प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST , Commissionerate- Ahmedabad South,
छठी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
6th Floor, GST Bhavan, 380015

फा.स. STC/04-56/Bhavani Construction/O&A/2019-20

DIN : 20221264WS0000020420

आदेश की तारीख: Date of Order: 14/12/2022
जारी करने की तारीख: Date of Issue:14/12/2022

द्वारा पारित /Passed by: Shri T.G.Rathod , Additional Commissioner

मूल आदेश सं/Order-In-Original No.: 55/CGST/Ahmd-South/ADC/ TGR/2022-23

यह प्रति उस व्यक्ति)यों (को ,जिसके)जिनके (लिए 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 भवन ,अंबावाड़ी ,अहमदाबाद- 15को प्रारूप इ.ए.–1 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.इ.ए 1-में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क)अपील (नियमावली 2001 ,के नियम 3के उपबंधों के अनुसार अपीलकर्ताओं अथवा द्वारा 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 108 of the CGST Rules 2017. It shall be accompanied with the following:
उक्त अ की प्रति।
Copy of the aforesaid order.

निर्णय की दो प्रतियाँ)उसमे से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है (अथवा उक्त आदेश की अन्य प्रति जिसपर रु -/2.00का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
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)अपील (में शुल्क के 7.5% जहाँ शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां सिर्फ जुर्माना के बारे में विवाद है उसका भुगतान करके अपील की जा सकती है।
An appeal against this orde- 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.स. F.No. **STC/04-56/Bhavani Construction/2019-20 dated 13/11/2019 issued to M/s. Bhavani Construction Company, 6, New Vaishali Society,Opp. Devashish School, Bodakdev, Ahmedabad / M/s. Bhavani Construction Company, C/o. Vimal Barot, Flat No. S/3RF-18, Lower Camp, Tata ,Joda West**

BRIEF FACTS OF THE CASE

On the basis of information received that M/s. Bhavani Construction Company (PAN No-AAEPB8590Q) situated at 6, New Vaishali Society, Opp. Devashish School, Bodakdev, Ahmedabad (hereinafter referred to as "the assessee" for sake of brevity) was engaged in providing taxable services but had not obtained service tax registration and had not paid service tax, inquiry was initiated against the assessee by way of Inspection under authorization. Inspection of the said assessee was initiated under authorization was carried out on 17.06.2019.

2. During the course of inspection, the assessee had submitted audited Balance Sheet for the year 2014-15 to 2016-17 and Trial Balance Sheet for the period from April, 2017 to June, 2017 and some work orders for construction/maintenance of road. The assessee produced the following work orders:

Sr. No.	Letter Reference No	Date of work order	Issuing Authority	Subject of Work Order	Amount of work order
1	AB/TC/VC/13	01.03.2014	Executive Engg, Road and building Dept, KhedamilkiyatPanchayat, Nadiad	Strenghning of various roads of TalukaMatar, Nadiad, Memdabad and Mouda of JilaKheda	29528170
2	DP/BV/TC/2416/23/15	26.06.2015	Executive Engg, R&B Deptt, Gandhinagar	Improvement of Rural Road under SCSP in Gandhinagar/ ManasarTaluka, Package No. Gandhi/SCSP/1/2014-15	7664751
3	MMO/TC/717/2016	07.06.2016	Executive Engg, R&B, DisctrictPanchayat, Mehsana	SCSP-2015-16/Suvidha Path Package No. 4, Taluka-Kadi	9949985
4	MMO/TC/716/2016	07.06.2016	Executive Engg, R&B, DisctrictPanchayat,	OWR 2015-16 Suvidha Path Package No. 4, Taluka-Kadi	7711152

●			Mehsana		
5	MMO/TC/592/2016	28.04.2016	Executive Engg, R&B, DisctrictPanchayat, Mehsana	OWR 2015-16 Suvidha Path Package No.10, Taluka-Mehsana	5908966
6	MM/TC/593/2016	28.04.2016	Executive Engg, R&B, DisctrictPanchayat, Mehsana	OWR 2015-16, Package No. 17, Taluka-Vijapur	5020922
7	DP/BV/VC/1831/16	07.07.2016	Executive Engg, R&B Deptt, Gandhinagar	SR(2015-16) PithapurMauhri Road to Kalka Mata Road	3197264
8	MM/O/TC/100/2015	30.01.2015	Executive Engg, R&B, DisctrictPanchayat, Mehsana	OWR-2014-15(7 Years), Package No. 6, Taluka-Vishnagar	1505152
9	MMO/TC/869/2016	25.07.2016	Executive Engg, R&B, DisctrictPanchayat, Mehsana	SR(FD-PR)-2015-16, Package No. 6, Taluka-Vijapur	1036829
10	MMO/TC/591/2016	28.04.2016	Executive Engg, R&B, DisctrictPanchayat, Mehsana	OWR 2015-16, Package No. 18, Taluka-Vijapur	4868360
11	MMO/TC/676/2016	20.05.2016	Executive Engg, R&B, DisctrictPanchayat, Mehsana	SR(2015-16) Package No.3, Vishnagar	5619707
12	AB/TC/VC/37/2016	25.02.2016	Executive Engg, (R&B), Kheda, Nadiad	Constructing BhumelLaxmipuraVenipura Road and Uttar Sanda, BhathijiMandir to Express	10598056

●				Way Road off Nadiad	
13	AB/TC/VC/123	16.02.2016	Executive Engg, (R&B), Kheda, Nadiad	Constructing RajnagarSolankipura Road Joining NarsandaConsory Road (Kilometer 0/0 to 2/0) off NadiadTaluka, Kheda Under OWR 2015-16 Package No. 12	5025565
14	MMO/TC/402/2017	28.03.2017	Executive Engg, R&B, DisctrictPanchayat, Mehsana	SR 2016-17, Package No. 2, Taluka-Vijapur	6441462
15	DP/PPV/VC/59697/2017	10.04.2017	Executive Engg, R&B Deptt, Gandhinagar	Resurfacing of Anodia to Maudi Road, Taluka-Mansa, Gandhinagar	24846665
16	DP/BV/TC/576/82/2017	18.02.2017	Executive Engg, R&B Deptt, Gandhinagar	Resurfacing and strengthening of various roads in Mansa Taluka	50289555

Further, the assessee also furnished the 26AS for the period from 2014-15 to 2017-18.

2.1 A Statement of Shri Vipulkumar V. Barot, Partner of M/s. Bhavani Construction Company was recorded on 17.06.2019, under Section 83 of Finance Act, 1994. The scanned copy of the Statement dated 17.06.2019 is appended below:-

(KEPT BLANK)

1

STATEMENT OF SHRI VIPUL KUMAR V BAROT, PARTNER OF M/S BHAVANI CONSTRUCTION COMPANY, 6, NEW VAISHALI SOCIETY, OPP. DEVASHISH SCHOOL, BODAKDEV, AHMEDABAD AGED 56 YRS. RESIDING AT THE SAME AS ABOVE RECORDED UNDER SECTION 70 OF CENTRAL GST ACT, 2017 READ WITH RELEVANT PROVISIONS OF CENTRAL GST RULES, 2017 READ WITHSECTION 83 OF FINANCE ACT, 1994 BEFORE THE SUPERINTENDENT OF CENTRAL GST, AHMEDABAD SOUTH ON 17.06.2019.
MOBILE NO: 9825711234
DRIVING LICENSE NO.: GJ0119820147751

I, the undersigned, Vipul Kumar V Barot, Partner of M/s Bhavani Construction Company, 6, New Vaishali Society, opp. Devashish School, Bodakdev, Ahmedabad appear before the Superintendent of Central GST, Ahmedabad South, for recording my statement on today i.e. 17.06.2019 to give true and correct statement. Before recording my statement, I have been explained the provisions of Section 70 of CGST Act, 2017, read with Section 83 of Finance Act, 1994 and rules made there under for the subject matter, according to which I have to give true and factual statement before you. In case any of the facts stated by me found to be false or intentionally misleading, I will be liable to penal action under the provisions of Section 174, Section 175 &Section 193 of the Indian Penal Code. I have also been explained that this statement of mine can be used against me or my company as evidence in judicial and quasi judicial proceedings. After understanding these provisions, I give my true and correct statement here as under.

My name, age and residence address given above is true to the best of my knowledge. My educational qualification is BE. I can read, write and understand English, Hindi and Gujarati languages very well. For the sake of convenience, my statement is being typed in English on the laptop carried by the officers. Further I state that I am looking after the all affairs of the said firm. I am fully aware of the day to day activities of the company. The statement being given by me will be binding on me and on the company for giving statement and my further statement will be in Question-Answer form.

Q1: If the above details given by you are correct?
Ans: Yes,Whatever details furnished by me above is correct.

Q2: Please state about the business of M/s. Bhavani Construction Company Ahmedabad&what is your designation in the said firm?
Ans: M/s. Bhavani Construction Company, Ahmedabad is engaged in "Road Construction Service to Government. I am the Partner of the said unit

Q.3: Kindly explain the invoicing system adopted by your firm?
Ans.When the work done on site is verified, recorded and recommended for payment by the government authority, then the concerned Govt. office is issued the invoice of such work done to my company and accordingly they make payment to us.

Q.4: How do you maintain your data?
Ans.The details of bill raised are maintained in software TALLY.

Q.5: Inform whether you are registered with GST department and erstwhile Service Tax Department. Give details.
Ans: Yes, We are registered with GST department having GSTIN 24AABFB8590Q1ZT but we were not registered with Service Tax Department as

For, Bhavani Construction Co.

17/6/19

Partner

Before Me

(S. J. Acharya)
Superintendent(Preventive)
CGST Ahmedabad

(SHRI VIPUL KUMAR V BAROT)
PARTNER OF M/S BHAVANI
CONSTRUCTION COMPANY.

we are providing exempted service as per Notification 25/2012 ST. We are engaged in providing Road Construction services to the Government Authorities which are exempted as per notification no. 25/2012-ST.

Q.6. As per the Notification No. 30/2012-ST, do you know that you are liable to pay Service Tax under RCM on GTA service?

Ans:- I was not aware about the above cited notification. However, I assure you that I will pay our outstanding liability of Service Tax under RCM on our Transportation expenses along with interest and penalty as applicable at the earliest.

Q.7. Please provide your Transportation expenses as per your audited balancesheet from 2014-15 to June-2017?

