



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST , Commissionerate- Ahmedabad South,
चौथी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
4th Floor, GST Bhavan, 380015



फा.सं. STC/4-08/O&A/15-16

DIN- 20221164WS0000666D76

आदेश की तारीख: Date of Order: 21.11.2022

जारी करने की तारीख: Date of Issue : 7.12.2022

द्वारा पारित /Passed by: Shri Shravan Ram , JOINT COMMISSIONER

मूल आदेश सं./Order-In-Original No.: 38-40/CGST/Ahmd-South/JC/SR/2022-23

यह प्रति उस व्यक्ति लिए (जिनके) जिसके ,को (यों) यह आदेश जारी किया गया है ,उसके (उनके) व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है ।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त , (अपील)केन्द्रीय जीएसटी ,केन्द्रीय जीएसटी भवनअहमदाबाद ,आंबावाड़ी , -को प्रारूप 15 एस.टी.-4 में अपील कर सकता है । उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए । इसपर रुपए -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं .एस.टी.-4 में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क 2001 ,नियमावली (अपील)के नियम के 3उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T.4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति ।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए) जिसके विरुद्ध अपील की गई है -/2.00 अथवा उक्त आदेश की अन्य प्रति जिसपर रु (का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

Two copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त में शुल्क के (अपील)7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है ।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference : कारण बताओ सूचना फा.सं. STC/4-08/O&A/15-16 (Audit) dated 22.4.2015, STC/4-22/O&A/Adc/Div-II dated 3.10.2016 and SD-02/SCN-64/O&A/M.S. Khurana/16-17 dated 16.3.2017 M/s M S Khurana Engineering Limited, 2nd Floor, MSK house, Near Kashiram Rana Bhawan, Passport Office Road, Ambawadi, Ahmedabad-380015.

Brief facts of the case

M/s M S Khurana Engineering Limited, 2nd Floor, MSK House, Near Kashiram Rana Bhawan, Passport Office Road, Ambawadi, Ahmedabad 380015 [hereinafter referred to as the 'assessee'] was registered with the Service tax department, having Service Tax registration no. AABCM4514FST001 dated 29.10.2004, as amended, under the category of 'Works contract service, Construction services other than residential complex, including Commercial Works Contract Service, including commercial/industrial buildings or civil structures, Technical inspection and Certification Agency Service & Supply of Tangible goods, Legal Consultancy service, Rent-a-cab scheme operator service, Manpower recruitment/supply agency services, Transport of goods by road/ goods transport agency service, Security / Detective agency service & other taxable services- other than the 119 listed (Receiver).

2. On verification of records, it was observed that the assessee had provided construction service to Sabarmati Riverfront Development Corporation Limited (SRFDCL for short) and had not paid the Service tax claiming the services to be exempted services provided to the Government authority. Sabarmati Riverfront Development Corporation Limited (SRFDCL) has been launched as a Special Purpose Vehicle (SP) under Section 149(3) of Indian Companies Act, 1956 by Ahmedabad Municipal Corporation (AMC). The SRFDCL entrusted the following works to the assessee under Works Contract Service: -

- a) Construction of Retaining wall, Reinforced anchor slab and special fill behind retaining wall on river Sabarmati.
- b) Civil & Electrical works for development of Public Garden.
- c) Constructions of General earth fill for construction behind RCC retaining wall.
- d) Pier construction works for Sardar Bridge on River Sabarmati

3. The assessee had not paid Service Tax on the execution of above mentioned services provided to SRFDCL, claiming benefit of entry Sr. no 12(a) of Notification No. 25/2012- Service Tax dated 20.06.2012.

4. As per the entry Sr. no 12(a) of Notification No. 25/2012- Service Tax dated 20.06.2012, - Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession is exempted.

5. The definition of Government Authority as per the above mentioned notification is reproduced hereunder: -

"Government Authority" means a board or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution."

