contract Receipt -Valthan Surat	33409260	51050000	84459260
Total	62,12,45,745	27,67,83,786	89,80,29,531

10.6 Further, it is to be mentioned that out of various units constructed in different schemes by M/s SIPL on which on-money has been received, some of them has been booked and sold after the issuance of Completion Certificate/ BU permission by the competent authority.

10.7 Under the negative list regime of Service Tax, certain services have been made chargeable of Service Tax as "Declared Services" by virtue of Section 66E of Finance Act, 1994 and one such declared service is construction service and relevant text of statute read as under:

"SECTION 66E. Declared services. — The following shall constitute declared services, namely: —

(a)

(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation. — For the purposes of this clause, —

(i).....

(ii)...."



Further, where construction was completed and the "Completion Certificate" was obtained, it turns out to be an immovable property. When such property is sold & transferred after the completion certificate is obtained, it is deemed to be sale of immovable property, which was specifically excluded from the definition of Service in terms of Section 65(B)(44) of the Finance Act, 1994, the relevant text of which is as under:

"(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"

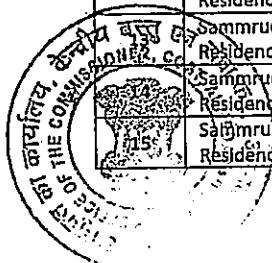
10.8 A conjoint reading of above-mentioned provisions makes it explicitly clear that the activity of construction attracts Service Tax, if a part or whole of the consideration towards such construction is received prior to Completion Certificate/Building Use Permission. The activity of construction, in which entire consideration was received after Building Use Permission Certificate (BUC), had been kept out of the declared services. In the present case, M/s SIPL have already received the BUC for its various projects as mentioned above, therefore, the consideration received towards such constructions does not fall under the purview of Service Tax.

10.9 Further, Income Tax Department in its assessment order has clearly stated the on-money taken by M/s SIPL unit-wise in each scheme. A detailed analysis of each unit was done as whether that particular unit is booked before BU or after BU and whether Service Tax is applicable or otherwise.

Period : April 2016- March 2017

(Figures: in Rs.)

F.Y.2016-17 (units not liable to Service Tax as per Section 65(B)(44) of the Finance Act, 1994 as the below units are booked after BU permission)								
Sr.No.	Scheme Name	Unit No	Date of sales as per Regular Books of Accounts	First Booking Date	BU Date	Amount of Revenue as per Regular Books of Accounts	Total Revenue on actual basis	Total Unaccounted Revenue
1	Sangani Residency	A-502	27-Apr-16	30-Mar-16	9-Nov-15	895000	930000	35000
2	Sangani Residency	B-506	5-Feb-16	28-Mar-16	9-Nov-15	897060	932060	35000
3	Sangani Residency	C-412	18-Jul-16	27-Jun-16	9-Nov-15	570000	595000	25000
4	Sangani Residency	C-504	8-Dec-16	4-May-16	9-Nov-15	627993	652993	25000
5	Sangani Residency	C-508	21-Jun-16	30-May-16	9-Nov-15	622500	647500	25000
6	Sangani Residency	D-202	29-Sep-16	6-Apr-16	9-Nov-15	769500	804500	35000
7	Sangani Residency	D-403	25-Oct-16	21-Oct-16	9-Nov-15	855000	890000	35000
8	Sangani Residency	D-407	12-Jan-16	17-Oct-16	9-Nov-15	754000	789000	35000
9	Sangani Residency	E-305	7-Aug-16	6-Jul-16	9-Nov-15	891000	926000	35000
10	Sangani Residency	E-306	18-Jul-16	25-Apr-16	9-Nov-15	911000	946000	35000
11	Sammrudhi Residency	J-204	5-Nov-16	12-Apr-16	7-Oct-14	1579500	2749500	1170000
12	Sammrudhi Residency	A-403	27-Jan-17	31-Dec-16	7-Oct-14	1590200	2172000	581800
	Sammrudhi Residency	B-302	26-Dec-16	18-Oct-16	7-Oct-14	1579500	2172000	592500
	Sammrudhi Residency	B-401	6-Sep-16	6-May-16	7-Oct-14	1582000	2172000	590000
	Sammrudhi Residency	B-402	25-Jan-17	9-Dec-16	7-Oct-14	1653000	2172000	519000



16	Sammrudhi Residency	B-503	26-Aug-16	16-Jul-16	7-Oct-14	1613800	2172000	558200
17	Sammrudhi Residency	E-504	12-May-16	13-Sep-16	15-Apr-13	1087500	1406000	318500
18	Sammrudhi Residency	F-503	8-Feb-16	31-May-16	15-Apr-13	1030500	1388000	357500
19	Sammrudhi Residency	G-501	20-Sep-16	4-Aug-16	29-Jun-13	1103900	1388000	284100
20	Sammrudhi Residency	H-306	10-May-16	12-Sep-16	29-Jun-13	999000	1388000	389000
21	Sammrudhi Residency	H-504	23-Sep-16	9-Aug-16	29-Jun-13	1057000	1406000	349000
22	Sammrudhi Residency	J-101	7-Jul-16	1-Jun-16	7-Oct-14	1654000	2172000	518000
23	Sammrudhi Residency	K-102	10-May-16	23-Aug-16	2-Dec-14	1557200	2090000	532800
24	Sammrudhi Residency	K-104	22-Feb-17	3-Feb-17	2-Dec-14	1259700	1478000	218300
25	Sammrudhi Residency	K-202	29-Sep-16	3-Sep-16	2-Dec-14	1525500	2090000	564500
26	Sammrudhi Residency	K-506	4-Apr-16	8-Mar-16	2-Dec-14	1127500	1478000	350500
27	Sammrudhi Residency	K-509	20-Sep-16	11-Jun-16	2-Dec-14	1899500	2414000	514500
28	Sammrudhi Residency	L-103	17-Mar-17	24-Jan-17	2-Dec-14	1939600	2172000	232400
29	Sammrudhi Residency	M-202	17-Jun-16	10-Mar-16	2-Dec-14	1640800	2172000	531200
30	Sammrudhi Residency	M-302	10-Apr-16	17-Aug-16	2-Dec-14	1609100	2172000	562900
31	Sammrudhi Residency	M-303	12-Jul-16	19-Oct-16	2-Dec-14	1623300	2172000	548700
32	Sammrudhi Residency	M-402	17-Mar-17	27-Feb-17	2-Dec-14	1590200	2172000	581800
33	Sammrudhi Residency	P-506	10-Apr-16	9-Aug-16	7-Oct-14	1052000	1316000	264000
34	Sammrudhi Residency	Q-106	27-Jan-17	26-Dec-16	7-Oct-14	963000	1316000	353000
35	Sammrudhi Residency	S-403	4-Jul-16	9-Mar-16	7-Oct-14	1033100	1316000	282900
36	Sammrudhi Residency	S-503	22-Mar-17	6-Mar-17	7-Oct-14	986000	1316000	330000
37	Sammrudhi Residency	S-506	22-Mar-17	24-Feb-17	7-Oct-14	986800	1316000	329200
38	Sangani Platinum	B-301	23-Sep-16	7-Mar-16	3-Jun-14	1580500	1706623	126123
39	Sangani Platinum	B-504	29-Jun-16	26-May-16	3-Jun-14	1550000	1698300	148300
40	Sangani Platinum	C-201	16-Sep-16	16-Jul-16	3-Jun-14	1613309	1740908	127599
41	Sangani Platinum	C-403	25-Jul-16	11-Feb-15	3-Jun-14	1539200	1594200	55000
42	Sangani Platinum	C-502	26-May-16	11-Dec-16	3-Jun-14	1665000	1720000	55000
43	Sangani Platinum	E-501	22-Apr-16	11-Dec-15	7-Aug-15	1251000	1698300	447300
44	Sangani Platinum	I-403	19-Nov-16	5-Oct-17	22-Aug-16	1449000	1606500	157500
45	Sangani Platinum	I-303	8-Nov-16	14-Sep-16	22-Aug-16	1522500	1606500	84000
46	Sangani Platinum	K-106	25-Jan-17	16-Oct-16	11-Feb-16	1421000	1671765	250765
47	Sangani Platinum	K- -2	22-Apr-16	19-Apr-16	11-Feb-16	1066656	1254889	188233
48	Sangani Platinum	K-G-1	22-Apr-16	19-Apr-16	11-Feb-16	999990	1176459	176469
49	Sangani Platinum	K-G-3	22-Apr-16	19-Apr-16	11-Feb-16	999990	1176459	176469
50	Sangani Platinum	J-206	22-Feb-17	12-Dec-16	11-Feb-16	1186500	1395882	209382
TOTAL						6,29,60,898	7,79,07,338	1,49,46,440

In view of the above Table, on-money of Rs.1,49,46,440/- for the period April 2016-March 2017 has been received against those units which do not fall under the purview of service tax as per Section 65(B)(44) of the Finance Act, 1994.



Period: April 2017- June 2017

figures: (in Rs.)

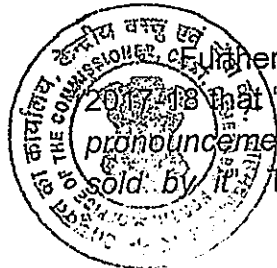
Units not liable to Service Tax as per Section 66E(b) of Finance Act,1994 as the below units are booked after BU permission

Sr.No.	Scheme Name	Unit No	Date of sales as per Regular Books of Accounts	First Booking Date	BU-Completion Certificate Date	Amount of Revenue as per Regular Books of Accounts	Total Revenue on actual basis	Total Unaccounted Revenue
1	Sangani Residency	D-402	29-May-17	19-Nov-16	9-Nov-15	769500	804500	35000
2	Sangani Residency	E-511	7-Jun-17	20-May-17	9-Nov-15	715000	748691	33691
3	Sammrudhi Residency	C-101	27-Jun-17	22-May-17	5-Nov-12	1475000	2176000	701000
4	Sammrudhi Residency	G-201	20-Jun-17	28-Mar-17	29-Jun-13	999000	1388000	389000
5	Sammrudhi Residency	I-402	23-May-17	13-Apr-17	7-Oct-14	1543000	2172000	629000
6	Sammrudhi Residency	J-403	12-Jun-17	15-Oct-17	7-Oct-14	1645900	2172000	526100
7	Sammrudhi Residency	K-302	5-Apr-17	4-Apr-17	2-Dec-14	1472200	2090000	617800
8	Sammrudhi Residency	K-508	4-Apr-17	3-Mar-17	2-Dec-14	1873500	2522000	648500
9	Sammrudhi Residency	L-104	12-Jun-17	16-Nov-17	2-Dec-14	1704500	2172000	467500
10	Sammrudhi Residency	L-304	9-Mar-17	3-Sep-17	2-Dec-14	1608750	2172000	563250
11	Sammrudhi Residency	L-501	10-Jun-17	7-Sep-17	2-Dec-14	1645900	2172000	526100
12	Sammrudhi Residency	L-504	11-Jun-17	5-Oct-17	2-Dec-14	1638000	2172000	534000
13	Sammrudhi Residency	M-403	18-May-17	16-Mar-17	2-Dec-14	1590200	2172000	581800
14	Sammrudhi Residency	M-502	19-Jun-17	1-May-17	2-Dec-14	1600500	2172000	571500
15	Sammrudhi Residency	M-504	5-May-17	5-May-17	2-Dec-14	1591500	2172000	580500
16	Sammrudhi Residency	Q-306	27-Jun-17	1-May-17	7-Oct-14	1033100	1316000	282900
17	Sammrudhi Residency	T-405	12-Jun-17	21-Nov-17	7-Oct-14	985800	1358647	372847
18	Sangani Platinum	A-404	10-Mar-17	21-Sep-17	3-Jun-14	1576200	1698300	122100
19	Sangani Platinum	A-504	9-Apr-17	6-Aug-17	3-Jun-14	1443000	1698300	255300
20	Sangani Platinum	D-403	10-Mar-17	4-Sep-17	3-Jun-14	1466400	1591200	124800
21	Sangani Platinum	H-404	20-Jun-17	6-Apr-17	22-Aug-16	1469000	1728900	259900
22	Sangani Platinum	I-404	10-Jun-17	27-May-17	22-Aug-16	1457813	1728900	271087
23	Sangani Platinum	Shop-8	7-Jun-17	5-Feb-18	11-Feb-16	535000	1401500	866500
24	Sangani Platinum	D-404	29-Apr-17	6-Apr-17	3-Jun-14	1700000	2000000	300000
Total						3,35,38,763	4,37,98,938	1,02,60,175

In view of the above Table, on-money of Rs.1,02,60,175/- for the period April 2016-March 2017 has been received against those units which do not fall under the purview of service tax as per Section 65(B)(44) of the Finance Act, 1994.