Ans:- As per our Audited balance sheet, the taxable service and liability of Service tax under RCM arises to as under:-

CALCULATION OF SERVICE TAX LIABILITY FROM 2014-15 TO JUN-2017

F.Y	GTA	Abatement	Taxable Value	Tax Amount
2014-15	7768402	5826347	1942116	271896
2015-16	562690	422018	140673	20398
2016-17	1901422	1426067	475356	71303
2017-18 (APRIL TO JUN)	1347390	1010543	336848	50527
TOTAL				414124

I hereby submit the copy of Audited balance sheet for the period from F.Y. 2014-15 to 2016-17 in support to ascertain our Service Tax liability and I submit the trial balance and sales ledger for the period from April-June- 2017. I also submit the copy of 26AS for F.Y. 2014-15 to 2017-18.I have also submitted the sample copy of works contract agreement.

Q.8: Provide the details of Bank Accounts of your company.

Ans: Following are the details of the Bank Accounts of our Firm:

Name of bank	Branch Address	Account Number	Account Type	IFSC
KarurVysya Bank	Satellite Road	2208115000022061	Current	KVBL0002208

Q.9. Do you want to say anything?

Ans:- I admit about the non-payment of Service Tax liability under RCM on our part and we will discharge the same at the earliest and I will submit the copy of challanto your office.

My above statement is recorded as per my say and version on laptop as per my own request. During the course of recording my statement, no pressure, threat, duress, coercion or impediments have been caused on me. I have given this statement willingly in a conscious state of mind. I can read write and understand English language very well. I have carefully gone through my statement running from page No. 1 to 2 and after fully understanding the contents there of, I put my dated signature on each page in token of acceptance and reading the same.

For, Bhavani Construction Co.

Before Me,

(K. J. Acharya)
Superintendent(Preventive)
CGST Ahmedabad

Partner

(SHRI VIPUL KUMAR V BAROT)
PARTNER OF M/S BHAVANI
CONSTRUCTION COMPANY.

2.2 On perusal of the above statement tendered under Section 83 of Finance Act, 1994, it is seen that he *interalia* stated that they have been engaged mainly in providing Road Construction Service to Government. He admitted their Service Tax liability under RCM towards to service received in respect of GTA and he stated that the non-payment of Service Tax liability under RCM on their part and will discharge the same at the earliest and will submit the copy of Challans.

2.3 Scrutiny of the 26AS for the period from 2014-15 to 2017-18 (upto June 17) indicated that the assessee had received payment for which TDS had been deducted under Sec. 194C of Income Tax Act from the following clients:

Sr No	Name of Client	Work order submitted or not
01	Capital Project Division Gandhinagar	No
02	District Panchayat Gandhinagar	Yes
03	Executive Engg Panchayat Mehsana	Yes
04	KheraluNagarpalika	NO
05	Kalol Municipality	NO
06	Samvit Buildcares Private Ltd	No
07	Vijapur Nagarpalika	No
08	Office of the XEN	No
09	Rao Construction Pvt Ltd	No
10	Vijapur Nagar Palika Brough	Yes
11	Ashish Construction Company	No
12	Jay Jayeshkumar Barot	No
13	Rachna Infrastructure Ltd	No
14	R C Patel	No
15	Shyamsunder Shrichand Karagwal	No
16	Sankalp Infrastructure	No
17	Executive Engg R&B Division	No

The assessee was asked to submit copies of the Work Order/ Contract in respect of clients appearing at Sr. Nos 1,4,5,6,7,8,9,11,12,13,14,15,16 and 17 in the table above for the purpose of ascertaining the nature of work undertaken by them.

However, the assessee could not produce the said Work Orders/ Contracts on the count that the same were mis-placed and they were not in a position to locate them.

2.4 Section 194C of the Income Tax Act, 1961 reads as under:

> *"Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—*
>
> *(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;*
>
> *(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,*
>
> *of such sum as income-tax on income comprised therein."*

In terms of the above provisions, it appeared that in case of Works Contract and Labor Contract, the person making the payment towards such contract is required to deduct tax at source. Therefore, it implies that in cases where TDS has been deducted under Sec. 194C of the Income Tax Act, the consideration has been received towards a Work Contract or a Labor Contract. Accordingly, it appeared that the amount received by the assessee from the customers as listed in the table at para 2.1 above, as evident from their 26AS, is a consideration towards services rendered in respect of Work Contract or Labor Contract entered into by the assessee with the respective customers.

2.5 During the course of enquiry, the assessee had contended that they had undertaken the work of Construction of Roads which was exempted by virtue of Sr No. 13 of Notn. No. 25/2012 ST as amended. However, it was observed that the assessee could produce documentary evidence in respect of their claim only in respect of the clients mentioned at Sr Nos. 2,3 and 10 to the table at para 2.3 and no documentary evidence was produced in respect of the other clients. Sr. No. 13 of Notn. No. 25/2012 ST exempts the services provided to a Government, Governmental Authority, Local Body in respect of the work of construction of road and as such it is incumbent upon the assessee to establish that

their services were exempt by way of documentary evidence. However, it was observed that the assessee have failed to substantiate their claim in respect of the clients at Sr. Nos. 1,4,5,6,7,8,9,11,12,13,14,15,16 and 17 to the effect that such services were exempted.

2.6 It is a well settled principle of law that the onus to establish the eligibility of exemption lies upon the person who seeks to claim the exemption. In the instant case, it was observed that the assessee had failed to produce any Work Order/ Contract, etc. to establish that the work undertaken by them is covered under the ambit of Sr. No. 13 of Notn. No. 25/2012 ST. Also it was an equivalent fact on record that the TDS has been deducted under Sec. 194C of the Finance Act which implies that a service has been rendered in respect of a Work Contract or a Labor Contract. Under such circumstances, it appeared that the revenue had no option but to resort to computation of the service tax liability on the basis of the relevant material which was available on records in terms of the provisions of Section 72 of the Finance Act, 1994 which reads as under:

> *If any person, liable to pay service tax, —*
> *(a) fails to furnish the return under section 70;*
> *(b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,*
> *the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.*

In view of the above provisions, it appeared that the income received, as evident from the 26AS, in cases where the assessee had not furnished any Work Contract to establish that the activity is exempted under Notification No. 25/2012 ST, is liable to be considered as taxable value for the purpose of charging service tax.

2.7 Further, Rule 2A of the Service Tax (Determination of Value) Rules, 2006 provides for valuation in respect of service

portion in Works Contract. The term 'Works Contract' has been defined at Sec. 65B(54) of the Finance Act, 1994 as under:

> *"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 movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;*

In the instant case, the assessee had not furnished any Work Contract/ Agreement and as such the revenue was not is a position to ascertain whether transfer of property in goods was involved in the execution of such contract which leviable to tax as sale of goods. In absence of any document to indicate that the assessee had provided Works Contract Service, it appeared that the valuation in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 cannot be extended to the assessee and the entire value has to be considered as taxable value in terms of the provisions of Section 67 of the Finance Act, 1994. This is especially so in light of the fact that the contract maybe a Work Contract or a Labor Contract in terms of the provisions of Section 194C of the Income Tax Act. In case of a Labor Contract, there would be no transfer of property in goods and the said works would not fall within the ambit of Works Contract as specified under Sec. 65B(34) of the Finance Act, 1994.

2.8 The term 'service' has been defined at Section 65 (B) clause 44 which reads as under:

> *"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*
> *(a) an activity which constitutes merely,—*
> *(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
> *(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or*
> *(iii) a transaction in money or actionable claim;*
> *(b) a provision of service by an employee to the employer in the course of or in relation to his employment;*
> *(c) fees taken in any Court or tribunal established under any*

law for the time being in force.

In terms of the above definition any activity undertaken by a person for another for a consideration tantamount to service. In the instant case, it is observed that the assessee has undertaken certain activities for the respective persons and have received a consideration against performing such activities for which TDS has been deducted under Section 194C of the Income Tax Act. Thus, the activities performed by the assessee appeared to be covered under the ambit of 'service' as defined at Sec. 65B(44) of the Finance Act, 1994. Moreover, the assessee had not produced any evidence to as to indicate that such activities are covered under the Negative List as specified under Sec. 66D of the Finance Act, 1994 or exempted and as such they are 'taxable services' in terms of the provisions of Sec. 65B(51) of the Finance Act, 1994 on the basis of best judgment in terms of the provisions of Section 72 of the Finance Act, 1994.

2.9 In view of the above, it appeared that the assessee have not paid service tax to the tune of Rs. 90,27,283/- (as detailed in table under) in respect of the services rendered by them to the customers appearing at Sr. Nos. 1,4,5,6,7,8,9,11,12,13,14,15,16 and 17 of the table at para 2.3 hereinabove

Financial Year	Payment receipt in 26AS	Work orders submitted to establish exemption under Notn. No. 25/2012	Taxable value (Rs.)	ST (Rs.)
2014-15	**54664740**	8639420	45025320	5688730
2015-16	23095082	16940691	5154391	892387
2016-17	57785796	45399371	12386425	1857964
2017-18 (upto June)	23054276	19132931	3921345	588202
			6,84,87,481	9027283

3. Further, on comparison of the income as shown in the Profit and Loss Account vis-à-vis the income received in respect of which TDS has been deducted under Sec. 194C of the Income Tax Act it appeared that the assessee has received certain other income in addition to that pertaining to Works Contract/ Labor Contract as tabulated under:

Financial Year	Income as per Balance Sheet	Payment receipt in 26AS (Rs.)	Difference between B/s and 26AS (Rs.)
2014-15	56754951	**54728489**	2026462
2015-16	30524285	23140492	7383793
2016-17	58695597	58255406	440191
2017-18 (upto June)	25479163	23054276	2424887
Total	171453996	159178663	12275333

The assessee did not appear to be in a position to furnish any documents whatsoever so as to establish the nature of work against which such income has been received. However, in view of the statement dated 17.6.2019 of Shri Vipul Kumar Barot, Partner of the assessee, it appeared that the nature of business undertaken by them is rendering services. In absence of any documents or explanation offered by the assessee, it appeared that the said income of Rs. 1,22,75,333/- is liable to be considered as taxable value by applying the best judgment assessment under Sec. 72 of the Finance Act, 1994 as discussed hereinabove.