This definition of "Government Authority " was amended vide Notification no. 02/2014 - Service Tax dated 30.01.2014, which is reproduced below:

"Government Authority "means a board, or an authority or any other body

- i) Set up by an act of the Parliament or a State Legislature; or*
- ii) Established by Government with 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under article 243W of the Constitution.*

6. Thus, from the above discussion, it is observed that the following conditions should be satisfied for a Board, a body, or an authority to be eligible for exemptions as a government authority:-

- a) Set up by an act of the Parliament or a State Legislature or established by Government.
- b) With 90% or more participation by way of equity or control
- c) Carries out any of the functions entrusted to a municipality under article 243W of the Constitution

7. Whereas it appeared that Sabarmati Riverfront Development Corporation Limited (SRFDCL) is launched by Ahmedabad Municipal Corporation as a Special Purpose Vehicle (SPV) under Section 149(3) of the Indian Companies Act, 1956 and it does not carry out any functions entrusted to a municipality under article 243W of the Constitution. Thus, the assessee appeared to be not eligible for benefit of exemption under entry Sr. no 12(a) of Notification no. 25/2012- Service Tax dated 20.06.2012. The total Service tax liability for the period from 01.07.2012 to 31.03.2014 amounted to Rs 24,64,130/-.

8. Further, as per the information available on the website of SRFDCL, the following commercial activities were to be carried out on the reclaimed land of the project:-

1. The project has been planned to be self financed. A small portion of reclaimed land will be sold for commercial development.
2. An Exhibition centre at the Riverfront will be established to host trade fair facilities to serve the business community.
3. An Event ground will also be made for holding organized events of local and national importance.
4. Riverfront market will be developed.

It appeared from the discussion supra that SRFDCL had commercial objectives and therefore, the services provided to SRFDCL by the assessee for the period from 01.04.2011 to 30.06.2012 are also liable to Service Tax under Works contract services. The total Service tax liability for the period 01.04.2011 to 30.06.2012 amounted to Rs 35,42,064/-.

9. It also appeared that the assessee had violated the provisions of Section 68 of the Finance Act, 1994 in as much as they had failed to pay the service tax; Section 70 of the Act, in as much as they had failed to self assess the tax liability. Further, since the assessee had not disclosed the complete and correct taxable income earned, the service tax is recoverable under Section

73(1) of the Act by invoking the extended period of five years. Since the tax has not been paid, it appeared the assessee is also liable to pay interest at the appropriate on the tax not paid.

10. The government had from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like self-assessment etc. based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax rule as considerable amount of trust is place on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service Tax. All these operate on the basis of honesty of the service provider, therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appears that the said service provider had not disclosed the taxable incomes received by them for rendering taxable services for the purpose of payment of service tax and thereby they have kept away themselves from their tax liability.

The deliberate efforts to suppress the value of taxable service and not paying the amount of service tax is in utter disregard to the requirements of law and in breach of trust reposed on them and such outright act in defiance of law appeared to have rendered them liable for penal action as per the provisions of Section 78 of the Act for suppression, concealment of taxable income/value of taxable service with intent to evade payment of service tax.

10A. In addition to the above, the assessee also appeared to be liable for penalty under Section 76 of the Act for failure to make payment of service tax within the stipulated time and under Section 77(2) of the Act for not filing the correct ST-3 return.

11. Therefore, a show cause assessee No:- ST/1-15/Circle-IV/AP-XXI/FAR-145/R.P.09/14-15 dated 22.04.2015 was issued by the Commissioner, Office of the Commissioner(Audit-II), Central Excise & Service Tax, Ahmedabad, to the assessee, proposing to consider the services rendered by them as "Works Contract service" and demanding Service Tax amounting to Rs 60,06,194/- for the period 2011-12, 2012-13 and 2013-14 (Rs. 35,42,064/- for the period 01.04.2011 to 30.06.2012 and Rs. 24,64,130/- for the period 01.07.2012 to 31.03.2014) . Two more Show Cause Notices, on the same grounds for the subsequent period were also issued as under:-

(1) SCN No:- STC/04-22/O&A/ADC/Div-II/2016-17 dated 03.10.2016, issued by the Additional Commissioner, Service Tax, Ahmedabad, for the period 2014-15, demanding Service Tax amounting to Rs 6,10,209/-.