Therefore, the total on-money of Rs. 2,52,06,615/- (Rs.1,49,46,440/- +Rs.1,02,60,175/-) has been received, during the period April 2016- June 2017, against those units which do not fall under the purview of Service Tax as per Section 65(B)(44) of the Finance Act, 1994.

10.10 Further, on the verification of the seized documents/data/loose diaries as provided by the Income Tax Department, it appeared that the Income Tax Department has followed the approximation/extrapolation approach while computing the on-money in various projects, majorly in Dove Deck project.



Further, it has been mentioned in the Para 7.12.3 of the assessment order A.Y. 2017-18 that "considering the concept of human probabilities as held by several judicial pronouncements, the assessee is held to have received On-money against all the units sold by it". Therefore, it appeared that Income Tax Department has followed the

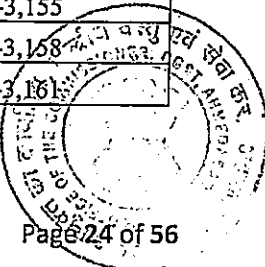
approach of approximation in this case. Extract of the relevant part of assessment order is produced below:

7.12.3 Further, considering the concept of human probabilities as held by several judicial pronouncements, the assessee is held to have received On-money against all the units sold by it. Reliance is also placed on judicial pronouncement of Hon'ble Apex Court in the case of **Commissioner of Income Tax, West Vs. Durga Prasad More 82 ITR 540** in which it is observed the often quoted following relevant observation: "It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents. " That genuineness could validly be tested on the ground or principle of preponderance of human probabilities, which could thus form a valid ground or parameter for determining the genuineness, stands since settled by the apex court in **Sumati Dayal v. CIT (1995) 214 ITR 801(SC)** wherein the apex court, in declaring the transaction as non-genuine, discarded a host of documentary evidences filed or relied upon by the assessee-appellant.

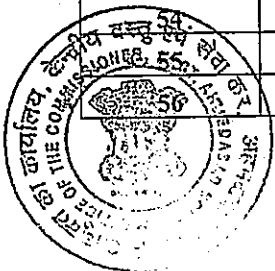
However, there exists no such provision under Service Tax, Finance Act 1994 that on-money be computed on the basis of extrapolation/ human probabilities and thus based on the evidences of seized data provided by the Income Tax Department till date, the on-money component received by M/s SIPL during the period April 2016-June 2017 amounts to Rs. 21,56,09,082/- as per below Table:

(figures: in Rs.)

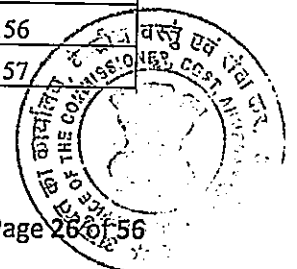
On-money component received by M/s SIPL during April 2016- June 2017			
Sr.No.	Scheme Name	Amount Found as Seized Data	Reference Party, Annexure, Page No.
1	Dev Alteria	1,349,000	A-5,A-3,146
2	Dev Alteria	1,000,000	A-5,A-3,151
3	Dev Alteria	1,100,000	A-5,A-3,155
4	Dev Alteria	2,500,000	A-5,A-3,158
5	Dev Alteria	1,773,000	A-5,A-3,161



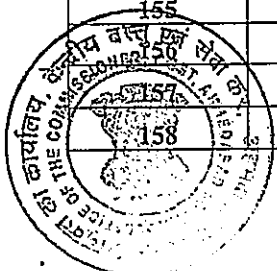
6	Dev Alteria	400,000	A-5,A-3,164
7	Dev Alteria	500,000	A-5,A-3,166
8	Dev Alteria	500,000	A-5,A-3,170
9	Dev Alteria	150,000	A-5,A-3,174
10	Dev Alteria	3,250,000	A-5,A-3,174
11	Dev Alteria	500,000	A-5,A-3,175
12	Dev Alteria	1,700,000	A-5,A-3,176
13	Dev Alteria	600,000	A-5,A-3,179
14	Dev Alteria	40,000	A-5,A-3,179
15	Dev Alteria	650,000	A-5,A-3,182
16	Dev Alteria	125,000	A-5,A-3,189
17	Dev Alteria	600,000	A-5,A-3,191
18	Dev Alteria	300,000	A-5,A-3,191
19	Dev Alteria	980,000	A-5,A-3,191
20	Dev Alteria	651,000	A-5,A-3,196
21	Dev Alteria	1,371,000	A-5,A-3,200
22	Dev Alteria	950,000	A-5,A-3,202
23	Dev Alteria	200,000	A-5,A-3,212
24	Dev Alteria	1,378,000	A-5,A-3,213
25	Dev Alteria	670,000	A-5,A-3,219
26	Dev Alteria	2,000,000	A-5,A-3,222
27	Dev Alteria	2,125,000	A-5,A-3,231
28	Dev Alteria	1,100,000	A-5,A-3,231
29	Dev Alteria	500,000	A-5,A-3,233
30	Dev Alteria	200,000	A-5,A-3,235
31	Dev Alteria	2,410,000	A-5,A-3,236
32	Dev Alteria	400,000	A-5,A-3,237
33	Dev Alteria	300,000	A-5,A-3,241
34	Dev Alteria	100,000	A-5,A-3,244
35	Dev Alteria	500,000	A-5,A-3,245
36	Dev Alteria	800,000	A-5,A-3,249
37	Dev Alteria	800,000	A-5,A-3,251
38	Dev Alteria	3,400,000	A-5,A-3,256
39	Dev Alteria	134,000	A-5,A-3,257
40	Dev Alteria	500,000	A-5,A-3,259
41	Dev Alteria	3,312,000	A-5,A-3,263
42	Dev Alteria	101,101	A-5,A-3,266
43	Dev Alteria	1,000,000	A-5,A-3,267
44	Dev Alteria	600,000	A-5,A-3,268
45	Dev Alteria	200,000	A-5,A-3,273
46	Dev Alteria	2,500,000	A-5,A-3,273
47	Dev Alteria	500,000	A-5,A-3,274
48	Dev Alteria	773,000	A-5,A-3,274
49	Dev Alteria	3,112,000	A-5,A-3,277
50	Dev Alteria	1,600,000	A-5,A-3,279
51	Dev Alteria	225,000	A-5,A-3,287
52	Dev Alteria	380,000	A-5,A-3,292
53	Dev Alteria	2,200,000	A-5,A-3,292
	Dev Alteria	1,000,000	A-5,A-3,296
	Dev Alteria	450,000	A-5,A-3,296
	Dev Alteria	5,300,000	A-5,A-3,297



57	Dev Alteria	1,265,000	A-5,A-3,297
58	Dev Alteria	300,000	A-5,A-3,301
59	Dev Alteria	200,000	A-5,A-3,303
60	Dev Alteria	1,500,000	A-5,A-3,310
61	Dev Alteria	400,000	A-5,A-3,311
62	Dev Alteria	1,714,000	A-5,A-3,322
63	Dev Alteria	200,000	A-5,A-3,318
64	Dev Alteria	50,000	A-5,A-3,319
65	Dev Alteria	1,080,000	A-5,A-3,319
66	Dev Alteria	900,000	A-5,A-3,340
67	Dev Alteria	520,000	A-5,A-3,341
68	Dev Alteria	665,000	A-5,A-3,342
69	Dev Alteria	200,000	A-5,A-3,346
70	Dev Alteria	200,000	A-5,A-3,346
71	Dev Alteria	700,000	A-5,A-1,9
72	Dev Alteria	400,000	A-5,A-1,9
73	Dev Alteria	2,100,000	A-5,A-1,10
74	Dev Alteria	1,000,000	A-5,A-1,11
75	Dev Alteria	913,000	A-5,A-1,11
76	Dev Alteria	2,500,000	A-5,A-1,11
77	Dev Alteria	700,000	A-5,A-1,13
78	Dev Alteria	45,000	A-5,A-1,14
79	Dev Alteria	550,000	A-5,A-1,14
80	Dev Alteria	1,118,000	A-5,A-1,16
81	Dev Alteria	200,000	A-5,A-1,21
82	Dev Alteria	1,000,000	A-5,A-1,22
83	Dev Alteria	1,500,000	A-5,A-1,27
84	Dev Alteria	3,500,000	A-5,A-1,29
85	Dev Alteria	293,000	A-5,A-1,40
86	Dev Alteria	300,000	A-5,A-1,67
87	Dev Alteria	2,000,000	A-5,A-1,67
88	Dev Alteria	1,000,000	A-5,A-1,71
89	Dev Alteria	1,100,000	A-5,A-1,72
90	Dev Alteria	364,000	A-5,A-1,74
91	Dev Alteria	300,000	A-5,A-1,96
92	Dev Alteria	200,000	A-5,A-1,100
93	Dev Alteria	517,500	A-5,A-1,107
94	Dev Alteria	500,000	A-5,A-1,109
95	Dev Alteria	400,000	A-5,A-1,113
96	Dev Alteria	250,000	A-5,A-1,115
97	Dev Alteria	200,000	A-5,A-1,120
98	Dev Alteria	700,000	A-5,A-1,125
99	Dev Alteria	200,000	A-5,A-1,125
100	Dev Alteria	400,000	A-5,A-1,128
101	Dev Alteria	100,000	A-5,A-1,139
102	Dev Alteria	500,000	A-5,A-1,140
103	Dev Alteria	79,000	A-5,A-1,158
104	Dev Alteria	200,000	A-5,A-1,148
105	Dev Alteria	200,000	A-5,A-1,150
106	Dev Alteria	800,000	A-5,A-1,156
107	Dev Alteria	17,000,000	A-5,A-1,157