3.1 The service tax liability on such income of Rs. 1,22,75,333/- comes to Rs. 17,50,882/- as detailed under:

Financial Year	Income as per Balance Sheet	Payment receipt in 26AS	Difference between B/s and 26AS	Service Tax
2014-15	56754951	**54728489**	2026462	250471
2015-16	30524285	23140492	7383793	1070650
2016-17	58695597	58255406	440191	66029
2017-18 (upto June)	25479163	23054276	2424887	363733
Total	171453996	159178663	12275333	**1750882**

4. Further, on scrutiny of the expenses shown in the financial statements of the assessee, it was observed that the assessee had incurred expenditure towards transportation and had made payments to the various transporters. In terms of the powers conferred under Sec. 68(2), the Government has issued Notn. No. 30/2012 ST dated 20.6.2012 as amended, wherein the class of services under the reverse charge mechanism, the person liable to pay service tax and the extent of service tax payable by such person, has been specified. For ease of reference, the said notification is reproduced hereunder:

"In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—

I. The taxable services,—

A)(i) _ _ _ _ _ _

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

The extent of service tax payable thereon by the person who provides the service and the person who receives the service for

the taxable services specified at (I) to Notn. No. 30/2012 ST as amended has been specified at the Table at II of the said notification and the relevant portion of the same has been reproduced as under:

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
2	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%"

4.1 The person liable to pay service tax under the reverse mechanism charge has also been stipulated under Rule 2(d) of the Service Tax Rules, 1994 which reads as under:

"2(d) "person liable for paying service tax", -

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

(A) _ _ _ _ . _

(B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(III) any co-operative society established by or under any law;

(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(V) any body corporate established, by or under any law; or

(VI) any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage"

4.2 In the instant case the service recipient is a partnership firm and have received the services of transportation. Thus, in terms of the provisions of Sec. 68(2) of the Finance Act, 1994 read with Rule 2(d) of the Service Tax Rules, 1994 and Notn. No. 30/2012 ST as amended, the assessee i.e. the service recipient was liable to pay 100% of the service tax payable in respect of such transportation services. The service tax not paid on such transportation services comes to Rs. 4,04,427/- as tabulated under:

Calculation of Service Tax on Reverse Charge basis

F.Y.	Services	Gross Amount	Abatement (75%/70%)	Taxable Value	ST Rate	ST Payable	ST Paid	Outstanding ST
2014-15	GTA	77,08,462	58,26,347	19,42,115	12.36	2,33,753		2,33,753
2015-16	GTA	5,62,690	3,03,993	1,58,807	14.5	24,477		24,477
2016-17	GTA	19,01,133	13,30,000	5,70,427	15.0	85,564	1,00,000	85,564
2017-18 (upto June, 2017)	GTA	13,47,390	9,43,173	4,04,217	15.0	60,633		60,633
Total		1,15,79,064				4,04,427	1,00,000	3,04,427

5. In view of the forgoing paras, it appeared that the total outstanding service tax liability for the period from April, 2014 to June, 2017 is summarized as follows:

Service Tax liability in respect of income for which TDS has been deducted under Section 194C of the Income Tax Act	90,27,283
Service Tax liability in respect of income other than the above which is shown in the P &L Account	17,50,882
Service Tax liability for RCM in respect of GTA	4,04,427
Total Service Tax Liability (incl. cess)	1,11,82,592

6. Further it was observed that the assessee had failed to file the periodical service tax returns in terms of the provisions of

Section 70(1) of the finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994. Thus, it appeared that the assessee was liable to pay late fees in terms of the provisions of Rule 7C of the Service Tax Rules, 1994 as calculated under:

S.NO.	F.Y.	Time period	Late fee
(i)	2014-15	April to Sep	20000
(ii)	2014-15	Oct to March	20000
(iii)	2015-16	April to Sept.	20000
(iv)	2015-16	Oct to March	20000
(v)	2016-17	April to Sept.	20000
(vi)	2016-17	Oct to March	20000
(vii)	2017-18	April to June	20000
	Total		1,40,000

7. In view of the above, it appeared that the assessee have not paid service tax to the tune of Rs. 1,11,82,592/- (as detailed at above) during the period from 2014-15 to 2017-18 (Upto June 17). Further, it was observed that the assessee have failed to obtain service tax registration and also failed to file their ST-3 returns. Accordingly, it appeared that the assessee have contravened the following provision of law:

- Sec. 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they failed to assess the service tax due on the declared services and reflect the taxable value of the same in their ST-3 returns as well as failure to file ST-3 returns.

- Section 68(1) of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they failed to pay Service Tax in the time and manner as prescribed on the above said services.

- Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 in as much as they failed to obtain service tax registration within the prescribed time frame

- Section 68(2) of the Finance Act, 1994 read with Rule 2(d)(B) of the Service Tax Rules, 1994 and Notn. No. 30/2012 ST as amended in as much as they failed to

discharge their service tax liability under the reverse charge mechanism in respect of GTA Services

Thus, it appeared that the service tax to the tune of Rs. 1,11,82,592/- was liable to be demanded and recovered from them in terms of the proviso to Sec. 73(1) of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994.

7.1 Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the service tax shall himself assess the tax due. 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:

> *"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.*

7.2 In the instant case it appeared that the assessee has failed to properly assess the service tax liability and also failed to reflect the correct information in the ST-3 returns by way of not filing ST-3 returns. The assessee also failed to obtain the service tax registration. Thus, they have appeared to be resorted to suppression of material facts by not reflecting the income accrued to the tune of Rs. 8,07,62,814/-on account of rendering taxable services in their ST-3 returns as well as the expenses of Rs. 1,15,79,964/- which are liable to service tax under the reverse charge mechanism. These facts only came into notice only when the department conducted an enquiry against the assessee. Had the enquiry been not initiated, the said facts would never have seen the light of the day. Therefore, the said Service Tax of **Rs. 1,11,82,592/**-not paid by them appeared to be liable to be recovered by invoking the extended period of limitation as provided for under proviso to Section 73(1) of the Finance Act, 1994 along with interest in terms of the provisions of Section 75 of the Finance Act, 1994.

7.3 In the self-assessment era, the Service Providers are required to be proactive in declaring their activities to the department and getting themselves registered and fulfill their tax obligations. Service Tax being an indirect tax requires the service provider only to collect the same from the service receiver and remit it to the Government. The Government has from the very beginning

placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by them 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. In the instant case the assessee has not complied with the provisions of Service Tax. They have received cash amount from customers but did not disclose the same before department nor paid service tax thereon and these facts came to the knowledge of the Department only when the enquiry was initiated by Department. This act of the said assessee appeared to be tantamount to willful misstatement and suppressing the facts with an intention to evade service tax payment. The assessee is also liable for penal action as per Section 78 of the Finance Act, 1994 for making willful misstatement and suppression of facts from the department, with an intention to evade service tax payment.

7.4 Moreover in the present regime of liberalization, self-assessment and filing of ER/ST returns online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about such non-payment of duty/service tax only during audit or preventive/other checks. Therefore, it appeared that all these information has been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. In the case of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, in this case all essential ingredients exist to invoke the extended period under proviso to Section 73 (1) of Finance Act, 1994 to demand the service tax not paid along with interest under Section 75 of the Act ibid. All these acts of contravention of the provisions of the Finance Act, 1994, and Rules framed there under, appeared to have been committed with intent to evade payment of service tax and constitute offence of the nature and type as described in Section 78 of the Finance Act, 1994.

In the case of Rathi Steel & Power Ltd. -2015(321) ELT200(All), The High court of Judicature at Allahabad held that:

"32. *We further find that under Rules, 2004, a burden is cast upon the manufacturer to ensure that Cenvat credit is correctly claimed by them and proper records are maintained in that regard.*

33. *The assessee, in response to the show cause notice had stated that there is no provision in Central Excise Law to disclose the details of the credit or to submit the duty paying documents, which in our opinion is false and an attempt to deliberately contravene the provisions of the Act, 1944 and the rules made there under with an intent to evade the duty.*

34. *In our opinion, the facts of the present case clearly suggest wilful suppression of material facts by the assessee as well as contravention of the provisions of the Act and rules framed there under with an intent to evade the demand of duty as would be covered by Clauses IV and V of Section 11A(1) of the Act, 1944. Therefore, the invocation of the extended period of limitation in the facts of the present case is fully justified."*

Similar view was expressed by the Hon'ble High Court of Judicature for Andhra Pradesh at Hyderabad in the case of Sree Rayalaseema Hi-Strength Hypo Ltd. Versus Commissioner of Cus. & C. Ex., Tirupati - 2012 (278) E.L.T. 167 (A.P.) Held:

"9. *The contention of the learned counsel for the assessee that the extended period of limitation of five years for recovery of the duty under the proviso to Section 11A(1) of the Central Excise Act, 1944 would not be available to the Revenue in this case, as the penalty proposed to be levied was dropped, does not hold water. The extended period of five years for recovery of duties either levied or short-levied arises under various situations such as fraud, collusion, wilfulmis-statement, suppression of facts or contravention of the provisions of the Act or the Rules made thereunder with intention to evade payment of duty. It is no doubt true that the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty [Union of India v. Rajasthan Spinning and Weaving Mills - (2009) 13 SCC 448 = 2009 (238) E.L.T.3 (S.C.)]. But merely because the ingredients for both are the same, it would not mean that in case penalty is not imposed, the duty also cannot be recovered.* ***Once the assessee availed credit under Rule 2(k) of the Rules of 2004 without entitlement it amounts to contravention of the rule with the intention of***

evading payment and the extended period of limitation would be available to the Revenue, notwithstanding the decision not to purpose penalty upon the assessee."

The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd - 2010 (260) E.L.T. 17 (S.C.) – has held:

"12. Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty. The extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five years, it needs to be construed strictly. The initial burden is on the department to prove that the situation visualized by the proviso existed. But the burden shifts on the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section."

8. Therefore, Bhavani Construction Company situated at 6, New Vaishali Society, Opp. Devashish School, Bodakdev, Ahmedabad served with a show cause notice F.No.STC/04-56/Bhavani Construction/2019-20 dated 13/11/2019 by which there were called upon to show cause to Additional Commissioner having his office at the above mentioned address as to why:

i) The amount of Rs. 6,84,87,481/- and Rs. 1,22,75,333/- (as detailed at table to para 2.8 and 3.1 hereinabove) should not be considered as taxable value in terms of the provisions of Sec. 67 of the Finance Act, 1994;

ii) Service Tax amounting to Rs. 1,07,78,165/- (One Crore Seven Lacs Seventy Eight Thousand One Hundred Sixty Five only) leviable on the taxable service provided by them during the period from 2014-15 to 2017-18 (upto June 17) should not be demanded and recovered from them under proviso to Sub-Section (1) of Section 73 by invoking extended period of five years;

iii) Service tax to the tune of Rs. 4,04,427/- (Rs. Four Lacs Four Thousand Four Hundred Twenty Seven only) leviable on the taxable service chargeable to tax under the reverse charge mechanism during the period from 2014-15 to 2017-18 (upto June 17) should not be demanded and recovered from them under proviso to Sub-Section (1) of Section 73 by invoking extended period of five years;

iv) Interest thereon as applicable should not be charged and recovered from them under Section 75 of the Finance Act, 1994 on the above demand;

v) Penalty should not be imposed under Section 77(1) (a) for failure to take service tax registration as per the provisions of Section 69 of the Finance Act, 1994;

vi) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for the above mentioned contraventions;

vii) Late fees of Rs. 1,40,000/- (Rs. One lakh Forty Thousand only) should not be charged and recovered from them in terms of the provisions of Rule 7C of the Service Tax Rules, 1994 for not filing their ST-3 returns for the period from April 14 to June 17 within the prescribed time frame.