(2) SCN No:- SD-02/SCN-64/O&A/ M.S.Khurana/2016-17 dated 15.03.2017 for the period 2015-16, issued by the Assistant Commissioner, Service Tax Division II, Ahmedabad, involving service tax demand of Rs. 3,54,000/-.

12. The assessee in their written submissions stated that the issues to be addressed are as under:-

- (i) Whether the assessee is liable for service tax on the services provided to SRFDCL under the Works contract service upto the period 30.06.2012.
- (ii) Whether the assessee is liable for service tax on the service provided to SRFDCL under the Work Contracts service with effect from 01.07.2012.
- (iii) Whether on the basis of the judgment in the case of ITD Commentation Ltd, such service is classifiable under the category of 'Site formation & Clearance, execution & Earth moving demolition service'.
- (iv) Whether extended period can be invoked or not.
- (v) whether penalty u/s 76,77(2) & 78 of the Finance Act, 1994 is imposable.

13. As far as the period upto 30.06.2012, the assessee stated that the contract with SRFDCL was for construction of retaining wall, Pier protection work on Sardar Patel Bridge on the river, Civil & public garden and Earth work filling behind retaining wall; that they relied on the clause (c) of CBEC Circular No. 116/10/2009-ST dated 15.09.2009, as per which, such activities did not attract Service Tax; that the activities involved were carried out for building infrastructure and constituted civic amenities provided by the Government, which are excluded from taxable services classified under construction services and work contract services as per sub-clause (ii)(b) of the explanation to the Works Contract Service; that it is not in dispute that the activity in dispute fell under Clause (ii)(b) of the Explanation in Section 65(105)(zzzza) whereas the revenue's case is that the impugned activity fell under sub-clause(ii)(e) of the same explanation; that the works contract done through EPC mode are exempt from service tax; that it can be seen from the Board's clarification that infrastructure activities which are concerned with welfare activity for the citizens of the country has been excluded from the liability of service tax; that CBEC circular No. 123/5/2010-TRU dated 24.05.2010, has clarified the scope of 'Commercial or industrial construction service, erection, commissioning or installation service, Works Contract services, site formation and clearance, excavation, earth moving and demolition services; that M/s SRFDCL has been created as a special purpose vehicle whose object is to develop the river front of Sabarmati river by reclaiming the land from the river bed of Sabarmati river and after reclamation of the land, the reclaimed land is to be used for various purposes and part of the reclaimed land will be used for public purpose such as garden, promenades, walkways etc and other part of the reclaimed land will be used for commercial buildings and residential buildings; that therefore, it is clear that the work carried out by the assessee is in the nature of public infrastructure, which has been exempt from service tax, since inception upto 30.06.2012. The assessee has also relied upon the Circular No. 80/10/2004-ST dtd. 17.09.2004 to buttress their point that service tax is exempted if it is provided to the non-commercial concern. The assessee has relied upon various judgments of the Tribunal namely:-

- (i) Anand Construction Co.Vs CCE, Kolhapur [2013(32) STR 451 (Tri-Mum)]
- (ii) Commr, Bangalore vs KVR Construction [2012 (26) STR 195]
- (iii) Nagarjuna Construction Co. Ltd. [2011 (22) STR 433 (Tri)]
- (iv) Ramky Infrastructure Vs CCE, Hyderabad [2011 (22) STR 85 (Tri-Bang)]

- (v) Lanco Infrastructre Vs CST, Hyderabad 2010 (19) STR 906
(vi) Radius corporation Vs CCE, Raipur [2009(14) STR 693 (Tri-Del)]

14. For the period from 01.07.2012, the assessee has stated that it is clear from the work carried out by the assessee that it is in the nature of the public infrastructure; that these were excluded from the taxable services classified under construction services and work contract services as per sub clause (ii)(b) of the explanation to the works contract service in the Act; that as the work carried out by the assessee is in the nature of public infrastructure, the same is exempted based on the mega exemption Notification no. 25/2012.