108	Dev Alteria	5,000,000	A-5,A-1,174
109	Dev Alteria	2,500,000	A-5,A-1,163
110	Dev Alteria	300,000	A-5,A-1,168
111	Dev Alteria	500,000	A-5,A-1,174
112	Dev Alteria	300,000	A-5,A-1,174
113	Dev Alteria	300,000	A-5,A-1,182
114	Dev Alteria	400,000	A-5,A-1,186
115	Dev Alteria	250,000	A-5,A-1,188
116	Dev Alteria	700,000	A-5,A-1,212
117	Dev Alteria	300,000	A-5,A-1,216
118	Dev Alteria	40,000	A-5,A-1,218
119	Dev Alteria	2,098,000	A-5,A-1,218
120	Dove Deck	400,000	A-5 A-1, 22
121	Dove Deck	1,425,600	A-5, A-2, 209
122	Dove Deck		A-5, A-2, 209
123	Dove Deck	598,800	A-5, A-2, 165
124	Dove Deck	699,600	A-5, A-2, 169, A-5 A-1, 22
125	Dove Deck	1,000,000	A-5 A-1, 22
126	Dove Deck	150,000	A-5, A-2, 179
127	Sangani Platinum	55,000	A-29, A-3 , 120-125
128	Sangani Platinum	55,000	
129	Sangani Platinum	95,000	
130	Sangani Platinum	55,000	
131	Sangani Platinum	55,000	
132	Sangani Platinum	102,350	
133	Sangani Platinum	55,000	
134	Sangani Platinum	55,000	
135	Sangani Platinum	80,000	
136	Sangani Platinum	55,000	
137	Sangani Platinum	189,000	
138	Sangani Platinum	55,000	
139	Sangani Platinum	303,600	
140	Sangani Platinum	55,000	
141	Sangani Platinum	55,000	
142	Sangani Platinum	55,000	
143	Sangani Platinum	55,000	
144	Sangani Platinum	100,000	
145	Sangani Platinum	1,540,000	
146	Sangani Platinum	1,069,200	
147	Sangani Platinum	670,000	
148	Sangani Platinum	618,420	
149	Sangani Platinum	789,440	
150	Sangani Platinum	55,000	
151	Sangani Platinum	55,000	
152	Sangani Platinum	74,900	
153	Sangani Platinum	55,000	
154	Sangani Platinum	202,261	
155	Sangani Residency	35,000	A-29, A-3 , 115-120
	Sangani Residency	39,100	
	Sangani Residency	35,000	
	Sangani Residency	729,800	




159	Sangani Skyz	400,000	A-5, A-3,325
160	Sangani Skyz	620,000	A-5, A-3,133
161	Sangani Skyz	700,000	A-5, A-3,135
162	Sangani Skyz	300,000	A-5, A-1,109
163	Sangani Skyz	579,150	A-5, A-3,146
164	Sangani Skyz	100,000	A-5, A-3,194
165	Sangani Skyz	238,000	A-5, A-3,180
166	Sangani Skyz	800,000	A-5, A-1,22
167	Sangani Skyz	50,000	A-5, A-3,179
168	Sangani Skyz	260,000	A-5, A-3,240
169	Sangani Skyz	600,000	A-5, A-3,284
170	Sangani Skyz	2,000,000	A-5, A-3,308
171	Sangani Skyz	100,000	A-5, A-3,318
172	Sangani Skyz	300,000	A-5, A-3,321
173	Sangani Skyz	500,000	A-5, A-3,327
174	Sangani Skyz	1,500,000	A-5, A-1,22
175	Sangani Skyz	147,000	A-5, A-1,32
176	Sangani Skyz	100,000	A-5, A-1,70
177	Sangani Skyz	1,653,000	AS-7, A-2, 93
178	Sangani Skyz	701,000	A-5, A-1,185
179	Sangani Sqaure	837,000	A-29, A-3, 114-115
180	Sangani Sqaure	762,000	
181	Sangani Sqaure	685,000	
182	Sangani Sqaure	1,155,000	
183	Sangani Sqaure	65,000	
184	Sangani Sqaure	95,000	
185	Sangani Square	1,010,000	A-29, A-3, 126
186	Tender Co	350,000	A-5, A-3,180
187	Tender Co	289,500	A-5, A-3,182
188	Tender Co	9,500	A-5, A-3,191
189	Tender Co	1,000,000	A-5, A-3,209
190	Tender Co	8,500,000	A-5, A-3,213
191	Tender Co	1,700,000	A-5, A-3,218
192	Tender Co	12,000	A-5, A-3,220
193	Tender Co	6,225	A-5, A-3,234
194	Tender Co	550,000	A-5, A-3,247
195	Tender Co	1,000,000	A-5, A-3,246
196	Tender Co	1,200	A-5, A-3,250
197	Tender Co	1,325,000	A-5, A-3,283
198	Tender Co	15,835	A-5, A-3,341
199	Tender Co	2,000,000	A-5, A-1,19
200	Tender Co	8,600,000	A-5, A-1,22
201	Tender Co	3,000,000	A-5, A-1,32
202	Tender Co	2,000,000	A-5, A-1,33
203	Tender Co	2,000,000	A-5, A-1,47
204	Tender Co	2,500,000	A-5, A-1,162
205	Tender Co	10,000,000	A-5, A-1,164
206	Tender Co	3,000,000	A-5, A-1,168
207	Tender Co	7,000,000	A-5, A-1,191
208	Tender Co	2,000,000	A-5, A-1,209
209	Tender Co	2,000,000	A-5, A-1,211

210	Tender Co	1,250,000	A-5, A-1,212
	Total	21,56,09,082	

10.11 Further, Shri Hanubhai R Sangani, Director in M/s SIPL in his statement dated 15.10.2021 stated that M/s SIPL has not received on-money in the project Dev Atelier. However, as per the evidences collected from the various premises of M/s SIPL, it appeared that M/s SIPL has received the cash as well as cheque considerations from member/customer against the sale of units. Further, there have been many incriminating documents found which reveals that M/s SIPL is separately maintaining the data of the consideration received in cash from the members/customers towards the sale of units.

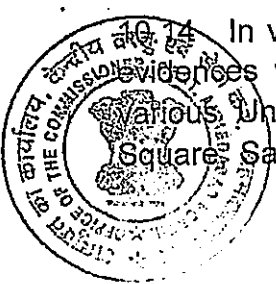
10.12 Further, Shri Hanubhai Sangani, Director of M/s SIPL, in his statement dated 15.10.2021 has stated that M/s SIPL has not received the on-money as Annexure: 1, (RUD-) shown to him during the statement, against the scheme namely Sangani Skyz, were not representing the on-money regarding provision of services. However, the contention provided by the Noticee appeared to be baseless as the seized document clearly depicts the cash payment as on 31.03.2017 which has been received from the customers against the sale/booking of the units developed by M/s SIPL and hence the same amount attracts the Service tax as service provided by the Noticee falls under the category "construction of residential complex and commercial complex". An extract of the same is produced below for reference:



Sl. No.	Total Cost	Cheque Payment	Cash Payment
1	2447268	1380000.00	1067268.00
2	2374742	1250000.00	1124742.00
3	2935620	1500000.00	1435620.00
4	2766000	1300000.00	1466000.00
5	2753000	1395000.00	1358000.00
6	2569250	1284000.00	1285250.00
7	2569250	1282000.00	1287250.00
8	3472700	1640000.00	1832700.00
9	1741000	956000.00	785000.00
10	1536685	784000.00	752685.00
11	1649000	861000.00	788000.00
12	2375000	1200000.00	1175000.00
13	1870700	1000000.00	870700.00

10.13 Further, Shri Hanubhai Sangani, Director of M/s SIPL in his statement dated 15.10.2021 stated that the cash receipts shown in Annexure: 1 against the scheme namely Tender Co were not representing the on-money regarding provision of services. Some of the entries stated therein more particularly described as "devchandbhai" were relating to the movement of cash held by the SIPL. Some of the entries stated therein more particularly described as "palitana" were relating to movement of cash in order to meet site expenses and are not related to provision of services.

As per the seized document cash book, all the mentioned entries in annexure -1 is of receipt in nature as per cash book (seized by Income Tax Department during the search) which does not require any explanation to the fact that the amount has been received by M/s SIPL against the services provided and the same amount has never been reflected in books of accounts and subsequently, no service tax has been paid.



In view of the elaborated discussions made in preceding paras, circumstantial evidences which were corroborating with books of the assessee, related to sale of various units in the projects, namely Sangani Residency, Sangani Skyz, Sangani Square, Sangani Platinum, Dove Deck, Dev Alteria Tender and Contract Receipt over.

and above the documented value were found and seized which established that the assessee is in receipt of on-money against the sale thereof. Based on the seized documents, the assessee is found to have sold the units at high rate and received a part in cash components which has not recorded in books of accounts. As such, the on-money received by the assessee, which has not been accounted in the books, is required to be added in total income substantiating the receipt of on-money by the assessee and keeping in mind the statements of Shri Sandip K Andani, there remains no ambiguity about the receipt of on-money by M/s SIPL.

10.15 Further, Income Tax Department has made the addition of Rs. 2,42,69,760/- in A.Y. 2017-18 and of Rs. 2,68,51,760/- in A.Y. 2018-19 on the account of unaccounted other Income that includes the rent income and various unexplained Bank Deposits to which Shri Hanubhai Sangani, Director of M/s SIPL in his statement dated 15.10.2021 accepted that M/s SIPL has received the cash consideration as rent income of Rs. 1,35,000/- and Rs. 3,15,000/- from a school running in one of the premises owned by them, during the period April 2016- March 2017 and April 2017-June 2017 respectively, which is not booked in books of accounts. Further, he also accepted to the cash income of Rs. 2,41,200/- on the marketing commission income received during F.Y.2016-17. Further, the Noticee has stated, for the rest of the addition which is added on account of unexplained bank deposits income as per the Assessment orders A.Y. 2017-18 and A.Y. 2018-19, same were merely deposit of cash in bank out of the cash-on-hand held by Sangani Infrastructure India Private Limited and submitted a cash book of the company.

In view of the above, it appeared that M/s SIPL has provided the service of "renting of immovable property" to a school and the cash income received remains unreflected in books of accounts as per below Table. Renting of immovable property is declared as "Service" as per Section 65 (105) (zzzz) of Finance Act, 1994 and therefore attracts service tax.

In view of the above, it appeared that M/s SIPL has provided the service of "business auxiliary Service" the cash income received remains unreflected in books of accounts as per below Table. Marketing commission income is a part of business auxiliary service. Business Auxiliary Service is declared as "Service" as per Section 65 (105) (zzb) of Finance Act, 1994 and therefore attracts service tax.

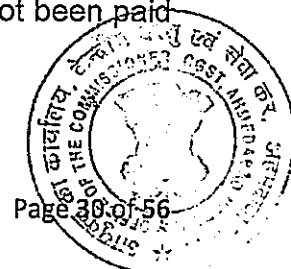
"Business Auxiliary Service" means any service in relation to, —

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client; or

Figures: (in Rs.)

Sr. No.	F.Y.	Rent Income	Marketing commission Income	Total Cash Consideration
1	2016-17	1,35,000/-	2,41,200/-	3,76,200/-
2	2017-18(UPTO June 2017)	3,15,000/-		3,15,000/-
Total		4,50,000/-	2,41,200/-	6,91,200/-

Therefore, in view of the above table, the cash consideration of rent income of Rs. 4,50,000/- (Rs. 1,35,000/- and Rs. 3,15,000/-) and marketing commission income of Rs. 2,41,200/- be considered as income on which the Service tax liability has not been paid by the Noticee.