WRITTEN SUBMISSION:-

9. The assessee vide their letter dated 19.12.2019 filed reply to SCN wherein they submitted as under:-.

- The SCN is issued based on assumption and presumptions contrary to facts on record; the SCN is issued based on personal whims and fancy and an unfair attempt is made to demand service tax by misrepresenting the facts **even though the activity of road construction service is clearly exempt from levy of whole of service tax under Notification No. 25/2012-ST, dated 20-06-2017 w.e.f. 01-07-2012 and the service of transportation of goods without issue of Consignment is not taxable at all as it is covered in negative list**. Further, the SCN is also issued in **clear defiance of CBEC direction to grant mandatory pre-show cause notice consultation making it patently illegal and invalid**.
- They have provided all services by way of construction, erection, commissioning, installation, fitting out, repair,

maintenance, renovation or alteration of a road for use by general public and such service is clearly exempt from levy of whole of service tax leviable thereon under Sl. No. 13(a) of Notification No. 25/2012-ST, dated 20-06-2012 with effect from 01-07-2012 to 30-06-2017. We give below relevant extract of Sl. No. 13(a) of the said notification for ready reference.

"13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-
(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;"

- The above stated fact is evident from Answer to Q. 2 and Q. 5 in Statement of the undersigned recorded on 17-06-2019 stating that "Bhavani Construction Company, Ahmedabad is engaged in **Road Construction Service"** and that **"We are not registered with Service Tax Department as we are providing exempted service as per Notification 25/2012-ST."**
- **The departmental officers who had visited their premises on 17-06-2019 had perused all our documents, records, accounts, vouchers, and had also collected copies of 16 work orders which are all reflected in Paragraph 2 of the SCN. They had also collected all other documents thought appropriate by them. The Officers from Office of Commissioner of CGST, Ahmedabad South Commissionerate viz. ShriK. J. Acharya, Superintendent, Shri Harkesh Meena and Shri Indramohan Chaudhari who visited their premises on 17-06-2019 had verified all the records and documents relating to road construction service provided by them and were satisfied that the said service is fully exempt from levy of service tax under Notification No. 25/2015-ST.**
- In view of the full exemption from service tax on their services relating to road, **there is no service tax liability on their part and hence the amount of Rs. 68487481/- and Rs. 12275333/- cannot be considered as taxable value in terms of the provisions of Section 67 of the Finance Act, 1994 by any stretch of imagination and**
- In support of their contention they enclose a certificate dated 18-12-2019 from their Auditors Kishor Raigandhi & Co., Chartered Accountants.
- Even service of road construction is that of works contract on which TDS under section 194C of the Income Tax Act is deductible and hence when there is categorical proof that we

have provided road construction service and is now further supported by CA certificate, it is unfair, unwarranted and illegal to presume it to be any other service and propose demand of service tax and even ignore the deduction for material when their financial statements clearly show use of huge quantity of material and particularly when the activity by way of road construction is clearly exempt from levy of service tax under Notification No. 25/2012-ST.

- The SCN proposes demand of service tax without adducing any evidence and based on presumption and assumption that when TDS is deducted, the income is in respect of taxable service. It is settled law that tax cannot be assessed merely on assumption and presumptions. In this case, entire proposal for demand of service tax is based on presumptions and assumptions contrary to facts on record and hence theyrequestto drop all the proceedings under the SCN relying on decision in case of CST v. Purni Ads. Pvt. Ltd. [2010 (9) STR 242 (Tri.-Ahmd.)] that squarely covers the issue in our favour. They also rely on decision in case of Nirav Travels v. CCE [2012 (27) STR 73 (Tri.-Ahmd.)] wherein it was stated that it was not proper to issue SCN based on balance sheet and profit and loss account without even giving an opportunity to explain the situation.
- They requested to provide the **copies of file note sheets from inception of our file with the department till today and Correspondence in respect of Investigation Paragraph 2.3 of the SCN states that the assesse was asked to produce copies of Work Order/Contract in respect of clients which is a misstatement. They were not asked for any other information on or after 17-06-2019 and such mis-statement is unfair, unwarranted and uncalled for. The copies of communications through which any such information is sought may be provided to them.**
- The Paragraph 2.3 of the SCN, at Sl. No. 06 shows name of SamvitBuildcares Pvt. Ltd. whose name is not there in any of the 26AS of any years from 2014-15 to 2017-18 and they fail to understand how the demand of service tax can be made based on such name not even appearing in 26AS. Further, demand of service tax can be made only if department discharges the onus of showing any taxable service with evidence. **Demanding service tax based on figures of 26AS is patently wrong as 26AS does not state any nature of service and it is injustice to presume something else when the records verified by the officers also showed that they have provided all our services of road construction which is exempt.** The SCN is issued based on personal whims and fancy and an unfair attempt is made to demand service tax by

misrepresenting the facts and by mentioning name of one party twice in the list at Sl. No. 07 and 10 with same PAN Number and bearing names as Vijapur Nagarpalika and Vijapur Nagar PalikaBrough.

- Paragraph 12 of the SCN states that "Goyal& Co. is now registered under the Jurisdiction of ....".They fail to understand why the name of this party appears in the SCN issued to us. Further, Paragraph 8(i) of the SCN makes mention of Paragraph 2.8 which should be 2.9. Such casualness in the SCN only points out at the non- application of mind while issuing SCN hurriedly to cover up the deadline after sitting on the file for more than 4 months after collecting all relevant information from them.
- They are not liable to pay service tax to the tune of Rs. 401427/- under reverse charge mechanism during the period from 2014-15 to 2017-18 (upto June, 2017) **as they have not received service in relation to transportation of goods from a goods transport agency.** The **services** by way of transportation of goods by road received by them from truck operators or truck owners are covered in negative list and hence it does not attract levy of service tax at all. Hence proposed demand of service tax on such transportation service is not sustainable and sum of Rs. 1 lakh paid by them vide DRC-03 Debit Entry No. DC2406190404932 dated 28-06-2019 at the insistence of departmental officers may not be appropriated and sanction refund thereof to them.
- In terms of the definition under Section 65B(26) of the Finance Act, 1994, the service provider should not only transport goods by road **but also issue consignment note to be treated as a Goods Transport Agency.** It is on record and this fact has also been verified by the Officers of Ahmedabad South Commissionerate who visited their premises on 17-06-2019 that transporter of goods had never issued consignment note in their case and hence the service cannot be said to be provided by a goods transport agency.
- Services of transportation of goods by road are taxable only if the same are provided by a goods transport agency. Service of transportation of goods by a person other than a goods transport agency is not taxable at all as it is covered in negative list. The kind attention is drawn to the provisions of section 66B of the Finance Act, 1994 that provides for levy of service tax on services **other than those services specified in the negative list. The services by way of transportation of goods by road except the services of a goods transport agency are clearly specified in negative list in terms of provisions of Section 66D(p) of the Finance Act, 1994.**

- Reliance is placed upon the decision of Hon. Tribunal in case of Lakshminarayana Mining Company v. Commissioner of Central Tax [2019 (27) GSTL 745 (Tri.-Bang.)] They enclose herewith sample Bill No. 126 dated 02-12-2014 issued to them by Shree Khodiyar Transport wherein no consignment note is issued and no responsibility is born by the transporter. They also enclose a certificate dated 18-12-2019 from our Auditors KishorRaigandhi& Co., Chartered Accountants certifying that **carting expenses or transportation expenses paid by them during 01-04-2014 to 30-06-2017 were all paid to truck owners or parties which were not goods transport agency as in no case consignment note was ever issued for transportation of material.**
- The trucks are hired by them for transportation of material and there is no agency function involved as the goods are loaded on vehicles and there is no third party involved. They further contend that **it was not the intent of the Government to tax 'goods transport operators' but that the tax leviability was to devolve on agencies that perform the function of acceptance of cargo for transport under consignment notes.**
- In a catena of decisions such as Commissioner of Central Excise, Guntur v. Kanaka Durga Agro Oil Products Pvt. Ltd. [2009 (15) S.T.R. 399 (Tri. - Bang.)] followed in ShreenathMhaskobaSakharKarkhana Ltd. v. Commissioner of Central Excise, Pune-III [2017 (3) G.S.T.L. 169 (Tri. - Mumbai)] and in Commissioner of Central Excise and Service Tax, Aurangabad v. JaikumarFulchandAjmera [2017 (48) S.T.R. 52 (Tri. - Mumbai)] the issue stands settled with detailed orders.
- The service that is taxable is **'in relation to transport of goods by road and not transportation of goods by road.**
- Since they were not liable to pay any tax on exempt service and on service covered under negative list, there was no obligation on their part to take service tax registration. Accordingly, they were also not liable to file any periodical ST-3 returns. Hence, the penalty under section 77(1)(a) of the Finance Act, 1994 or any late fee is not payable by them and when tax itself is not payable, there is no question of imposing any penalty.
- Since no service tax is payable by them either on road construction service provided by them or on transportation service received by them from truck operators (and not from a goods transport agency) as explained above, there is no question of payment of interest by them and no penalty or late fee can be imposed or charged on them.
- The demand for period from 01-04-2014 to 31-03-2017, is not sustainable on the ground of limitation also as the SCN dated

13-11-2019 is served on 13-11-2019 beyond the normal period of limitation of 30 months from relevant date as applicable in terms of provisions of Section 73(1) of the Finance Act, 1994 as there is no fraud or collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions of the said Act or the rules made thereunder with intent to evade payment of tax on their part. The due date for filing ST-3 return for half year ended 31-03-2017 was 30-04-2017. 30 months from 30-4-2017 would expire on 30-10 2019 and since this SCN is served on 13-11-2019 i. e. beyond 30-10-2019, the proposed demand of service tax for period upto 31-03-2017 is also not sustainable on ground of limitation apart from entire demand being unsustainable on merit.