15. The assessee has further relied upon the judgment of the Tribunal in the case of *ITD Cementation India Ltd Vs Commissioner* [2014(36) STR 897 (Tri)] which has been upheld by the Supreme Court, to state that such service is classifiable under 'Site formation & Clearance, execution & Earthmoving demolition service'.

16. As regards the issue of limitation, the assessee has claimed that the audit report was issued on 22.04.2015 whereas the fact of the case has been in the knowledge of the department since 2011; that therefore, extended period cannot be invoked in the present case as there is no suppression, willful misstatement on the part of the assessee; that penalty cannot be imposed under Section 78; that penalty under Section 76 & 77 is not imposable as there is no short payment of service tax. The assessee has also relied upon various judgments in this regard.

PERSONAL HEARING

17. Personal hearing in the matter was held on 18.11.2022 and Shri Vipul Khandhar, Authorised representative and Shri Pawan Kumar Maheshwari, Manager Accounts, appeared on behalf of the assessee. They reiterated the submissions already made and specifically relied upon the decision of the apex court in the case of *Commissioner Vs ITD Cementation*.

DISCUSSION AND FINDINGS

18. I have carefully gone through the facts of the case, the written and oral submissions made by the assessee. I find that the service tax demand in the impugned Show Cause Notices can be divided into two parts i.e for the period prior to 01.07.2012 and for the period from 01.07.2012, when the negative list came into existence.

Period prior to 01.07.2012

19. For the period prior to 30.06.2012, the case of the Department is that SRFDCL is carrying out the following commercial activities:

1. The project has been planned to be self financed. A small portion of reclaimed land will be sold for commercial development.
2. An Exhibition centre at the Riverfront will be established to host trade fair facilities to serve the business community.
3. An Event ground will also be made for holding organized events of local and national importance.
4. Riverfront market will be developed.

Thus, since SRFDCL has commercial objectives, the services provided by the assessee to M/s SRFDCL is liable to service tax under the Works contract services. While the submission of the assessee is that M/s SRFDCL has been assigned the work of construction of retaining wall, pier protection work on Sardar Patel bridge on the river, civil and electrical work of the public garden and earth work filling behind the retaining wall. All these work was in relation to public infrastructure and thus, these are excluded from taxable services under the construction services and the work contract services as per sub clause (ii)(b) of the explanation to the works contract service in the Act. Further, work in the nature of public infrastructure, has been exempt from service tax since inception upto 30.06.2012 based on Circular No. 80/10/2004-ST dated 17.09.2004.

20. As the assessee is claiming that the services provided by them to SRFDCL is excluded from the ambit of works contract as per sub clause (ii)(b) of the explanation to 65(105)(zzzza) of the Act, it would be worthwhile to reproduce the said section, as it existed during the relevant time:-

Section 65(105)(zzzza):-

“Taxable Service” means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.—For the purposes of this sub-clause, “works contract” means a contract wherein,—

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out,—
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
 - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
 - (c) construction of a new residential complex or a part thereof; or
 - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
 - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

21. As per the assessee, the services provided by him fall under sub clause (ii)(b) of the Explanation above, according to which construction of a new building or a civil structure or a part thereof or of a pipeline or conduit, primarily for the purpose of commerce or industry is only taxable. The case of the assessee is that the service they have provided is in the nature of public infrastructure and hence exempted from service tax.