10.16 It is pertinent to mention that the above amount of Rs. 21,56,09,082/- and Rs. 6,91,200/- collected by M/s SIIPL in cash, from their clients, was not accounted for in their regular books of accounts. It is also clear that the said consideration was received in cash and was neither considered for computing their taxable value while filing their ST-3 returns nor appropriate Service Tax was paid on such cash consideration received by M/s SIIPL towards supply of said taxable service of "Commercial or Industrial Construction service", "Construction of Residential Complex Service", "works contract service", "renting of immovable property" and "business auxiliary Service".

Hence, M/s SIIPL have not filed their Service Tax returns properly as they have not included the cash amounts received from their customers in the taxable value of the service provided by them as they have not reflected the amount of cash component in the ST-3 returns filed by them and have not paid the applicable Service Tax on the consideration received as indicated above.

11. QUANTIFICATION OF DEMAND:

11.1 And whereas based on the details/ documents / information provided by Income Tax Department and documents/ledgers submitted by M/s SIIPL during the investigation, it has been ascertained that M/s SIIPL has received on-money from its buyers in various projects and the said on-money was never reflected in the books of accounts and thus evaded the Service Tax on the on-money component.

(i) Annexure-A1 : It shows the details of cash money of Rs.1,49,46,440/- received by M/s SIIPL from buyers in their various projects during the period April 2016- March 2017 which have been booked after BU permission and the same are not liable to service Tax in terms of Section 65(B)(44) of the Finance Act, 1994.

(ii) Annexure-A2 : It shows the details of cash money of Rs.1,02,60,175/- received by M/s SIIPL from buyers in their various projects during the period April 2017- June 2017 which have been booked after BU permission and the same are not liable to service Tax in terms of Section 65(B)(44) of the Finance Act, 1994.

(iii) ANNEXURE-A3: It shows the details of cash money received by M/s SIIPL from buyers in their various projects during period April 2016- June 2017. M/s SIIPL had collected receipts in cash from the buyers over and above the amounts received through cheques/banking channels as discussed in para supra. The total of such receipts works out to Rs. 21,56,09,082/- and Service Tax arrived at Rs. 1,05,78,563/- after allowing admissible abatement:

1) of 70%, on construction of complex, building or residential services, as per Notification No. 08/2016 -Service Tax dated 01.03.2016 and the services be charged at 30% if value of land is included in the amount charged from the service receiver and the Cenvat on inputs is not availed.

Relevant portion of the Notification No. 08/2016 -Service Tax dated 01.03.2016 is produced below as reference:



- (ix) for Sl. No. 12 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)
"12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	30	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The value of land is included in the amount charged from the service receiver."

2) of 60%, on works contract service of original works, as per Rule 2A of Service Tax (Determination of value) Rules, 2006 read with section 67 of the Finance Act, 1994.

Relevant portion is produced below as reference:

- (ii) execution of works contract under this clause;
Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-
- (A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;
- (B) in case of works contract, not covered under sub-clause (A), including works contract entered into for,-
- (i) maintenance or repair or reconditioning or restoration or servicing of any goods; or
- (ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property.

(iv) Below table shows the details of cash money received by M/s SIPL against the renting income and marketing income.

Sr. No.	F.Y.	Rent Income	Marketing Commission Income	Service Tax liability
1	2016-17	1,35,000/-	2,41,200/-	55,224/- (20250+34974)
2	2017-18(UPTO June 2017)	3,15,000/-		47,250/-
Total (B)		4,50,000/-	2,41,200/-	1,02,474/-

Therefore, in view of above facts, M/s SIPL is liable to pay the Service tax of Rs. 1,06,81,057/- as per below Table A.

TABLE-A (Figures: in Rs.)

Sr. No.	Period	Service Category	On-money addition as per Annexure-A3	Abatement/deduction as per notification	Taxable Amount after permissible abatement	Service Tax liability as per Applicable Rate
1	April 2016- June 2017	Construction of Residential and Commercial Services	15,54,99,822/-	70%	4,66,49,947/-	69,73,286/-
2		Works Contract Services	6,01,09,260/-	60%	2,40,43,704/-	36,05,272/-

3	Renting of Immoveable Property	3,76,200/-	0	3,76,200/-	55,244/-
4	Business Auxillary Services	3,15,000/-	0	3,15,000/-	47,250/-
Total		21,63,00,282/-		7,13,83,851/-	1,06,81,057/-

* RUD-10 containing Annexure A1,A2,A3

12. CONTRAVENTION/VIOLATIONS OF STATUTORY PROVISIONS:

12.1 It appeared from the facts discussed in the foregoing paras that M/s SIPL has contravened the following provisions of the Finance Act, 1994, and the Service Tax Rules, 1994, with intent to evade payment of Service Tax, in as much as they have

(a) failed to pay Service Tax (including Edu. Cess and S.H.E. Cess), on the taxable services viz. "Commercial or Industrial Construction services", "Construction of Residential Complex Services" and "Works Contract services" provided at the rate specified in Section 66 of the Finance Act, 1994, in the manner and within such period as required under Section 68 of the Finance Act, 1994, read with Rule 6 of the Service Tax Rules, 1994;

(b) failed to determine the gross value of said taxable services correctly as required under Section 67 of the Finance Act, 1994;

(c) failed to assess the Service Tax due on aforesaid taxable services provided by them and to maintain records and furnish returns, in such form and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994, read with Rule 7 of the Service Tax Rules, 1994.

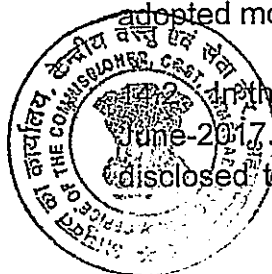
13. DEMAND OF SERVICE TAX:

From the forgoing para, it appeared that M/s SIPL have evaded Service Tax of Rs. 1,06,81,057/- by suppressing the taxable value of the services provided by them. They have also contravened the provisions of Section 68, Section 69 and Section 70 of the Finance Act, 1994 and provisions of Rule 6 and Rule 7 of the Service Tax Rules, 1994 with intent to evade payment of Service Tax. Therefore, it appeared that the Service Tax of Rs. 1,06,81,057/-, along with applicable interest and applicable penalty, not paid by M/s SIPL is required to be recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

14. INVOCATION OF EXTENDED PERIOD FOR DEMAND OF SERVICE TAX:

14.1 And whereas M/s. SIPL are having a very good team of employees well conversant to tax matters as well as very skilled/learned/educated tax consultants and having knowledge of the various provisions of Service Tax and having Service Tax Registration for payment of Service Tax as a provider for 'Construction of Complexes'. They were aware of such provisions relating to Service Tax. However, they deliberately adopted modus as indicated above to evade payment of Service Tax.

In this case, the period to reckon for demand of Service Tax is from April-2016 to June-2017. M/s SIPL have filed ST-3 returns for this period but they have never disclosed the true taxable turnover of their services to the Department. Instead, they



chose to suppress the true details in the ST-3 returns filed by them with the malafide intention to evade payment of Service Tax. Had the department not noticed the fact of suppression of the actual turnover of the services, the Service Tax amount, so evaded would have remained uncollected.

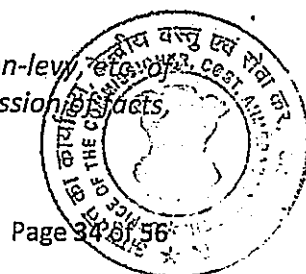
14.3 It is pertinent to mention here that the system of self-assessment is in vogue in respect of Service Tax. In the scheme of self-assessment, the department comes to know about the service rendered and payment made only during the scrutiny of the statutory returns filed by the service providers. Therefore, it places greater onus on the party/assessee to comply with higher standards of disclosure of information in the statutory returns. It is seen from the facts that emerged during the investigation of the instant case that M/s SIPL have not filed the correct Service Tax Returns and in fact they have indulged in under-reporting of their actual turnover. Thus, M/s SIPL have suppressed the material facts from the Department by not filing correct ST-3 Returns. This appeared to be done intentionally so as to hide their actual turnover of the taxable services provided by them from the Department. 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. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. The evaluation of tax behaviour of M/s SIPL, shows clear intent to evade payment of Service Tax by an act of suppression and omission in as much as M/s SIPL though being well aware of the unambiguous provisions of the erstwhile Finance Act, 1994 and Rules made there under, failed to disclose to the department at any point of time, the correct turnover of the taxable services provided by them. Had the investigation proceedings not conducted by DGCI, Ahmedabad Zonal Unit, these facts would not have ever come to light.

14.4 In view of the specific omissions as elaborated above, it is apparent, that M/s SIPL have deliberately suppressed the facts of receipt of consideration towards providing taxable services by under-reporting in the ST-3 Returns filed by them. This amounts to wilful suppression of facts with the deliberate intent to evade payment of Service Tax. Therefore, the extended period of limitation as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 read with Section 174 of the CGST Act, 2017 appeared to be clearly invocable to demand Service Tax for the period from April-2016 to June, 2017.

14.5 In this regard, it may not be out of place, to highlight the observations of 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 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 there under 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 there under 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 disappeared. 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 there under, 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 there from.



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 appeared 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 appeared to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

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

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :

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

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

The above decision of the Hon'ble Apex Court is applicable on all four squares of the present case in as much as M/s SIPL has knowingly and intentionally not accounted for the consideration received in cash, towards the construction of residential complex services/ construction of commercial complex services/ works contract services provided by them, in their regular books of accounts with sole intention of evading payment of Service Tax on such receipts. Further, they also failed to consider such cash receipts while computing the value of taxable services at the time of filing their ST-3 returns. Accordingly, the extended period of limitation can be rightly invoked in the present case.

14.6. Therefore, it appeared that M/s SIPL have wilfully suppressed the taxable turnover in the ST-3 returns filed by them by way of under-reporting and mis-declaring of taxable sale of services with the sole intent to evade payment of Service Tax and the extended period of limitation of five years as envisaged under proviso to sub-section (1) of Section 73 of Chapter V of the erstwhile Finance Act, 1994 (as it existed up to

30.06.2017) read with Section 174 of Central Goods And Service Tax Act, 2017, for the demand and recovery of Service Tax (including Cess) as quantified in the subsequent paras is applicable in the instant case. Consequently, M/s. SIPL are also liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of aforesaid amount of Service Tax.

15.1 Further, all the above acts of omission coupled with the contravention of the Act/Rules made thereunder, the Noticee have rendered themselves liable to penalty under the provisions of Section 76 and/or 78 of the Finance Act, 1994 for failure to pay Service Tax and suppression of actual value of taxable services provided to their clients with clear intent to evade payment of Service Tax leviable thereon and constitute an offence of the nature as described under the provisions of Section 77(1)(b) the Finance Act, 1994 for their failure to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules, and they have rendered themselves liable to penalty under Section 77(1)(c)(i), *ibid*, separately for not furnishing the correct information in respect of turnover of the taxable services provided by them in prescribed periodical ST-3 returns, for issuing invoices with suppressed value of taxable services and for not recording the cash portion of taxable value of taxable services provide by them in their books of accounts.