- They have not suppressed any information from department and all their transactions are very well reflected in our books of accounts and audited financial statements. The SCN is also issued based on figures taken from our record.
- They were of the bona fide belief that they were not liable to pay any service tax on road construction service as the same is fully exempt under Notification No. 25/2012-ST. Further they were also of the bona fide belief that theywerenot liable to pay any tax on mere transportation service provided by the truck operators in absence of any agency function involved by way of issue of consignment note in our case.
- They draw attention to CBEC Circular No. 5/92-CX.4, dated 13-10-1992 – (1993) 63 ELT T7, wherein Board has taken note of such attitude. Board has stated that such attitude only **increased fruitless adjudication with the gamut of appeals and reviews, inflation of outstanding figures and harassment of assesses. Board has warned that such casualness in issuance of show cause notices will be viewed seriously.** It further clarifies that mere non-declaration is not sufficient for invoking larger period, but a positive mis-declaration is necessary, as per decision of Supreme Court in Padmini Products and Chemphar Drugs.
- They draw your kind attention to Circular No. 1053/02/2017-CX, dated 10-03-2017 wherein it is stated that Board has made pre show cause notice consultation by the Principal Commissioner/ Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs (except for preventive/ offence related SCN's) **mandatory** vide instruction issued from F No. 1080/09/DLA/MISC/15 dated 21st December 2015. The said Circular further directs that such consultation **shall be done** by the adjudicating authority with the assessee concerned. Despite the clear mandate given by the Board, above referred Show Cause Notice is issued in

clear defiance of the Board instruction in this regard. **Such show cause notice issued in defiance of CBEC instruction is void ab initio.**

- Being aggrieved by such an action, they request to withdraw this show cause notice and grant them pre-show cause notice consultation giving reasonable opportunity of being heard. SCN issued in defiance of the mandate given by the Board is patently illegal and is not maintainable in law. They **rely on decision in case of Amadeus India Pvt. Ltd. v. Pr. Commr. of CE, ST & CT [2019 (25) GSTL 486 (Del.)]**
- With effect from 01-07-2017, the provisions of Chapter V of the Finance Act, 1994 were **omitted** vide Section 173 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act'). Further the Constitution (One Hundred and First Amendment) Act, 2016 was notified on 08-09-2016. Section 7 of the said Act **omitted** Article 268A of the Constitution. As a result Entry 92C relating to "tax on services" of the List I of the Seventh Schedule of the Constitution was also omitted vide Section **17** of the Constitution (One Hundred and First Amendment) Act, 2016 and thus with effect from 16-09-2016, levy of service tax was done away with.
- According to Section 173 of the CGST Act, Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.
- It is pertinent to refer to the provisions of the General Clauses Act, 1897 that saves the rights accrued under the prior legislation and empowers the Central Government to initiate any proceedings under the repealed legislations in terms of section 6 of the said Act. **However, in case of Rayala Corporation v. Directorate of Enforcement [1969 (2) SCC 412], a five-judge Bench of Hon. Supreme Court had held that Section 6 of the General Clauses Act, 1897 applied only to repeals and not to omissions.** In the present case, the Legislation has omitted provisions of Chapter V of the Finance Act, 1994 and therefore relying on decision of Hon. Supreme Court in case of Rayala Corporation (Supra), no proceedings can be initiated, no liability can be fastened by the Government in respect of any alleged violation or non-compliance of the provisions contained in Chapter V of the Finance Act, 1994 as omitted vide Section 173 of the CGST Act.
- Further, since they are registered under GST with our Vadodara office address as stated in all our audited accounts , the Office of CGST Commissionerate, Ahmedabad South has no jurisdiction to issue SCN to them.
- They have not concealed any information from service tax or

any other department and state that there is no violation of any provisions of service tax law on their part. In view of this, the question of imposition of penalty under section 78 or any other section does not arise. In a series of other cases, it has been held that when suppression is not alleged or proved, penalty cannot be levied. Relying on following decisions, the extended period of limitation cannot be invoked and that penalty cannot be imposed in this case.

(i) CCE, Mumbai-IV v. Damnet Chemicals P. Ltd. [2007 (216) ELT 3 (SC)].
(ii) CC v. Seth Enterprises [1990(49) ELT 619 (Tri.-Del.)]
(iii) Tamilnadu Housing Board v. CCE – 1994 (74) ELT 9 (SC),
(iv) The Hon. Supreme Court, in the case of Collector v. Chemphar Drugs – 1989 (40) ELT 276 (SC),
(v) Pahwa Chemicals P. Ltd. v. CCE, Delhi [2005 (189) ELT 257 (S.C.)]
(vi) Cosmic Dye Chemical v. CCE, Bombay [1995(75) ELT 721(SC)]
(vii) Hindustan Steel v. State of Orissa [1978 (2) ELT (J159) (S.C.)]
(viii) Cement Marketing Co. [1980 (6) ELT 295 (SC)]

10. Records of Personal Hearing:-

The first personal hearing was conducted on 01.07.2020, which was attended by Dr. Nilesh V. Suchak, He reiterated the submissions already made earlier. He also filed a submission where it is inter-alia contended as under:-.

- They enclosed following documents to show that all the works carried out by us are by way of construction of road for use by general public.
  (ix) Running Account Bill for BadpuraVarsoda Road for Rs. 5951677.75 and Rs. 1400000/- in respect of Capital Project Division Gandhinagar (Sl. No. 1 at Para 2.3 of SCN).
  (x) Work Orders of KheraluNagarpalka for road work of Rs. 10300323/- and Rs. 12.24 lakhs (Sl. No. 4 at Para 2.3 of SCN)
  (xi) Work Order dated 11-09-2012 and Letter dated 25-09-2014 from Kalol Municipality for road work. (Sl. No. 5 at Para 2.3 of SCN)
  (xii) Our Bill dated 25-08-2014 for Rs. 1287000/- for road construction work on SamvitBuildcares Pvt. Ltd. (Sl. No. 6 at Para 2.3 of SCN)
  (xiii) Work Order of VijapurNagarpalika for work of Rs. 1800188/- for road.(Sl. No. 7 at Para 2.3 of SCN)

(xiv) Three Work Orders dated 01-03-2014, 16-01-2016 and 25-02-2016 of Office of XEN, KhedaJillaPanchayat. (Sl. No. 8 at Para 2.3 of SCN)

(xv) Bill dated 03-03-2016 on Rao Construction Pvt. Ltd. for Rs. 1999750/- for road work (Sl. No. 9 at Para 2.3 of SCN)

(xvi) Bill dated 15-05-2015 on Ashish Construction Company for Rs. 1700000/- for construction of road (Sl. No. 11 at Para 2.3 of SCN)

(xvii) We have not provided any road construction service to Jay JayeshkumarBarot and the entry in 26AS appears to be erroneous to us. (Sl. No. 12 at Para 2.3 of SCN)

(xviii) Bill dated 14-06-2016 for Rs. 152500/- for road construction on Rachna Infrastructure Ltd. (Sl. No. 13 at Para 2.3 of SCN)

(xix) Bill dated 31-03-2015 for Rs. 234374/- on R. C. Patel (Sl. No. 14 at Para 2.3 of SCN)

(xx) Bills dated 31-03-2015 and 31-03-2018 for Rs. 1560600/- and Rs. 499985/- respectively on Shyamsunder Shrichand Karagwal (Sl. No. 15 at Para 2.3 of SCN)

(xxi) Four Bills dated 30-06-2016, 30-06-2016, 30-06-2016 and 01-11-2017 s. 9200/-, 225000/-, 225000/- and Rs. 603803/- respectively on Sankalp Infrastructures (Sl. No. 16 at Para 2.3 of SCN)

(xxii) Work Order dated 20-04-2017 for reconstruction of damaged road by Executive Engg. R & B Division, Anand for Rs. 36372686/-. (Sl. No. 17 at Para 2.3 of SCN)

➢ Since they have submitted all work orders/bills in respect of road construction work for all the parties as desired in paragraph 2.3 of the SCN, they requested to drop the demand of service tax in respect of road construction work and thus render justice.

➢ They have provided service by way of construction of road with material and thus in execution of these works contracts, transfer of property in goods is involved. Since the works executed by them are 'works contract" within the meaning of Section 65B(54) of the Finance Act, 1994, no service tax can be demanded on material portion as has been done blindly in the SCN based on false presumption of the same to be a pure service despite the clear facts made available to the officers who visited our premises and who have also collected our audited accounts for respective years.

➢ According to Section 65B (54) of the Finance Act, 1994 "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 movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

➢ Their construction income is for works contract service by way of construction of road for use by general public and the said income is also for 'original works' as defined in Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

➢ It is also on record and the officers who visited their premises have verified the fact that they have not charged any service tax on this road construction income in any case. Hence in terms of provisions of section 67(2) of the Finance Act, 1994, even where the service is taxable, the taxable value should be worked out by considering the gross amount as including service tax. Further, the rates of tax applied in the SCN are also wrong and on higher side for some period. Such high handedness is condemnable. The assessee submitted that though no service tax is payable in their case on account of full exemption under Notification No. 25/2012-ST, even where service tax is payable, the same should be calculated only on 40% of total amount in terms of provisions of Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006. The SCN has calculated the same on entire total amount without allowing deduction of 60% as per clear provisions of Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006 making such SCN bad in law.

➢ Out of total road construction income of Rs. 171453996/- for the period from 01-04-2014 to 30-06-2017, a deduction of only Rs. 90112413/- is made in respect of work orders submitted to establish exemption under Noti. No. 25/2012 as per para 2.9 of the SCN. The assessee further submitted that Paragraph 2 of the SCN itself confirms the fact that assesse produced 16 work orders and if one makes total of these 16 work orders, it comes to Rs. 179212561/- which clearly shows that the value of work orders for construction of road received by department is more than the value of road construction income and thus, service tax is not payable at all. The assessee further stated that the deduction allowed only of Rs. 90112413/- appears arbitrary and prayed to hold that since all the work orders for construction of road are submitted by them, no service tax is payable as proposed in the SCN. The assessee submitted that they have also submitted some more documents in respect of parties stated in paragraph 2.3 of this SCN making it

clear that entire construction income is in respect of road construction work which is fully exempt. The assessee requested to hold that they are not liable to pay any service tax in respect of construction income as the same is for fully exempt service by way of construction of road.

➢ Though they are not liable to pay any service tax, the SCN is issued applying wrong rate of service tax and without working out correct tax amount in terms of provisions of Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006. Though no tax is payable by them, even where tax is payable, the tax amount should be Rs. 3842089/- as under and not Rs. 10778165/- (9027283+1750882) as stated in paragraph 2.9 and 3.1 of the SCN for road construction works contract.

Period	Total Amt.	Less: WCs	Bal. Total Amt.	40% of Bal. Total Amt.	Rate of Tax %	Taxable Value	Service Tax Rs.
(1)	(2)	(3)	(4)=2-3	(5)	(6)	(7)	(8)=
1-4-14 to 31-3-15	56754951	8639420	48115531	19246212	12.36	17129061	2117152
1-4-15 to 31-5-15	1137238		1137238	454895	12.36	404855	50040
1-6-15 to 14-11-15	9260675		9260675	3704270	14.00	3296787	461550
15-11-15 to 31-3-16	20126372	16940691	3185681	1274272	14.50	1134098	164444
1-4-16 to 31-5-16	0	0	0	0	14.50	0	0
1-6-16 to 31-3-17	58695567	45099371	13596226	5318490	15.00	4732438	710016
1-4-17 to 31-3-17	25479163	19132931	6346232	2538493	15.00	2259250	339687
Total	171453996	90312413	81341583	32536633		28957488	3842089

➢ They enclose Construction Income Ledgers for reference and record in support of their period-wise figures.