22. The activities undertaken by the assessee are narrated in the SCN, which are:-

- a) Construction of Retaining wall, Reinforced anchor slab and special fill behind retaining wall on river Sabarmati.
- b) Civil & Electrical works for development of Public Garden.
- c) Constructions of General earth fill for construction behind RCC retaining wall.
- d) Pier construction works for Sardar Bridge on River Sabarmati

As mentioned above, the contention of the assessee is that these services would fall under sub clause (ii)(b) of the Explanation to Section 65(105)(zzzza) , according to which construction of a new building or a civil structure or a part thereof or of a pipeline or conduit, primarily for the purpose of commerce or industry is only taxable. However, from the nature of the activities mentioned above, the nature of work provided by the assessee would more appropriately fall under sub clause (ii)(e) of the Explanation to Section 65(105)(zzzza) i.e EPC contracts . Having held thus, it is also seen that the said explanation does not discriminate between EPC projects for commercial/industrial purposes and those for non-commercial/non-industrial purposes, nor between EPC projects of Government departments/agencies and private entities.

23. Another contention of the assessee is that the services provided by them would more appropriately fall under 'Site formation & Clearance, execution & earthmoving, demolition service'. For this, they have placed reliance on the judgment of the Tribunal in the case of *ITD Cementation India Ltd Vs Commissioner reported in 2014 (36) STR 897 (Tri)*, which has been upheld by the Supreme Court. However, it is observed that the said judgment deals with the period prior to 01.06.2007, when Works contract was not introduced in the Finance Act, 1994. The judgment also did not deal with this aspect. Since, the issue involved is for the period subsequent to 01.06.2007 and I have already held that the service provided by the assessee falls under works contract, more particularly, EPC contracts, the said judgment will not help the assessee's case. For that matter, the Circular No. 80/10/2004-ST dated 17.09.2004 will also not help the assessee, as the same dealt with Construction services (commercial and industrial buildings or civil structures). Thus, I hold that the services provided by the assessee will fall under the category of 'Works contract' under sub clause (ii)(e) of the Explanation to Section 65(105)(zzzza) i.e EPC contracts and service tax amounting to Rs 35,42,064/- is payable for the services provided during the period from 01.04.2011 to 30.06.2012 .

Period subsequent to 01.07.2012

24. Subsequent to 01.07.2012, the Government had introduced the concept of Negative list, wherein the definition of 'Service' was completely overhauled and was defined now as '*any activity carried out by a person for another for consideration and includes a declared service but does not include transfer or sale of goods and immovable property and provision of service by employee to employer*'. Thus, the concept of classification of services has been done away with.

25. The contention of the Department is that benefit of entry Sr. no 12(a) of Notification no. 25/2012- Service Tax dated 20.06.2012 is not available as the said benefit is only for services provided to the Government Authority whereas M/s SRFDCL is a Special Purpose Vehicle created by the Government under Section 149(3) of the Indian Companies Act, 1956. The definition of

'Government Authority' as mentioned in the said Notification, means a board or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution." This definition was subsequently amended, vide Notification No. 02/2014 - Service Tax dated 30.01.2014, to mean a board, or an authority or any other body;

- i) Set up by an act of the Parliament or a State Legislature; or
- ii) Established by Government with 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under article 243W of the Constitution.

Since, M/s SRFDCL does not carry out any function entrusted to a municipality under article 243W of the Constitution, the benefit of Notification no. 25/2012- Service Tax dated 20.06.2012 is not available.

26. The assessee has not given any submissions against the Department's stand that M/s SRFDCL does not carry out any function entrusted to a municipality under article 243W of the Constitution. Instead, they have simply stated that because the work carried out by the assessee is in the nature of public infrastructure and civic amenities, it is exempt from payment of service tax under Notification no. 25/2012- Service Tax dated 20.06.2012.

27. The main contention of the Department is that M/s SRFDCL does not carry out any function entrusted to a municipality under Article 243W of the Constitution, which is a primary condition for the assessee to avail the benefit of Notification no 25/2012- Service Tax dated 20.06.2012. Article 243W of the Constitution is reproduced below:-

243W : Powers, authority and responsibilities of Municipalities, etc. - Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to -

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

The relevant extract of the said twelfth schedule is as under:-

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.