15.2 Shri Hanubhai Sangani, Director of M/s SIPL and Shri Rashesh V Limabsia, Director of M/s SIPL were at the helm of the affairs of their company. It was under their directions that their employees did not consider the taxable value recovered in cash for computing the taxable value declared in ST-3 returns and consequently no Service Tax was paid on such cash component of taxable value. Further as per their directions only the cash component of taxable value was not recorded in their regular books of accounts and other financial documents. As such, they had played decisive role in the present evasion unearthed by DGGI, AZU, Ahmedabad. By committing such an act, they have rendered themselves liable to penalty under Section 78A of the Finance Act, 1994.

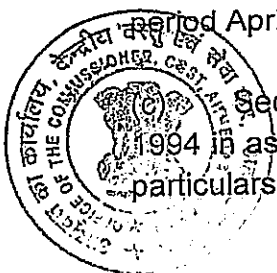
16. CONTRAVENTION OF PROVISIONS OF FINANCE ACT, 1994 AND RULES FRAMED THERE UNDER:-

16.1 In light of the facts discussed hereinabove and the material evidences available on record, it is revealed that M/s. SIPL have contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 read with Section 174 of the CGST Act, 2017, with intent to evade payment of Service Tax in respect of services provided by them to various clients during the period from April, 2016 to June, 2017:

(a) Section 67 of the Finance Act, 1994 in as much as they have knowingly failed to determine the correct value of taxable services viz. "works contract services", by not considering the taxable value of services, so provided, that was received in cash and the unrealized taxable value while computing their Service Tax liability.

(b) Section 68 of the Finance Act, 1994 in as much as they failed to make payment of Service Tax liability of Rs. 1,06,81,057/- (on the services provided by them during the period April-16 to June-17), in such manner and within the period prescribed;

(c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to furnish proper periodical returns mentioning the particulars of the aforesaid taxable service provided by them;



(d) Rule 4A of Service Tax Rules, 1994, in as much as they failed to issue invoice giving correct details of the taxable value of the service provided by them by not including the cash portion of taxable value recovered by them from their clients.

(e) Rule 5 of the Service Tax Rules, 1994, in as much as they failed to maintain proper records regarding actual taxable value of the services provided by them.

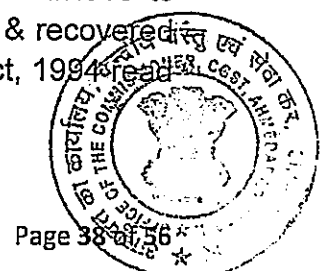
16.2. Further, all the above acts of contravention constitute an offence of the nature as described under the provisions of Section 77(1)(b) of the Finance Act, 1994 thereby rendering themselves liable to penalty under Section 77(i)(c)(i) ibid separately for failure to account for the correct taxable value and not furnishing the information in respect of receipt of income for providing taxable service in prescribed periodical ST-3 returns as well as under Section 76 and/or Section 78 of the Finance Act, 1994 for suppression of taxable value received from taxable services provided during the period from April, 2016 to June, 2017 with intent to evade payment of Service Tax leviable thereon. M/s SIPL also appear to be liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of Service Tax.

17. From the above investigation, it appeared that the entire modus operandi of recovering certain amount of taxable value of the services provided by M/s SIPL, in cash and not considering the same for computation of taxable value declared in their ST-3 returns and consequently evading payment of appropriate Service Tax was established under the directions of Shri Hanubhai Sangani, Director of M/s SIPL and Shri Rashesh V Limabsia, Director of M/s SIPL. Further, the fact that such taxable value recovered in cash was not being accounted in their regular accounts but was being recorded in diaries and secreted in computers of the employees of M/s SIPL was also known to Shri Hanubhai Sangani, Director of M/s SIPL and Shri Rashesh V Limabsia, Director of M/s SIPL and had their approval. All these acts of omission and commission on part of Shri Hanubhai Sangani, Director of M/s SIPL and Shri Rashesh V Limabsia, Director of M/s SIPL constitute offence punishable under the provisions of Section 78A of the Finance Act, 1994.

18. And whereas the above said Service Tax liabilities of M/s. SIPL, for the period from April 2016 to June 2017, have been worked out on the basis of data/information withdrawn during search by the Income tax authorities and received from M/s. SIPL. Thus, the present notice relates exclusively to the information available on record.

19. Therefore, a Show Cause Notice bearing No. DGGI/AZU/Gr-D/36-84/2021-22 dated 22.10.2021 was issued to M/s Sangani Infrastructure India Pvt. Ltd., 215, Signature Complex, Opp Suvarna Bunglows, Thaltej, Ahmedabad 380058 to show cause to the Additional/Joint Commissioner, CGST & CX, Ahmedabad North having office at 1st Floor, Custom House, Nr. All India Radio Navrangpura, Ahmedabad-380009 as to why:

(i) the amount of Service Tax evaded to the tune of Rs. 1,06,81,057/- (Rupees One crores six lakhs eighty one thousand and fifty seven only) in respect of taxable services viz. "Construction of Residential Complex Services / construction of commercial complex services", "works contract Service", "Renting of immovable property" and "business auxiliary services" supplied by them during the period from 01/04/2016 to 30/06/2017, as detailed in Table-A of Para 11.1, should not be demanded & recovered from them under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.



(ii) Interest at the appropriate rate should not be demanded and recovered from them on the Service Tax amount as mentioned in (i) above, under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017;

(iii) Penalty should not be imposed upon them for suppressing & concealing the taxable value of the aforesaid services as mentioned in (i) above with a blatant & pre-conceived intent to evade payment of the resultant Service Tax due from them, under the provisions of the Section 76 and/or 78 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017;

(iv) Penalty should not be imposed upon them under the provisions of Section 77(1)(b) of the Finance Act, 1994 for failure to keep, maintain or retain books of account and other documents as required in accordance with the relevant provisions of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

(v) Penalty should not be imposed upon them under the provisions of Section 77(1)(c)(i) of the Finance Act, 1994 for failure to furnish correct information in accordance with the provisions of this Chapter or rules made thereunder read with Section 174 of the CGST Act, 2017.

20. Further, Shri Hanubhai Sangani, Director of M/s SIPL, 215 Signature Complex, Opp Suvarna Bunglows, Thaltej, Ahmedabad 380058, was also required to show cause to the Additional/Joint Commissioner of Central Goods and Services Tax and Central Excise, Ahmedabad North Commissionerate, Ahmedabad, having his office at 1st Floor, Custom House, Nr. All India Radio, Navrangpura, Ahmedabad-380009 as to why: the personal penalty should not be imposed upon him under the provisions of the Section 78A of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

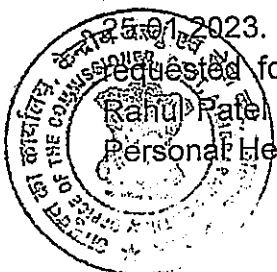
21. Further, Shri Rashesh V Limabsia, Director of M/s SIPL, 215 Signature Complex, Opp Suvarna Bunglows, Thaltej, Ahmedabad 380058, was also required to show cause to the Additional/Joint Commissioner of Central Goods and Services Tax and Central Excise, Ahmedabad North Commissionerate, Ahmedabad, having his office at 1st Floor, Custom House, Nr. All India Radio, Navrangpura, Ahmedabad-380009 as to why: the personal penalty should not be imposed upon him under the provisions of the Section 78A of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

DEFENCE REPLY

22. In response to Show Cause Notice dated 22.10.2021, the said assessee has not filed any reply till date even though they are required to file reply within 30 days of the receipt of the SCN.

PERSONAL HEARING

23. Personal Hearing in this case has been granted to the said assessee on 25.01.2023. In response to letter for fixing Personal Hearing, the assessee has requested for the adjournment citing reason that their authorized representative CA Rahu Patel was not available to be present. Considering the request of the assessee, Personal Hearing has again been granted on 08.02.2023, 17.04.2023 and 16.01.2024.



However, in response to letter for fixing personal hearing on 16.01.2024, the assessee vide their letter dated 16.01.2024 has requested for adjournment of the hearing to any date after 1st February, 2024 citing reason that their representative Shri Rahul Patel, Chartered Accountant was travelling to outside Ahmedabad. Considering the request of the assessee, Personal Hearing has again been fixed on 02.02.2024. However, instead of appearing for Personal Hearing, the assessee has again requested for adjournment. To reduce litigation and to ensure that wrong demand of tax and penalty is not confirmed, personal hearing was finally fixed on 15.03.2024. However, neither the assessee nor their authorized representative appeared for personal hearing. Sufficient opportunities have been given to the assessee and principle of nature justice has been followed but assessee did not avail the opportunities for the reason best known to them. The provision of Section 33A of the Central Excise, Act, 1944 as made applicable to Service Tax matters under Section 83 of the Finance Act, 1994 has been complied with, thus, under these circumstances, I am left with no option but to take up the case for adjudication on the basis of evidences available on record.

DISCUSSION AND FINDINGS

24. 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 further.

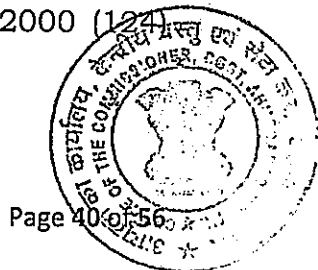
25. I have carefully gone through the records of the case, SCN and I find that the issue to be decided is to whether the said assessee is liable to pay service tax amounting to Rs. 1,06,81,057/- for period April-2016 to June-2017 towards Construction of Residential/Commercial services in their various construction projects viz. 'Sangani Residency', 'Sangani Skyz', 'Sangani Square', 'Sammrudhi Residency', 'Sangani Platinum', 'Dove Deck' and towards works contract services, rental income and business auxiliary services.

26. I have carefully gone through the records of the case and the facts available on record. It is noticed that sufficient opportunities of personal hearing were given to the said assessee, however, they had not availed the same to defend their case. They had also not filed any reply to SCN in this regard even after lapse of more than two years four months from the date of issuance of Show Cause Notice. I find that Sufficient opportunities have been given to the assessee and principle of nature justice has been followed but assessee did not avail the opportunities. I find that the provision of Section 33A of the Central Excise, Act, 1944 as made applicable to Service Tax matters under Section 83 of the Finance Act, 1994 has been complied with in this case. Therefore, I am proceeding to decide the case ex-parte based upon the records available with this office.

27. In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals, in several judgments/decision, have held that ex-parte decision will not amount to violation of principles of Natural Justice, when sufficient opportunities for personal hearing have been given for defending the case.

In support of the same, I rely upon the following judgments/orders as under:-

- a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;



"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

(Emphasis Supplied)"

b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, deciding on 13-9-1963, has observed that;

"Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the assessee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

(Emphasis supplied)"

(c) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.), has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

(Emphasis Supplied)"

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), has observed that;

"Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

(Emphasis Supplied)"

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.L.T. 1296 (S.C.), has observed as under:

"Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing.

If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(Emphasis Supplied)"



(f) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), has observed as under;

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."