➢ The demand of service tax proposed in the SCN Paragraph 2.9 merely based on 26AS presuming the same to be for taxable service is not sustainable for the reason that the Statement recorded in this regard and facts on record clearly show that the services provided by them are by way of construction of road and the same are fully exempt under Sl. No. 13 of Notification No. 25/2012-ST, dated 20-06-2012. The department cannot raise the demand on the basis of 26AS figures and balance sheet figures without examining the real nature of income and without establishing that the entire amount received by the appellant as reflected in said Form 26AS is consideration for any taxable services provided and

without examining whether the said income was because of any exemption.

- It is not legal to presume that the entire amount was on account of consideration for providing taxable services without such examination. They relied on decision of Hon. Tribunal in case of Kush Constructions v. CGST NACIN, ZTI, Kanpur [2019 (24) GSTL 606 (Tri.-All.)] in this regard holding that difference in figures reflected in ST-3 returns and Form 26AS filed under Income-tax Act, 1961 cannot be basis for raising Service Tax demand without examining the reasons for such difference and without examining whether amount as reflected in said Income Tax return was the consideration for providing any taxable services or the difference was due to any exemption or abatement. They also relied on decision of Hon. Tribunal in case of Sharma Fabricators & Erectors Pvt. Ltd. [2017 (5) GSTL 96 (Tri.-All.) wherein it was held that the charges in the SCN have to be on the basis of books of accounts and records maintained by the assesse and other admissible evidences.

- Since their records clearly show that the service provided by them is by way of construction of road, proposing demand of service tax by making presumption contrary to facts is not legal or proper and prayed to drop the proceedings under the SCN on this ground alone relying on this decision also. The transactions recorded in the books of account cannot be held to be contrary to the facts.They have further stated that the said order is also maintained by Hon. High Court and reported as [Commissioner v. Sharma Fabricators & Erectors Pvt. Ltd. - 2019 (22) GSTL J166 (All.)].

- They have not yet received copies of documents as required in paragraph 10 of their reply dated 19-12-2019. They stated that they do not need these documents if this office is dropping all the proceedings under the SCN based on our submissions.

- However, the office still proposes to confirm the demand of any service tax despite clearly establishing that there is no service tax liability on their part, they requested to provide all documents and then an opportunity of cross examination of all officers who investigated this matter as they were given clear indication by all of them right from 17-06-2019 till the

date of issuance of SCN on 13-11-2019 that there is no service tax liability in respect of their road construction income..

- The assessee further stated that considering their submissions in paragraphs 27 to 29 their reply dated 19-12-2019, they requested to hold that since with effect from 01-07-2017, the provisions of Chapter V of the Finance Act, 1994 were **omitted** vide Section 173 of the Central Goods and Services Tax Act, 2017, any demand under the Finance Act, 1994 is not sustainable now.

- The assessee's another submission is that they are registered under GST with their Vadodara office address as stated in all their audited accounts collected by this office, the Office of CGST Commissionerate, Ahmedabad South has no jurisdiction to issue SCN to them and they requested to withdraw the SCN issued without jurisdiction.

- It is the submission of the assessee that as they have not concealed any information from service tax or any other department and as there is no fraud or collusion or wiful misstatement or violation of any provisions of service tax law on their part with intent to evade payment of service tax, kindly hold that extended period of limitation cannot be invoked and that penalty cannot be imposed in this case.

Owing to the changes in the adjudicating authority, the assessee was granted opportunity of personal hearing on 20.06.2022 and 03.11.2022, which was also attended by Shri Dr. Nilesh V. Suchak. During the course of personal hearing he reiterated the submissions already made earlier and also relied upon case laws in support of assessee's stand.

Discussions and findings:-

11. I have carefully gone through the facts on record and the written and PH submissions made by the assessee. The issues to be decided in the present case are as to whether

i) After the omission of provisions of Chapter V of Finance Act, 1994 vide Section 173 of the CGST Act, 2017, no proceedings can be initiated for alleged violation or non-compliance of provisions contained in Chapter-V of Finance Act, 1994 ?

ii) Pre-show Cause Notice was mandatory in the present case ?

iii)The amount of Rs. 6,84,87,481/- should be considered as taxable value in terms of Section 67 of the Finance Act, 1994 and service tax thereon amounting to Rs. 90,27,283/- is required to be paid by the assessee as per the merits of the case?

iv)The amount of Rs. 1,22,75,333/- should be considered as taxable value in terms of Section 67 of the Finance Act, 1994 and service tax thereon amounting to Rs. 17,50,882/- is required to be paid by the assessee as per the merits of the case?

v) Service tax to the tune of Rs. 4,04,427/- leviable on the taxable service chargeable to tax under the reverse charge mechanism should be recovered from the assessee as per the merits of the case"

vi) The extended period for recovery of service tax has been rightly invoked in the SCN?

vii) The penalties as proposed in the SCN can be imposed upon the assessee from the facts and circumstances of the present case?

viii) Late fees of Rs. 1,40,000/- should be charged and recovered from them in terms of the provisions of Rule 7C of the Service Tax Rules, 1994 for not filing their ST-3 returns for the period from April 14 to June 17 within the prescribed time frame?

12. The assessee has argued that the Legislation has omitted provisions of Chapter V of the Finance Act, 1994 and therefore relying on decision of Hon. Supreme Court in case of Rayala Corporation, no proceedings can be initiated, no liability can be fastened by the Government in respect of any alleged violation or non-compliance of the provisions contained in Chapter V of the Finance Act, 1994 as omitted vide Section 173 of the CGST Act.

12.1 In this regard, I find that the provisions of Chapter V of the Finance Act, 1994 stands omitted by Section 173 of the Central Goods and Services Tax Act, 2017. However, the omission is not a point-blank omission but is subject to the phrase *'save as otherwise provided in this Act'* and the relevant text of the said statuette is as under:

> *"**Save as otherwise provided in this Act**, Chapter V of the Finance Act, 1994 shall be omitted."*

The above phrase has the effect that the Chapter V of the Finance Act, 1994 would be applicable notwithstanding the

omission, if any other provision of the Central Goods and Services Tax Act, 2017 allows its applicability. Against the background of this analogy, it is worthwhile to reproduce the following relevant clauses of sub-section 2 of Section 174 of the Central Goods and Services Tax Act, 2017 which reads as under:

> *(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) . . . . . .*
> *(b) . . . . . .*
> *(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*

The above express provisions of Section 174(2) of the Central Goods and Services Tax Act, 2017 is the saving clause which permits the applicability of Chapter V of the Finance Act, 1994 even after its omission w.e.f. 1.7.2017. This view has been endorsed by the High Court of Calcutta in order dated 15.1.2019 pertaining to Writ Petition No. 380(W) of 2019 in the case of *M/s*

Gitanjali Vacationville wherein the Hon'ble High Court has observed as under:

> ***"Prima facie reading of Sections 173 and 174 of the Act of 2017 it appears that, an enquiry or an investigation or even a legal proceeding under the Act of 1994 is permissible notwithstanding the coming into effect of the Act of 2017."***

Likewise in the case of *M/s Laxmi Narayan Sahu[2018 (019) GSTL 0626 (Gau)*, the High Court of Gauhati has held as under:

> ***"A conjoint reading of the provisions laid down in paragraph 37 of Kolhapur Cane Sugar Works Ltd. (supra) and Sections 173 and 174(2)(e) would lead to a conclusion that although Chapter V of the Finance Act of 1994 stood omitted under Section 173, but the savings clause provided under Section 174(2)(e) will enable the continuation of the investigation, enquiry, verification etc., that were made/to be made under Chapter V of the Finance Act of 1994."***

The High Court of Gauhati has also considered the case of *M/s Rayala Corporation reported at 1969 (2) SCC 412*, which has been relied upon by the assessee, before coming to the above conclusion. The issue under consideration in both the above case laws is to the effect whether the provisions of the omitted Chapter V of the Finance Act, 1994 would be applicable w.e.f. 1.7.2017 or otherwise which is identical to the argument presented by the assessee. Thus, the ratio of the above case laws is squarely applicable to the facts of the case at hand. Thus, I find that the argument raised by the assessee to the effect that the show cause notice is unconstitutional and without jurisdiction is not sustainable. In view of the above judicial pronouncements, the issuance of show cause notice and adjudication thereof is legally correct even after enactment of the Central Goods and Services Tax Act, 2017 w.e.f. 1.7.2017.

13. The assessee has argued that since no pre-SCN hearing was held in their case before the issuance of the SCN , the SCN should be dropped on this ground. The assessee has relied upon Board's circular and various case laws in support of their argument.

13.1 In this regard, I find that Board vide Circular No. 1076/02/2020-CX dated 19.11.2020, has clarified that *"Pre-*

show cause notice consultation with assessee, prior to issuance of SCN in case of demand of duty is above Rs. 50 Lakhs (except for preventive/offence related SCNs) is mandatory & shall be done by the Show cause notice issuing authority".

As per above clarification, Pre-show Cause notice consultation is not mandatory for preventive/ offence related SCNs. I find that the present show cause notice has been issued to the assessee on the basis of proceedings initiated by the officers of Preventive Section of this Commissionerate, hence; in view of above clarification, Pre-show Cause Notice consultation was not mandatory in the present case. I also find that Board vide Circular No. 1079/03/2021-CX dated 11.11.2021 at Para :- 5 has issued another clarification in the matter as under:-

"5. It is, therefore, reiterated that pre-showcause notice consultation shall not be mandatory for those cases booked under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 for recovery of duties or taxes not levied or paid or short levied or short paid or erroneously refunded by reason of :-

(a) fraud; or

(b) collusion; or

(c) wilfulmis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provision of the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 or the rules made there under with the intent to evade payment of duties or taxes."

Since, the present SCN has been issued invoking extended period of limitation under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994, pre-show cause notice consultation was not mandatory in view of above clarification also. I further rely upon the judgment of Hon'ble High Court of Jharkhand in the case of M/s. Himanchal Construction Company Pvt Ltd Vs. Union of India (2021(377)ELT 545(Jhar.) wherein the Hon'ble Court in similar circumstances has observed that the SCN fell into the category of preventive SCN and hence, the case of the petitioner comes within the exception under para 5.0 of the master circular dated 10th March, 2017.