3. *Planning for economic and social development.*
4. *Roads and bridges.*
5. *Water supply for domestic, industrial and commercial purposes.*
6. *Public health, sanitation conservancy and solid waste management.*
7. *Fire services.*
8. *Urban forestry, protection of the environment and promotion of ecological aspects.*
9. *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
10. *Slum improvement and upgradation.*
11. *Urban poverty alleviation.*
12. *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
13. *Promotion of cultural, educational and aesthetic aspects.*
14. *Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.*
15. *Cattle pounds; prevention of cruelty to animals.*
16. *Vital statistics include registration of births and deaths.*
17. *Public amenities including street lighting, parking lots, bus stops and public conveniences.*
18. *Regulation of slaughter houses and tanneries.*

28. Sabarmati Riverfront Development Corporation Limited (SRFDCL) is launched by Ahmedabad Municipal Corporation as a Special Purpose Vehicle (SPV) under Section 149(3) of the Indian Companies Act, 1956. As per the information available on the website of SRFDCL, the following commercial activities will be carried out on the reclaimed land of the project:-

1. The project has been planned to be self financed. A small portion of reclaimed land will be sold for commercial development.
2. An Exhibition centre at the Riverfront will be established to host trade fair facilities to serve the business community.
3. An Event ground will also be made for holding organized events of local and national importance.
4. Riverfront market will be developed.

It emerges from the above that the purpose for which Sabarmati Riverfront Development Corporation Limited was not created for the performance of functions and the implementation of schemes in relation to the matters listed in the Twelfth Schedule of the Constitution. The matters listed in the twelfth schedule of the constitution mainly relate to matters of economic development and social justice. In the instant case, SRFDCL has commercial objectives as mentioned above. Thus, it cannot be said that SRFDCL carries out the function entrusted to a municipality under Article 243W of the Constitution.

29. Further, the assessee has also not produced any evidence nor the website of SRFDCL mentions that SRFDCL has been set up by an act of Parliament or State legislature. Therefore, on this account also, the assessee is not eligible for exemption under Notification no 25/2012- Service Tax dated 20.06.2012.

30. The assessee has further relied upon various judgments of the Tribunal to buttress their arguments. However, I find that none of these judgments support the case of the assessee. In the case of *Anand Construction*, the Tribunal was dealing with the case of Commercial or Industrial Construction services. The Karnataka High Court was dealing with the matter of service tax paid mistakenly on construction services in *KVR construction*. *Nagarjuna Construction co*, *Ramky Infrastructure*, *Lanco Ibnfratech Ltd.* and *Radius Corporation* was dealing with Stay matters and has not attained finality.

31. The assessee further submitted that extended period cannot be invoked as the fact of the case has been in the knowledge of the department since 2011. This contention of the assessee is not correct because the assessee has never revealed to the Department that they were providing the services in question to M/s SRFDCL. It was only during the audit by the officers of the Department that the said activity of the assessee came into light. Thus, extended period has been rightly invoked in the case of Show Cause Notice dated 22.04.2015. For the subsequent periods i.e 2014-15 and 2015-16, the Show Cause Notices have been issued within the normal period of limitation.

32. It is well settled principle that "the burden to prove eligibility to exemption under a notification rests on the party, who claims the exemption." In the case of *Mysore Metal Industries* [1988 (36) ELT 369 (SC)], Hon'ble Supreme Court of India, has held that the burden is on the party who claims exemption, to prove the facts that entitled him to exemption. Since it is a case of exemption from tax, there is no question of any liberal construction to extend the term and scope of the exemption notification, which must be strictly construed. No extended meaning can be given to enlarge the scope of exemption. In the case of *Rajasthan Spinning & Weaving Mills Ltd.* [1995 (77) ELT 474 (SC)], Supreme Court of India, held that there is no question of any liberal construction to extend the term and the scope of the exemption notification. The relevant text is reproduced here:

[16. Lastly, it is for the Assessee to establish that the goods manufactured by him come within the ambit of the exemption notification. Since it is a case of exemption from duty, there is no question of any liberal construction to extend the term and the scope of the exemption notification. Such exemption notification must be strictly construed and the Assessee should bring himself squarely within the ambit of the notification. No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification.]