28. I find that information received from the Regional Economic Intelligence Council Committee, Ahmedabad (hereinafter referred to as "REIC") indicated that M/s. SIPL have evaded Service Tax by resorting to recovering of substantial part of the taxable value of their services in cash from their clients and not accounting the same in their regular accounts. Consequently, such unaccounted receipts were neither considered for computing the taxable value declared in their ST-3 returns nor paying the applicable Service Tax on such cash receipts. Accordingly, inquiry was initiated against M/s. SIPL by DGGI, Ahmedabad Zonal Unit. Further, I find that acting on the above communication received from REIC, documents seized and recovered by Income Tax authorities during their search proceedings, further documents were called for from the respective Income Tax authorities. The documents provided, selectively, by the Income Tax authorities included soft copy of few of the documents seized by them during search proceedings conducted by them.

29. I find that upon scrutiny of documents received from Income Tax, it was found that assessment orders for the A.Y. 2017-18 and A.Y. 2018-19 had been issued by the Income tax to the Noticee regarding unaccounted cash receipts from sale of shops/units in their various project 'projects viz. 'Sangani Residency', 'Sangani Skyz', 'Sangani Sqaure', 'Sammrudhi Residency', 'Sangani Platinum' and 'Dove Deck'. I further find that Income Tax authorities had observed that the evidences in the form of diaries seized from the residential premises of the directors and employee of the group was written in coded form for names, amount, dates and headlined many a times as estimates for actual transactions; that entries recorded in those diaries were verified by the signatures/names of employees of Sangani Group; that those diaries contain information of cash receipts from sale of units/shops in their projects; that the directors and employee had admitted in their statements recorded u/s 132 (4) of the Income Tax Act that the customers diaries recovered from them were maintained in respect of project constructed by Sangani Group.

30. Further I find that few evidences reproduced & discussed in the said assessment orders wherein cash transactions related to Sanghani Group were recorded has been briefly described as below:-



30.1 During the search proceedings at the residential premises of Shri Sandip K Andani (one of the most trusted employees of Sangani group), certain loose papers/cash diaries containing details of cash receipts in respect of various projects of Sangani Group were found and seized by the Income Tax Department. Shri Sandip K Andani in his statement dated 06.03.2018 recorded u/s 132(4) of the IT Act has admitted that material found and seized from his residence was in relation to the booking of shops/units in various projects developed by SIPL. He also admitted that the cash receipts reflected in dairies is never reflected in books of accounts of SIPL.

30.2 During the search proceedings at the terrace room (room allotted to Shri Ashokbhai Ramjibhai Bavadva, employee of SIPL), certain loose papers/cash diaries containing details of cash receipts in respect of various projects of Sangani Group were found and seized by the Income Tax Department. It came to the notice of the Income tax department that the sale value recognized by the assessee against the sale of Shop No. 3 stood at Rs. 15,00,000/- only i.e. the amount received in cheque.

30.3 During the search proceedings at the terrace room (room allotted to Shri Ashokbhai Ramjibhai Bavadva, employee of SIPL), certain loose papers/cash diaries containing details of cash receipts in respect of various projects of Sangani Group were found and seized by the Income Tax Department which shows that in respect of Shop No. 2 in Sangani Residency, amount of Rs. 6,92,000/- has been accounted for. Further, Rs. 7,29,800/- has been received in cash by SIPL which is never accounted in Regular books of accounts, as confirmed through the ledgers submitted by the assessee, and Service Tax has never been collected and paid on the cash component received.

30.4 During the search proceedings at the site office of Sangani Skyz (one of the Schemes in SIPL), certain loose papers/cash diaries containing details of cash receipts in respect of various projects of Sangani Group were found and seized by the Income Tax Department. The relevant portion of Unit C-1001 in Sangani Skyz project showing Basic cost, Received Amount, Advance, Doc amount and Service Tax. Further on the verification of ledger of unit C-1001 of Sangani Skyz, it is found that unit C-1001 is sold to Shri S.K.Mehrotra for Rs.20,92,000/- only.

30.5 Shri Sandeep K Andani in his statement recorded u/s 132 (4) of the IT Act has explained that the amount written in customer/pocket diaries are in coded form. The amounts are written in codes. For example 170812=51 means amount of Rs. 1,70,81,251/- and so on.

31. I find that based on collated evidences reproduced and discussed in the assessment orders, it was conclusively established by the Joint Commissioner, Income-Tax (OSD), Central Circle-2(2), Ahmedabad that the assessee had received unaccounted cash receipts during the F.Y 2016-17 and F.Y 2017-18 from their prospective buyers against sale of shops/units in projects developed by the assessee and towards works contract services provided by the assessee. I further find that the above income of assessee on account of consideration received in cash from the prospective buyers of shops/units in their various projects was neither recorded by them in regular books of account nor declared in the ST-3 returns filed by them for the corresponding tax period.

I further find that during the search dated 06.03.2018 by DGIT (Inv.), Unit-2, Income tax, Ahmedabad at the residential premises of Shri Sandip K Andani, who is a key employee of the assessee, various incriminating documents such as loose papers/3



diaries/digital data was seized and further a statement was recorded on 06.03.2018 wherein Shri Sandip K Andani inter alia admitted the fact that he handles the cash and cash related work as per the directions of Shri Hanubhai R Sangani and Shri Rashesh V Limabsia (both key Directors of M/s SIPL). Further, I find that a statement dated 29.09.2018 of Shri Sandip K Andani was also recorded by Income Tax Department wherein at Ans. 6 he has admitted the fact that Sangani Group has received unaccounted on money against the sale of units in its various projects and himself has submitted a working of on-money project wise. I find that the working produced was rejected by the Income Tax Department, as he has represented the amount much lower than that quantified by the Income Tax Department. I also find that a statement of Shri Sandip K Andani dated 09.06.2021 was recorded by DGGI, Ahmedabad Zonal Unit wherein he admitted the fact that M/s SIPL is engaged in taking cash from the customer as on-money and the same is never reflected in books of accounts.

33. I find that statement of Shri Hanubhai R Sangani, Director of M/s. SIPL was recorded under Section 14 of the Central Excise Act, 1994 read with Section 83 of the Finance Act, 1994 read with Section 174 and Section 70 of Central Goods and Services Act, 2017 on 15.10.2021, wherein he admitted that:-

a) Shri Sandip K Andani does the accounting work in M/s SIPL and look after the deposit and withdrawal of cash in banks and also handles the cash on daily basis and reports the same to him and other director Shri Rasheshbhai Limbasia.

b) In past years, in some of the units of certain schemes i.e. Samarthya Status, Samarthya Heights, Signor Residency, Sangani Platinum, on-money were received for funding land payments.

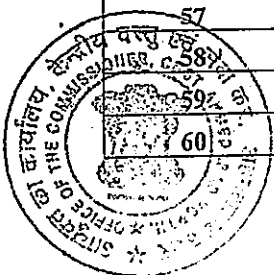
c) They have not paid any service tax on the additions made as on-money in the F.Y. 2016-17 and F.Y. 2017-18 (upto June-2017).

34. In view of foregoing discussion, I find that M/s. SIPL have provided 'Construction of Residential Complexes' and 'Construction of Commercial Complexes' and 'Works Contract Services' to various buyers which are taxable services under the provisions of Section 65B(51) of Finance Act, 1994 and the definition of 'service' as enunciated in Section 65B(44) of Finance Act, 1994 (w.e.f. 01.07.2012) read with Section 66E(b) and (h) of the Finance Act, 1994. I find that based on the evidences of seized data provided by the Income Tax Department, the on-money component received by M/s. SIPL during the period April-2016 to June-2017 amounts to Rs. 21,56,09,032/- as per below Table:

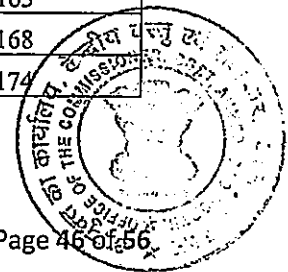
(figures:in Rs.)

On-money component received by M/s SIPL during April 2016- June 2017			
Sr.No.	Scheme Name	Amount Found as Seized Data	Reference Party, Annexure,Page No.
1	Dev Alteria	1,349,000	A-5,A-3,146
2	Dev Alteria	1,000,000	A-5,A-3,151
3	Dev Alteria	1,100,000	A-5,A-3,155
4	Dev Alteria	2,500,000	A-5,A-3,158
5	Dev Alteria	1,773,000	A-5,A-3,161
6	Dev Alteria	400,000	A-5,A-3,164
7	Dev Alteria	500,000	A-5,A-3,166
8	Dev Alteria	500,000	A-5,A-3,170
9	Dev Alteria	150,000	A-5,A-3,174

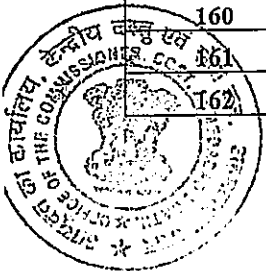
10	Dev Alteria	3,250,000	A-5,A-3,174
11	Dev Alteria	500,000	A-5,A-3,175
12	Dev Alteria	1,700,000	A-5,A-3,176
13	Dev Alteria	600,000	A-5,A-3,179
14	Dev Alteria	40,000	A-5,A-3,179
15	Dev Alteria	650,000	A-5,A-3,182
16	Dev Alteria	125,000	A-5,A-3,189
17	Dev Alteria	600,000	A-5,A-3,191
18	Dev Alteria	300,000	A-5,A-3,191
19	Dev Alteria	980,000	A-5,A-3,191
20	Dev Alteria	651,000	A-5,A-3,196
21	Dev Alteria	1,371,000	A-5,A-3,200
22	Dev Alteria	950,000	A-5,A-3,202
23	Dev Alteria	200,000	A-5,A-3,212
24	Dev Alteria	1,378,000	A-5,A-3,213
25	Dev Alteria	670,000	A-5,A-3,219
26	Dev Alteria	2,000,000	A-5,A-3,222
27	Dev Alteria	2,125,000	A-5,A-3,231
28	Dev Alteria	1,100,000	A-5,A-3,231
29	Dev Alteria	500,000	A-5,A-3,233
30	Dev Alteria	200,000	A-5,A-3,235
31	Dev Alteria	2,410,000	A-5,A-3,236
32	Dev Alteria	400,000	A-5,A-3,237
33	Dev Alteria	300,000	A-5,A-3,241
34	Dev Alteria	100,000	A-5,A-3,244
35	Dev Alteria	500,000	A-5,A-3,245
36	Dev Alteria	800,000	A-5,A-3,249
37	Dev Alteria	800,000	A-5,A-3,251
38	Dev Alteria	3,400,000	A-5,A-3,256
39	Dev Alteria	134,000	A-5,A-3,257
40	Dev Alteria	500,000	A-5,A-3,259
41	Dev Alteria	3,312,000	A-5,A-3,263
42	Dev Alteria	101,101	A-5,A-3,266
43	Dev Alteria	1,000,000	A-5,A-3,267
44	Dev Alteria	600,000	A-5,A-3,268
45	Dev Alteria	200,000	A-5,A-3,273
46	Dev Alteria	2,500,000	A-5,A-3,273
47	Dev Alteria	500,000	A-5,A-3,274
48	Dev Alteria	773,000	A-5,A-3,274
49	Dev Alteria	3,112,000	A-5,A-3,277
50	Dev Alteria	1,600,000	A-5,A-3,279
51	Dev Alteria	225,000	A-5,A-3,287
52	Dev Alteria	380,000	A-5,A-3,292
53	Dev Alteria	2,200,000	A-5,A-3,292
54	Dev Alteria	1,000,000	A-5,A-3,296
55	Dev Alteria	450,000	A-5,A-3,296
56	Dev Alteria	5,300,000	A-5,A-3,297
57	Dev Alteria	1,265,000	A-5,A-3,297
	Dev Alteria	300,000	A-5,A-3,301
	Dev Alteria	200,000	A-5,A-3,303
	Dev Alteria	1,500,000	A-5,A-3,310