13.2 The assessee has relied upon the judgment of Hon'ble High Court in the case of M/s. Amadeus India Pvt Limited Vs. Pr.

Commr (2019(25)GSTL 486(Del.) in support of their submission. I find that the facts in the above case laws are distinguishable from the present case inasmuch as in the above referred case, the party concerned was already registered and was filling ST-3 returns, whereas in the present case, the assessee was not registered and the department came to know about their activities only because of proceedings initiated by the Preventive wing of the Commissionerate based on the information received. Similarly in the judgment of the Hon'ble High Court, in the case of Hitachi Power Europe GMBH v. CBIC [2019 (27) GSTL 12 (Mad.)], relied upon by the assessee, the appellant concerned was already registered with the department. Further, the appellant concerned was regularly audited by the Government authority, and it is the observations of the Hon'ble Court that SCN was issued only on the basis of CERA audit and there was no reference to the exchange of communication between the petitioner and the Assessing Officer or the details furnished by the petitioner to the Department in the course of the Audit. Thus, the ratio of above case laws relied upon by the assessee is not applicable from the facts and circumstances of the present case.

13.3 In support of my above observations, I rely upon the judgment of Hon'ble Supreme Court in the case of Collector of C.Ex. CALCUTTA Vs. ALNOORI TOBACCO PRODUCTS (2004 (170) E.L.T. 135 (S.C.) wherein the Hon'ble Apex court at para-13 of the judgment has observed as under:-

> ***"13. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."***

13.4 Accordingly, I find that Pre-show-cause notice consultation was not mandatory in the present case and hence, the submission made by the assessee in this regard cannot be considered tenable.

14. I further find that the assessee has requested for cross examination of the officers who were investigating the present case. However, the assessee has not clarified as to how such cross examination would be relevant for the adjudication of the present case. It also appears that assesee's request is based on some erroneous indication not supported by any documentary evidence. I also find that the present SCN has been issued to the assessee on the basis of documents collected by the officers of department wherein statements of none of the officers has been relied upon. Thus, it is purely a record based proceeding initiated on the basis of documents/ records provided / collected

from the assessee. In this respect, I rely upon the judgment of Hon'ble High Court of Kerala in the case of M/s. N.S. Mahesh Vs. CC, Cochin (2016(331)ELT 402(Ker), wherein the Hon'ble Court in analogous circumstances has upheld the denial of cross-examination of the officers. In any case, when sufficient opportunities by way of personal hearing and written submissions have been provided to the assessee to present their case, in my opinion no useful purpose would be served in allowing the cross examination of the officers especially when statement of none of officers have been recorded or relied upon in the SCN. Accordingly, I reject the request made by the assessee in this regard.

14.1 The assessee has argued since they are registered under GST with their Vadodara office address as stated in all their audited accounts, this Commissionerate has no jurisdiction to issue SCN to them. I find that the present proceedings were initiated for recovery of service tax and not GST. Also, it is on record that the assessee was already having their office at 6, New Vaishali Society, Opp. Devashish School, Bodakdev, Ahmedabad which falls within the jurisdiction of this Commissionerate. Further, Shri Vipul Kumar V. Barot, Partner of the assessee in his statement recorded under Section 70 of the Central GST Act, 2017 read with Section 83 of the Finance Act, 1994, has stated that he was looking after all the affairs of the company and he was aware of the day to day activities of the company. Shri Barot in his above statement has not stated anything about their Vadodara office. Hence, this plea of the assessee is clearly an afterthought. Therefore, in my opinion the competent authority of this Commissionerate was empowered to initiate proceedings and issue SCN to the assessee.

15. With regard to the demand of service tax of Rs. 90,27,283/- proposed to be recovered from the assessee, the officers of the department on verification of the 26AS statements submitted by the assessee, observed that the assessee had earned income from below mentioned clients/ service recipients who had deducted TDS under Section 194C of the Income Tax Act,1961 from the payments made by them to the assessee. As per the provisions of Income Tax Act, 1961, the tax under Section 194C is required to be deducted from the payments made for the services of Work Contract or a Labor Contract rendered by the service providers concerned. Hence, it appeared to the officers of the department that payments received from these clients by the assessee, as reflected in their 26AS statements, is a consideration towards services rendered in respect of Work Contract or Labor Contract on which no service tax liability was discharged by the assessee. As no documents / work orders etc were available with

the departmental officers at the material time to verify the nature of services and whether the same is exempted or otherwise, the amounts reflected in the 26AS statements have been taken as consideration received from these clients towards provisions of taxable services, and, proposed demand of service tax from the assessee in the SCN accordingly.

Sr No	Name of Client
01	Capital Project Division Gandhinagar
02	KherahiNagarpalika
03	Kalol Municipality
04	SamvitBuildcares Private Ltd
05	VijapurNagarpalika
06	Office of the XEN
07	Rao Construction Pvt Ltd
08	Ashish Construction Company
09	Jay JayeshkumarBarot
10	Rachna Infrastructure Ltd
11	R C Patel
12	ShyamsunderShrichandKaragwal
13	Sankalp Infrastructure
14	Executive Engg R&B Division

15.1 Against above proposal made in the SCN, the assessee has vehemently argued that all the services provided by them including the services provided to above clients are exempted under Sl. No. 13(a) of Notification No. 25/2012-ST, dated 20-06-2012.

15.2 It is a settled legal position that the onus to establish the eligibility of exemption lies upon the person who seeks to claim the exemption. In this regard, I find it relevant to refer tothe judgment of the Constitution bench of Hon'ble Supreme Court,in the case of Commissioner of Customs(Import) , Mumbai Vs. Dilip Kumar & Co. 2018 (361) E.L.T. 577 (S.C.), wherein the Hon'ble Apex Court while answering reference made to them in civil appeal no. 3227 of 2007 have held as under:-

"52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

15.3 At the outset, I find no dispute about the fact that the activities carried out by the assessee is "taxable services" as defined under Section 65B(51) of the Finance Act, 1994. The assessee's only argument is that all their services including the services provided to the above clients (Road construction service) are covered under Sl. No. 13(a) of the Mega Exemption Notification No. 25/2012-ST, dated 20-06-2012 as amended. In support of their stand the assessee have submitted work orders/ bills,pertaining to these clients, and a certificate from their auditors.

15.4 Since the assessee has claimed exemption under Sl. No. 13(a) of Notification No. 25/2012-ST, dated 20 06-2012, I find it pertinentto extract the Sl. No. 13(a) of the said notification for ready reference.

> ***"13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-***
> ***(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;"***

In the following paragraphs, I proceed to discuss the applicability of the above exemption to the services provided by the assessee to the above clients, on the basis of work orders/ bills submitted by the assessee in their written / oral submissions and in the backdrop of the ratio of Hon'ble Supreme Court's binding judgment in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Co *supra*.

15.5 I find that in respect of services provided to following clients, the assessee has furnished copies of work order/ bills issued by the governmental authority/local authority concerned.

Sr No	Name of Client
01	Capital Project Division Gandhinagar
02	KheraluNagarpalika
03	Kalol Municipality
04	VijapurNagarpalika
05	Office of the XEN
06	Executive Engg R&B Division

I have gone through the above documents and find that many of these documents are illegible and hence, not reliable. I also find that the documents which are legible indicate that the assessee was supposed to provide services related to Roads to these clients. I further find that in terms of provisions of Sr. No. 13(a) *supra, Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, a road* ***for use by general public*** only is exempted. Therefore, before claiming exemption under the above provision, the assessee mandatorily establish his case as to the nature of actual services provided with sufficient documentary evidences, and, hence, the documents the assessee have furnished must establish that the roads mentioned therein are for use by general public. I find that the term *"general public"* has been defined in Para 2(q) in Notification No. 25/2012-ST, dated 20-06-2012 supra as :-

"(q)"general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature;"

I would also like to refer the following definition of *public road* given under The National Road Traffic Act, 1996 which reads as under:-

"Public road means any road, street, or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access and includes –

(a) The verge of any such road, street or thoroughfare;

(b) Any bridge, ferry or drift traversed by any such road, street or thoroughfare ,and

(c) Any other work or object forming part of or connected with or belonging to such road, street or thoroughfare; "

I further find that in none of the above documents submitted by the assessee, it has been certified / declared/ stated by the authority concerned that the roads mentioned therein are meant for use by *general public* nor they have been categorized as *public road* as envisaged in the definitions supra. In my opinion, only because the works were given by the government/ local authority, it cannot be automatically presumed that the roads mentioned in the relevant work orders/ bills are for use by *general public*, if the said documents do not have categorical declaration/ certificate to that effect by the competent authority. Thus, I find that the assessee failed to conclusively prove that the works given by the above clients were for the roads for use by general public and hence, in my considered view, the assessee is not eligible for exemption under Sr. No. 13(a) of Notification No. 25/2012-ST, dated 20 06-2012 supra in respect of services provided to these clients.

15.6 I further find that the assessee have furnished copies of bills in respect of following clients to support their claim for exemption.

Sr No	Name of Client
1	Samvit Buildcares Private Ltd
2	Rao Construction Pvt Ltd
3	Ashish Construction Company
4	Jay JayeshkumarBarot
5	Rachna Infrastructure Ltd
6	R C Patel
7	Shyamsunder Shrichand Karagwal
8.	Sankalp Infrastructure

It is observed that these bills have been issued by the assessee to above private parties/clients for road related services provided to them. I find that on the basis of the said bills only, it cannot be decisively proved that the services mentioned therein relate to *construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-a road, for use by general public* as envisaged in the Sl. No. 13(a) of Notification No. 25/2012-ST, dated 20-06-2012 supra and hence,

the service tax exemption cannot be extended to the services provided to above private parties/clients also.

15.7 In case something falls within the scheme of taxation, the same cannot be exempted, unless specifically exempted by virtue of Notification. In this regard, I would like to rely on the decision of Hon'ble Supreme Court in the case of CCE V/s M/s Doaba Steel Rolling Mills [2011(269) ELT 298 (SC)] wherein it was held that -

> *"**19.** The principle that a taxing statute should be strictly construed is well settled. It is equally trite that the intention of **the Legislature is primarily to be gathered from the words used in the statute.** Once it is shown that an assessee falls within the letter of the law, he must be taxed however great the hardship may appear to the judicial mind to be.*
>
> ***20.** On the principles of interpretation of taxing statutes, the following passage from the opinion of Late Rowlatt, J. in Cape Brandy Syndicate v. Inland Revenue Commissioners, 1921 (1) KB 64, 71 has become the locus classicus and has been quoted with approval in a number of decisions of this Court :*
>
> *"....**in a taxing act, one has to look merely at what is clearly said. There is no room for any intendment.** There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*
>
> ***21.** In Commissioner of Sales Tax, Uttar Pradesh v. The Modi Sugar Mills Ltd. (1961) 2 SCR 189, J.C. Shah, J. observed thus :*
>
> *"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed : it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."*
>
> *(Emphasis supplied)*

Further, it is trite law that exemption notifications are to be strictly interpreted. Words cannot be imported into a notification. Further, it has also been held by the Hon'ble Apex Court that in case of ambiguity in a section/rule, it is to be interpreted in favour of the assessee. However, if there is any ambiguity in an exemption notification, it is to be interpreted in favour of the Revenue. In the instant case it is observed that in none of the documentary evidences furnished by assessee, it is mentioned that the roads referred therein are for use by general public. Consequently, following the binding judgments of Hon'ble Supreme Court's in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Co and CCE V/s M/s Doaba Steel Rolling Mills *supra*, and I find that the assessee have failed to prove with documentary evidences that the services provided to the clients mentioned at para-15 above, were exempted under Sl. No. 13(a) of Notification No. 25/2012-ST, dated 20-06-2012 supra and hence, they are required to discharge service tax liability on the considerations received from the said clients.