33. In view of the above, the assessee was NOT ONLY required to himself assess the tax liability in respect of transactions made by him and the facts had to be recorded in the returns filed with the department and declare in the self-assessment memorandum that the particulars given in the Return are in accordance with the records and books maintained by them and are correctly stated and he has assessed and paid the service tax correctly with due interest as per the provisions of the Finance Act, 1994 and the rules made thereunder, BUT ALSO was required to satisfactorily prove the facts that entitled him to exemption as held by the Apex Court that the burden is on the party who claims exemption. However, the eligibility of exemption claimed by the assessee had not been satisfactorily proved by the assessee.

34. Thus, I hold that the assessee is not eligible for exemption under Notification No. 25/2012- Service Tax dated 20.06.2012 and is therefore, liable for the payment of service tax Rs 24,64,130/- for the service provided during the period from 01.07.2012 to 31.03.2014, Rs. 6,10,209/- for the service provided during the period 2014-15 and Rs.3,54, 000/- for the service provided during the period 2015-16. I have already held earlier in para 23 that the assessee is liable to pay Service tax amounting to Rs 35,42,064/- for the services provided during the period from 01.04.2011 to 30.06.2012 . Since the tax has not been paid, the assessee is also liable to pay interest at the appropriate rate under Section 75 of the Act, on the tax not paid.

35. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the service tax on the Assessee. The definition of "assessment" available in Rule 2(b) of Service Tax Rules, 1994 is reproduced as under:

(b)"assessment" includes self assessment of service tax by the Assessee, re-assessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed.

36. In the instant case, the Assessee has failed to properly assess the service tax liability and also failed to reflect the correct information in the ST-3 returns. The Assessee is required under Section 70 of the Finance Act, 1994, to himself assess the tax liability in respect of transactions made by him and the facts have to be recorded, in the service tax return (ST-3) to be filed with the department under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994. Further, the Assessee or its authorized signatory, is required to declare in the self-assessment memorandum, in the service tax return (ST-3) to be filed with the department under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 that the particulars given in the Return are in accordance with the records and books maintained by them and are correctly stated and he has assessed and paid the service tax correctly with due interest and/or availed and distributed CENVAT credit correctly as per the provisions of the Finance Act, 1994 and the rules made thereunder and that he is authorized to sign on behalf of the Assessee.

37. The assessee has contended that they are not liable to penalty. However, the discussions above clearly reveal the assessee has willfully not declared the taxable nature of the Service and not paid Service tax leviable thereon. Thus, I find that the assessee has rendered themselves liable to penalty in terms of the provisions of Section 78 of the Finance Act, 1994. Since penalty under Section 78 is imposable, no penalty under Section 76 is warranted.

38. I further find that the assessee has not correctly filed ST-3 returns thereby rendering the assessee liable to penalty under Section 77 of the Finance Act, 1994.

39. In view of the above discussions, I hereby pass the following Order:

O R D E R

A. SCN No. ST/1-15/Circle-IV/AP-XXI/FAR-145/R.P.09/14-15 dated 22.04.2015

- (i) The services rendered by M/s Khurana Engineering Ltd is to be considered as taxable service, viz. Works Contract Service, as defined in the provisions of Section 65 (105) (zzzza) of the Finance Act, 1994.
- (ii) I further uphold the demand of Service tax amounting to Rs 60,06,194/- under Section 73(2) of the Finance Act, 1994.
- (iii) Interest at the appropriate rate on the service tax demanded above should be recovered from them under Section 75 of the Finance Act, 1994.
- (iv) I hereby vacate the proposal to impose penalty under Section 76 of the Finance Act, 1994.
- (v) I hereby impose a penalty of Rs 60,06,194/- under Section 78 of the Finance Act, 1994. However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within a period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.
- (vi) I hereby impose a penalty of Rs 10,000/- on M/s Khurana Engineering Ltd, under Section 77(2) of the Finance Act, 1994.