61	Dev Alteria	400,000	A-5,A-3,311
62	Dev Alteria	1,714,000	A-5,A-3,322
63	Dev Alteria	200,000	A-5,A-3,318
64	Dev Alteria	50,000	A-5,A-3,319
65	Dev Alteria	1,080,000	A-5,A-3,319
66	Dev Alteria	900,000	A-5,A-3,340
67	Dev Alteria	520,000	A-5,A-3,341
68	Dev Alteria	665,000	A-5,A-3,342
69	Dev Alteria	200,000	A-5,A-3,346
70	Dev Alteria	200,000	A-5,A-3,346
71	Dev Alteria	700,000	A-5,A-1,9
72	Dev Alteria	400,000	A-5,A-1,9
73	Dev Alteria	2,100,000	A-5,A-1,10
74	Dev Alteria	1,000,000	A-5,A-1,11
75	Dev Alteria	913,000	A-5,A-1,11
76	Dev Alteria	2,500,000	A-5,A-1,11
77	Dev Alteria	700,000	A-5,A-1,13
78	Dev Alteria	45,000	A-5,A-1,14
79	Dev Alteria	550,000	A-5,A-1,14
80	Dev Alteria	1,118,000	A-5,A-1,16
81	Dev Alteria	200,000	A-5,A-1,21
82	Dev Alteria	1,000,000	A-5,A-1,22
83	Dev Alteria	1,500,000	A-5,A-1,27
84	Dev Alteria	3,500,000	A-5,A-1,29
85	Dev Alteria	293,000	A-5,A-1,40
86	Dev Alteria	300,000	A-5,A-1,67
87	Dev Alteria	2,000,000	A-5,A-1,67
88	Dev Alteria	1,000,000	A-5,A-1,71
89	Dev Alteria	1,100,000	A-5,A-1,72
90	Dev Alteria	364,000	A-5,A-1,74
91	Dev Alteria	300,000	A-5,A-1,96
92	Dev Alteria	200,000	A-5,A-1,100
93	Dev Alteria	517,500	A-5,A-1,107
94	Dev Alteria	500,000	A-5,A-1,109
95	Dev Alteria	400,000	A-5,A-1,113
96	Dev Alteria	250,000	A-5,A-1,115
97	Dev Alteria	200,000	A-5,A-1,120
98	Dev Alteria	700,000	A-5,A-1,125
99	Dev Alteria	200,000	A-5,A-1,125
100	Dev Alteria	400,000	A-5,A-1,128
101	Dev Alteria	100,000	A-5,A-1,139
102	Dev Alteria	500,000	A-5,A-1,140
103	Dev Alteria	79,000	A-5,A-1,158
104	Dev Alteria	200,000	A-5,A-1,148
105	Dev Alteria	200,000	A-5,A-1,150
106	Dev Alteria	800,000	A-5,A-1,156
107	Dev Alteria	17,000,000	A-5,A-1,157
108	Dev Alteria	5,000,000	A-5,A-1,174
109	Dev Alteria	2,500,000	A-5,A-1,163
110	Dev Alteria	300,000	A-5,A-1,168
111	Dev Alteria	500,000	A-5,A-1,174

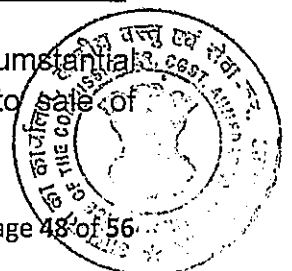


112	Dev Alteria	300,000	A-5,A-1,174
113	Dev Alteria	300,000	A-5,A-1,182
114	Dev Alteria	400,000	A-5,A-1,186
115	Dev Alteria	250,000	A-5,A-1,188
116	Dev Alteria	700,000	A-5,A-1,212
117	Dev Alteria	300,000	A-5,A-1,216
118	Dev Alteria	40,000	A-5,A-1,218
119	Dev Alteria	2,098,000	A-5,A-1,218
120	Dove Deck	400,000	A-5 A-1, 22
121	Dove Deck	1,425,600	A-5, A-2, 209
122	Dove Deck		A-5, A-2, 209
123	Dove Deck	598,800	A-5, A-2, 165
124	Dove Deck	699,600	A-5, A-2, 169, A-5 A-1, 22
125	Dove Deck	1,000,000	A-5 A-1, 22
126	Dove Deck	150,000	A-5, A-2, 179
127	Sangani Platinum	55,000	A-29, A-3 , 120-125
128	Sangani Platinum	55,000	
129	Sangani Platinum	95,000	
130	Sangani Platinum	55,000	
131	Sangani Platinum	55,000	
132	Sangani Platinum	102,350	
133	Sangani Platinum	55,000	
134	Sangani Platinum	55,000	
135	Sangani Platinum	80,000	
136	Sangani Platinum	55,000	
137	Sangani Platinum	189,000	
138	Sangani Platinum	55,000	
139	Sangani Platinum	303,600	
140	Sangani Platinum	55,000	
141	Sangani Platinum	55,000	
142	Sangani Platinum	55,000	
143	Sangani Platinum	55,000	
144	Sangani Platinum	100,000	
145	Sangani Platinum	1,540,000	
146	Sangani Platinum	1,069,200	
147	Sangani Platinum	670,000	
148	Sangani Platinum	618,420	
149	Sangani Platinum	789,440	
150	Sangani Platinum	55,000	
151	Sangani Platinum	55,000	
152	Sangani Platinum	74,900	
153	Sangani Platinum	55,000	
154	Sangani Platinum	202,261	
155	Sangani Residency	35,000	A-29, A-3 , 115-120
156	Sangani Residency	39,100	
157	Sangani Residency	35,000	
158	Sangani Residency	729,800	
159	Sangani Skyz	400,000	A-5, A-3,325
160	Sangani Skyz	620,000	A-5, A-3,133
161	Sangani Skyz	700,000	A-5, A-3,135
162	Sangani Skyz	300,000	A-5, A-1,109



163	Sangani Skyz	579,150	A-5, A-3,146
164	Sangani Skyz	100,000	A-5, A-3,194
165	Sangani Skyz	238,000	A-5, A-3,180
166	Sangani Skyz	800,000	A-5, A-1,22
167	Sangani Skyz	50,000	A-5, A-3,179
168	Sangani Skyz	260,000	A-5, A-3,240
169	Sangani Skyz	600,000	A-5, A-3,284
170	Sangani Skyz	2,000,000	A-5, A-3,308
171	Sangani Skyz	100,000	A-5, A-3,318
172	Sangani Skyz	300,000	A-5, A-3,321
173	Sangani Skyz	500,000	A-5, A-3,327
174	Sangani Skyz	1,500,000	A-5, A-1,22
175	Sangani Skyz	147,000	A-5, A-1,32
176	Sangani Skyz	100,000	A-5, A-1,70
177	Sangani Skyz	1,653,000	AS-7, A-2, 93
178	Sangani Skyz	701,000	A-5, A-1,185
179	Sangani Sqaure	837,000	A-29, A-3, 114-115
180	Sangani Sqaure	762,000	
181	Sangani Sqaure	685,000	
182	Sangani Sqaure	1,155,000	
183	Sangani Sqaure	65,000	
184	Sangani Sqaure	95,000	
185	Sangani Square	1,010,000	
186	Tender Co	350,000	A-5, A-3,180
187	Tender Co	289,500	A-5, A-3,182
188	Tender Co	9,500	A-5, A-3,191
189	Tender Co	1,000,000	A-5, A-3,209
190	Tender Co	8,500,000	A-5, A-3,213
191	Tender Co	1,700,000	A-5, A-3,218
192	Tender Co	12,000	A-5, A-3,220
193	Tender Co	6,225	A-5, A-3,234
194	Tender Co	550,000	A-5, A-3,247
195	Tender Co	1,000,000	A-5, A-3,246
196	Tender Co	1,200	A-5, A-3,250
197	Tender Co	1,325,000	A-5, A-3,283
198	Tender Co	15,835	A-5, A-3,341
199	Tender Co	2,000,000	A-5, A-1,19
200	Tender Co	8,600,000	A-5, A-1,22
201	Tender Co	3,000,000	A-5, A-1,32
202	Tender Co	2,000,000	A-5, A-1,33
203	Tender Co	2,000,000	A-5, A-1,47
204	Tender Co	2,500,000	A-5, A-1,162
205	Tender Co	10,000,000	A-5, A-1,164
206	Tender Co	3,000,000	A-5, A-1,168
207	Tender Co	7,000,000	A-5, A-1,191
208	Tender Co	2,000,000	A-5, A-1,209
209	Tender Co	2,000,000	A-5, A-1,211
210	Tender Co	1,250,000	A-5, A-1,212
	Total	21,56,09,082	

35. In view of the elaborated discussions made in preceding paras, circumstantial evidences which were corroborating with books of the assessee, related to sale of



various Units in the projects, namely Sangani Residency, Sangani Skyz, Sangani Square, Sangani Platinum, Dove Deck, Dev Alteria Tender and Contract Receipt over and above the documented value were found and seized which established that the assessee is in receipt of on-money against the sale thereof. Based on the seized documents, the assessee is found to have sold the units at high rate and received a part in cash components which has not recorded in books of accounts. As such, the on-money received by the assessee, which has not been accounted in the books, is required to be added in total income substantiating the receipt of on-money by the assessee and keeping in mind the statements of Shri Sandip K Andani, there remains no ambiguity about the receipt of on-money by M/s SIPL.

36. Further, I find that Shri Hanubhai Sangani, Director of M/s SIPL in his statement dated 15.10.2021 accepted that M/s SIPL has received the cash consideration as rent income of Rs.1,35,000/- and Rs.3,15,000/- from a school running in one of the premises owned by them, during the period April 2016- March 2017 and April 2017- June 2017 respectively, which is not booked in books of accounts. Further, he also accepted to the cash income of Rs. 2,41,200/- on the marketing commission income received during F.Y.2016-17.

Thus, I find that M/s SIPL has provided the service of "renting of immovable property" to a school and the cash income received remains unreflected in books of accounts as per below Table. Renting of immovable property is declared as "Service" as per Section 65 (105) (zzzz) of Finance Act, 1994 and therefore attracts service tax.

I also find that M/s SIPL has provided the service of "business auxiliary Service" and the cash income received remains unreflected in books of accounts as per below Table. Marketing commission income is a part of business auxiliary service. Business Auxiliary Service is declared as "Service" as per Section 65 (105) (zzb) of Finance Act, 1994 and therefore attracts service tax.

(Figures: in Rs.)

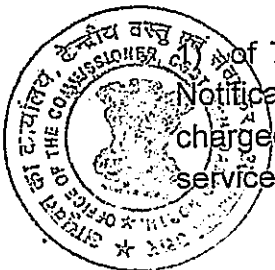
Sr. No.	F.Y.	Rent Income	Marketing commission Income	Total Cash Consideration
1	2016-17	1,35,000/-	2,41,200/-	3,76,200/-
2	2017-18(UPTO June 2017)	3,15,000/-		3,15,000/-
Total		4,50,000/-	2,41,200/-	6,91,200/-

Therefore, in view of the above table, I find that the cash consideration of rent income of Rs. 4,50,000/- (Rs.1,35,000/- and Rs.3,15,000/-) and marketing commission income of Rs. 2,41,200/- be considered as income on which the Service tax liability has not been paid by the assessee.

37. In view of the foregoing discussion, service tax demand is calculated as under:-

37.1 M/s SIPL had collected receipts in cash from the buyers over and above the amounts received through cheques/banking channels as discussed in para supra. The total of such receipts works out to Rs. 21,56,09,082/- and Service Tax arrived at Rs.1,05,78,563/- after allowing admissible abatement:

of 70% on construction of complex, building or residential services, as per Notification No. 08/2016 -Service Tax dated 01.03.2016 and the services be charged at 30% if value of land is included in the amount charged from the service receiver and the Cenvat on inputs is not availed.



2) of 60%, on works contract service of original works, as per Rule 2A of Service Tax(Determination of value) Rules,2006 read with section 67 of the Finance Act, 1994.

37.2 Below table shows the details of cash money received by M/s SIPL against the renting income and marketing income.

Sr. No.	F.Y.	Rent Income	Marketing Commission Income	Service Tax liability
1	2016-17	1,35,000/-	2,41,200/-	55,224/- (20250+34974)
2	2017-18(UPTO June 2017)	3,15,000/-		47,250/-
Total (B)		4,50,000/-	2,41,200/-	1,02,474/-

37.3 Therefore, in view of above facts, M/s SIPL is liable to pay the Service tax of Rs.1,06,81,057/- as per below Table A.

TABLE-A

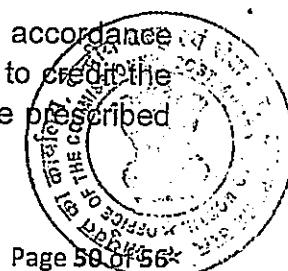
(Figures: in Rs.)

Sr. No.	Period	Service Category	On-money addition as per Annexure-A3	Abatement/deduction as per notification	Taxable Amount after permissible abatement	Service Tax liability as per Applicable Rate
1	April 2016- June 2017	Construction of Residential and Commercial Services	15,54,99,822/-	70%	4,66,49,947/-	69,73,286/-
2		Works Contract Services	6,01,09,260/-	60%	2,40,43,704/-	36,05,277/-
3		Renting of Immovable Property	3,76,200/-	0	3,76,200/-	55,244/-
4		Business Auxillary Services	3,15,000/-	0	3,15,000/-	47,250/-
Total			21,63,00,282/-		7,13,83,851/-	1,06,81,057/-

38. I further find that M/s SIPL had contravened the 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 April-2016 to June-2017.

39. 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 said 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.

40. 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 assessee has failed to pay their Service Tax liabilities in the prescribed time limit, I find that the assessee 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.

41. As far as imposition of penalty under Section 77(1)(b) of the Finance Act, 1994 is concerned, I find that the said assessee has failed to keep, maintain or retain books of account and other documents as required in accordance with the relevant provisions of the Finance Act, 1994. Hence, they have rendered themselves liable to penalty under Section 77(1)(b) of the Finance Act, 1994. The assessee is also liable to penalty under Section 77(1)(c)(i) *ibid* separately for failure to account for the correct taxable value and not furnishing the information in respect of receipt of income for providing taxable service in prescribed periodical ST-3 returns.

42. As far as imposition of penalty under Section 78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of Finance Act, 1994 as they failed to pay the correct duty with the intend to evade the same. It is also a fact that they had deliberately not shown correct value of taxable services in their ST-3 returns and service tax involved thereon, with intent to evade proper payment of service tax. Had there been no investigation by the officers of Director General of GST Intelligence, Ahmedabad Zonal Unit, Ahmedabad, the Service tax evasion would not have been detected. They have never informed the Service Tax department about the correct value of taxable services provided by them to their service recipients during the relevant time and they had also not shown the aforesaid correct value of taxable service provided by them, in respective ST-3 returns filed by them for the relevant period. M/s. SIIPL have thus, willfully suppressed the correct value of the taxable services provided by them and service tax payable thereon, 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 under Section 78 of Finance Act, 1994.

43. In the instant SCN, penalties under section 76 and/or 78 have been proposed. However, penalty under Section 76 and Section 78 of the Finance Act, 1994 cannot be imposed simultaneously. The Finance Act, 2008 (18 of 2008) which came into force from 10-05-2008, the Parliament has made the legal position clear by introducing a proviso to Section 78. Therefore, as per the prevailing provisions of law, penalty can be imposed either under Section 76 or Section 78 of the Finance Act, 1994 w.e.f. 10.05.2008. As, I propose to impose penalty u/s 78 of the Finance Act, 1994, I refrain from imposing any penalty u/s 76 of Finance Act, 1994 in this case:

44. In view of facts stated hereinabove, the value of Services and Service Tax payable thereon mentioned in Show Cause Notice dated 22.10.2021 issued to M/s. SIIPL is considered as taxable value of services provided and service tax payable. Taxable value after permissible abatement as per Show Cause Notice comes to Rs. 7,13,83,851/- and Service Tax payable as per the Show Cause Notice is Rs. 1,06,81,057/-.

The government has from the very beginning placed full trust on the service tax 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. All these operate



on the basis of honesty of the service tax service provider; 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 service provider, no matter how innocently. On the basis of investigation done by the officers of the Director General of GST Intelligence, Ahmedabad Zonal Unit, Ahmedabad, it is found that M/s. SIPL had not discharged service tax liability correctly. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposited 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 of Rs. 1,06,81,057/- not paid by the said assessee worked out in Tables supra 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.

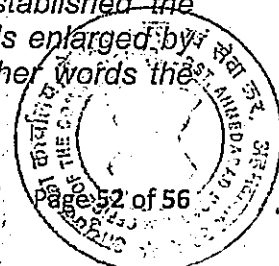
46. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The said assessee deliberately not supplied their documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the payment of service tax. These facts would not have come to light if there had been no investigation against M/s. SIPL. 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.

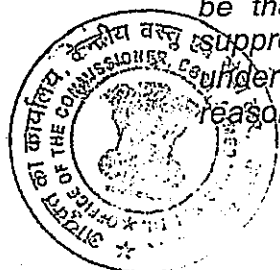
16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. 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 disappeared. 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 appeared 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 appeared to be fallacious in as much as once the suppression is



admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

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

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :

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

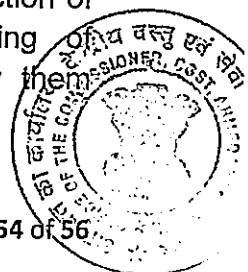
23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

47. From the above investigation, I find that the entire modus operandi of recovering certain amount of taxable value of the services provided by M/s SIPL, in cash and not considering the same for computation of taxable value declared in their ST-3 returns and consequently evading payment of appropriate Service Tax was established under the directions of Shri Hanubhai Sangani, Director of M/s SIPL and Shri Rashesh V Limabsia, Director of M/s SIPL. Further, I find that the fact that such taxable value recovered in cash was not being accounted in their regular accounts but was being recorded in diaries and secreted in computers of the employees of M/s SIPL was also known to Shri Hanubhai Sangani, Director of M/s SIPL and Shri Rashesh V Limabsia, Director of M/s SIPL and had their approval. All these acts of omission and commission on part of Shri Hanubhai Sangani, Director of M/s SIPL and Shri Rashesh V Limabsia, Director of M/s SIPL constitute offence punishable under the provisions of Section 78A of the Finance Act, 1994. Thus, I hold Shri Hanubhai Sangani, Director of M/s. SIPL and Shri Rashesh V Limabsia, Director of M/s. SIPL responsible and found them liable for the penal action under Section 78A of the Finance Act, 1994, as amended.

48. In view of the above discussion and findings, I pass the following order:-

ORDER

- (i) I confirm the demand of Service Tax of Rs. 1,06,81,057/- (Rupees One crores six lakhs eighty one thousand and fifty seven only), in respect of taxable services viz. "Construction of Residential Complex Services / construction of commercial complex services", "works contract Service", "Renting of immovable property" and "business auxiliary services" supplied by them



during the period from 01/04/2016 to 30/06/2017 as discussed in foregoing paras and order to recover the same from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Service Tax Act, 2017;

- (ii) I confirm the demand of Interest at the appropriate rate and order to recover the same from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Service Tax Act, 2017;
- (iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s SIPL under Section 77(1)(b) of the Finance Act, 1994.
- (iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s SIPL under Section 77(1)(c)(i) of the Finance Act, 1994.
- (v) I drop penalty under Section 76 of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Service Tax Act, 2017.
- (vi) I impose Penalty of Rs.1,06,81,057/- (Rupees One crores six lakhs eighty one thousand and fifty seven only), 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 SIPL 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 SIPL 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.
- (vii) I impose Penalty of Rs. 1,00,000/- (Rupees One Lakh only) upon Shri Hanubhai Sangani, Director of M/s. SIPL under Section 78A of the Finance Act, 1994, read with Section 142 and 174 of the Central Goods and Service Tax Act, 2017.
- (viii) I impose Penalty of Rs. 1,00,000/- (Rupees One Lakh only) upon Shri Rashesh V Limbasia, Director of M/s. SIPL under Section 78A of the Finance Act, 1994, read with Section 142 and 174 of the Central Goods and Service Tax Act, 2017.

49. Accordingly the Show Cause Notice bearing No. DGGI/AZU/Gr-D/36-84/2021-22/4004 dated 22.10.2021 is disposed off.



(Lokesh Damor)

Additional Commissioner
Central GST & Central Excise
Ahmedabad North

BY RPAD

F.No. STC/15-311/OA/2021

Dt. 15.03.2024

To

1. M/s Sangani Infrastructure India Private Limited,
215, Signature Complex, 100 Ft. Road,
Thaltej, Ahmedabad, Gujarat – 380059
2. Shri Rasheshkumar V Limbasia,
Director of M/s Sangani Infrastructure India Private Limited,
C/504, Signor Residency, Vejalpur, Opp. Shyamal Row House
Ahmedabad City, Vejalpur-380051
3. Shri Hanubhai R Sangani,
Director of M/s Sangani Infrastructure India Private Limited,
5, Satyam Bungalows, Opp. Karnavati Club,
B/h. Wide Angel Ahmedabad-380015

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The Joint Director, Director General of GST Intelligence, Ahmedabad Zonal Unit,
6th and 7th Floor, I-The Address, Near Sola Flyover, Sarkhej- Gandhinagar Road,
Thaltej, Ahmedabad - 380059
3. The Deputy/Assistant Commissioner, Central GST & Central Excise, Division-VI,
Ahmedabad North.
4. The Superintendent, Range-II, Division-VI, Central GST & Central Excise,
Ahmedabad North
5. The Superintendent (System), Central GST & Central Excise, Ahmedabad North
for uploading the order on website.
6. Guard File.