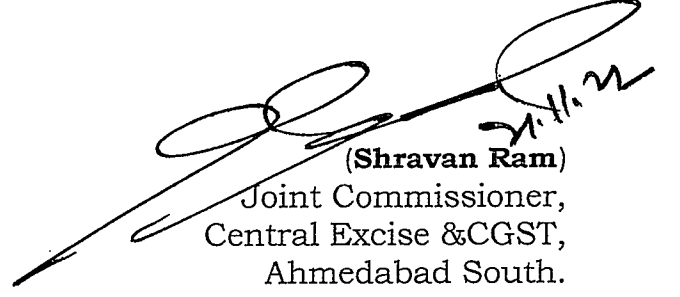
B. SCN No. ST/04-22/O&A/ADC/Div-II/2016-17 dated 03.10.2016.

- (i) The services rendered by M/s Khurana Engineering Ltd is to be considered as taxable service, viz. Works Contract Service, as defined in the provisions of Section 65 (105) (zzzza) of the Finance Act, 1994.
- (ii) I further demand Service tax amounting to Rs 6,10,209/- under Section 73(2) of the Finance Act, 1994.
- (iii) Interest at the appropriate rate on the service tax demanded above is to be recovered from them under Section 75 of the Finance Act, 1994.
- (iv) I hold that penalty of Rs 61,020/- under Section 76 of the Finance Act, 1994 is imposed on the assessee.
- (v) I hereby impose a penalty of Rs 10,000/- on M/s Khurana Engineering Ltd, for not filing correct ST-3 Returns under Section 77(2) of the Finance Act, 1994.

(vi) SCN No. SD/02/SCN-64/O&A/M.SKhurana///2016-17 dated 16.03.2017.

- (i) The services rendered by M/s Khurana Engineering Ltd is to be considered as taxable service, viz. Works Contract Service, as defined in the provisions of Section 65 (105) (zzzza) of the Finance Act, 1994.
- (ii) I hereby uphold the demand Service tax amounting to Rs 3,54,000/- under Section 73(2) of the Finance Act, 1994.
- (iii) Interest at the appropriate rate on the service tax demanded above is to be recovered from them under Section 75 of the Finance Act, 1994.
- (iv) I hereby impose a penalty of Rs 35,400/- under Section 76 of the Finance Act, 1994 is imposed on the assessee.
- (v) I hereby impose a penalty of Rs 10,000/- on M/s Khurana Engineering

Ltd, for not filing correct ST-3 Returns under Section 77(2) of the Finance Act, 1994.


(Shravan Ram)
Joint Commissioner,
Central Excise &CGST,
Ahmedabad South.

F. No. STC/04-08/O&A/2015-16

Date: 21.11.2022

To
M/s M.S Khurana Engineering Ltd,
2 nd Floor, MSK House,
Near Kashiram Rana Bhavan,
Passport Office Road,
Ambawadi
Ahmedabad 380 015.

Copy to:

- 1) The Principal Commissioner, Central GST, Ahmedabad South.
- 2) Deputy/ Assistant Commissioner, Central Tax, Division VI, Ahmedabad South.
- 3) Deputy/ Assistant Commissioner, Central Tax (Audit) Circle IV, Audit Commissionerate, Ahmedabad-
- 4) Superintendent, Central Tax, AR-III, Division VI, Ahmedabad South.
- ✓ 5) The Superintendent (Systems), CGST Ahmedabad South.
- 6) Guard File.