16. Now I proceed to determine the taxable value and service tax liability in respect of following clients as mentioned in Para -15 above.

Sr No	Name of Client
01	Capital Project Division Gandhinagar
02	KheraluNagarpalika
03	Kalol Municipality
04	Samvit Buildcares Private Ltd
05	VijapurNagarpalika
06	Office of the XEN
07	Rao Construction Pvt Ltd
08	Ashish Construction Company

09	Jay JayeshkumarBarot
10	Rachna Infrastructure Ltd
11	R C Patel
12	Shyamsunder Shrichand Karagwal
13	Sankalp Infrastructure
14	Executive Engg R&B Division

I find that in the SCN, while arriving at the taxable value, the provisions of Section 72 of Finance Act, 1994 (Best judgment method) have been invoked. I further find that the assessee have not raised any specific argument against the invocation of above provisions. However, the assessee in their submissions have argued that though they are not liable to pay any service tax, the SCN is issued without working out correct tax amount in terms of provisions of Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006.

16.1 Under the circumstances, I find that the taxable value in respect of above clients is required to be determined on the basis of provisions of Section 72 of Finance Act, 1994 read with Section 67 of Finance Act, 1994 and also considering as to whether the provisions of Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006 are applicable as contended by assessee or otherwise.

16.2 Before determining the taxable amount in respect of services provided to above clients, it is desirable to extract the relevant provisions of Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006, which provides as under:-

> ***RULE 2A. Determination of value of service portion in the execution of a works contract.*** *— Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :-*
>
> *(i)* ---
>
> *(ii) 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;

***[Provided** that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty 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,

service tax shall be payable on seventy per cent. of the total amount charged for the works contract.]

***Explanation 1.** - For the purposes of this rule,-*

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon :

Provided *that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.*

Explanation 2. *- For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.]*

The above Rule provides for determination of value of service portion in execution of a work contract. The term 'Works Contract' has been defined at Sec. 65B(54) of the Finance Act, 1994 as under:

"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 movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

As per provisions cited above, it is apparent that the valuation under Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006 can be resorted to only in the cases, where the assessee proves with documentary evidences that services provided by them to the clients concerned were work contract services and property in goods involved in the execution of such contract was leviable to tax as sale of goods .

16.3 I have gone through the copies of work orders/ bills etc., in respect of services provided to these clients and find that from none of these documents it is established that the transfer of property in goods was involved during the execution of the said works/provisions of services mentioned in these documents. Accordingly, the assessee has failed to prove that they had provided work contract service to the above clients. Hence, the service tax liability cannot be determined in terms of Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006*supra* . Accordingly, the entire value of Rs. 6,84,87,481/- as mentioned in the SCN is required to be considered as taxable value for arriving at the service tax liability in terms of provisions of Section 67 read with Section 72 of the Finance Act, 1994 and hence, the assessee is required to pay service tax of Rs.9027283/- thereon.

17. As regards, the demand of service tax of Rs. 17,50,882/- on the amount of Rs. 1,22,75,333/-, I find that the same is proposed to be recovered from the assessee on the ground that on comparison of the income as shown in the Profit and Loss Account vis-à-vis the income received in respect of which TDS has been deducted under Sec. 194C of the Income Tax Act it appeared that the assessee has received certain other income in addition to that pertaining to Works Contract/ Labor Contract as tabulated under:

Financial Year	Income as per Balance Sheet	Payment receipt in 26AS	Difference between B/s and 26AS
2014-15	56754951	**54728489**	2026462
2015-16	30524285	23140492	7383793
2016-17	58695597	58255406	440191
2017-18 (upto June)	25479163	23054276	2424887
Total	171453996	159178663	12275333

Further in view of the statement dated 17.6.2019 of Shri Vipul Kumar Barot, Partner of the assessee; it appeared that the nature of business undertaken by them is rendering services. In absence of any documents or explanation offered by the assessee, it further appeared that the said income of Rs. 1,22,75,333/- is liable to be considered as taxable value by applying the best judgment assessment under Sec. 72 of the Finance Act, 1994 and hence, the service tax liability on such income of Rs. 1,22,75,333/- calculated to Rs. 17,50,882/ as detailed under:

Financial Year	Income as per Balance Sheet	Payment receipt in 26AS	Difference between B/s and 26AS	Service Tax
2014-15	56754951	**54728489**	2026462	250471
2015-16	30524285	23140492	7383793	1070650
2016-17	58695597	58255406	440191	66029
2017-18 (upto June)	25479163	23054276	2424887	363733
Total	171453996	159178663	12275333	**1750882**

17.1 I find that the assessee has not explained the above difference with documentary evidences or authenticated reconciliation statement. Since the above figures have been taken from audited accounts of the assessee as well as 26AS statement under Income tax Act, and assessee did not have any other income except provisions of services, the difference of Rs.1,22,75,333/- is required to be treated as consideration for the provisions of taxable services. I also find that on the basis of submission made and documents furnished by the assessee, it is not possible to determine the nature of services in respect of above differential amount, hence, I have no other option but to treat entire differential amount of Rs. 1,22,75,333/-,as consideration towards provision of taxable service. Accordingly, I find that the assessee is required to pay service tax of Rs. 17,50,882/- on the amount of Rs. 1,22,75,333/- in terms of provisions of Section 67 read with Section 72 of the Finance Act, 1994 as proposed in the SCN.

18. I find that another argument of the assessee is that whole basis of SCN is incorrect / or misconceived when the same has been issued based on figures of 26AS. The assessee has also relied upon several cases laws in support of their arguments.

18.1 I find that it is not the case of the assessee that the figures reflected in 26AS statements are incorrect or these figures are not showing the consideration received from their clients towards provisions of services. It is also not the case of the assessee that the figures of income reflected in their audited accounts records i.e., Balance sheet/ Profit and Loss accounts are not showing consideration received by them towards provisions of services. I further find that figures of 26AS statements and audited accounts records have been taken only in the cases where the officers of the department did not have primary documents like invoices/work orders for verifying the nature of services provided by the assessee. Also, the issuance of SCN is not fastening of service tax liability, as it provides the opportunity to the assessee to present their case with documentary evidences. The opportunities have also been provided to the assessee to put forth their defense in the form of written as well as oral submission at the time of personal hearing. Thus, it cannot be said that the entire demand is based on 26AS statement only, and hence, the argument made by the assessee in this regard is incorrect and devoid of merits.

18.2 In this regard, I would also like to refer the judgment of Hon'ble Tribunal in the case of M/s. Rent Works India Pvt Limited Vs. CCE (2016(43) STR634 (Tri.Mumbai), wherein establishing the reliability of figures reflected in Income Tax records / returns for service tax purpose, the Hon'ble Tribunal has observed as under

"If an amount paid by the appellant to Shri Alan Van Niekerk is considered as a salary by the Income Tax Department, a branch of Ministry of Finance, Department of Revenue, it cannot be held by the Service Tax Department, another branch of Ministry of Finance, Department of Revenue, as amount paid for consultancy charges and taxable under Finance Act. The same department of Government of India cannot take different stand on the amount paid to the very same person and treat it differently. "

In view of above observations, I find that if the figures reflected in 26AS statements / income records etc., have been treated as consideration towards provision of services and assessed accordingly under Income Tax Act, 1961, then said figures have to be treated as consideration received towards provisions of taxable services and service tax liability is required to be calculated on the said amount.

18.3 The assessee has relied upon following judgments in support their arguments.

(i) Kush Constructions v. CGST NACIN, ZTI, Kanpur [2019 (24) GSTL 606 (Tri.-All.)]-

In the above referred judgment the assessee concerned was already registered with the department and, it was observed by the Hon'ble Tribunal that further verification should have been carried out by the department before demanding service tax on difference between figures reflected in the 26AS and ST-3 returns. Whereas, in the present case, the assessee was not registered with the department and did not file any periodical returns. Hence, the facts and circumstances of the present case are distinguishable from the above judgment.

(ii) Sharma Fabricators & Erectors Pvt. Ltd. [2017 (5) GSTL 96 (Tri.-All.)]:- In the above judgment it was the observation of the Hon'ble Tribunal that books of account maintained by the assessee were not verified by the department before issuance of the SCN. Whereas, in the present case, as evident from the facts narrated in the SCN, the audited books of account maintained by the assessee were verified by the officers before issuance of SCN. Thus, the facts of the above case are also not similar to the present case.

(iii) Quest Engineers & Consultants Pvt. Ltd. v. Commissioner [2022 (58) GSTL 345 (Tri.-All.)]:-

(iv) Ganpati Mega Builders (I) Pvt. Ltd. v. CCE [2022 (58) GSTL 324 (Tri.-All.)]

(v) Forward Resorcers Pvt Ltd Vs. CCE- CESTAT order No. A/10801/2022 dated 15.07.2022. :-

The appellants concerned in the above cases were registered with the department and was regularly filing ST-3 returns, which is not the case in the present proceedings. Thus, the facts and circumstances of the above judgments are also distinguishable and hence, reiterating the observations of the Hon'ble Supreme Court in the case of Collector of C.Ex. CALCUTTA Vs. ALNOORI TOBACCO PRODUCTS (2004 (170) E.L.T. 135 (S.C.) *supra* I find that the ratio of these judgments will not be applicable in the present case.

19. As regards demand of service tax of Rs. 4,04,427/- I find that on scrutiny of the expenses shown in the financial statements of the assessee, it was observed by the officers of the department that the assessee had incurred expenditure towards transportation and had made payments to the various transporters. Since the assessee is a partnership firm, in terms of provisions of Notification No. 30/2012 ST dated 20.6.2012 as amended;they appeared to be liable for payment of service tax under reverse charge mechanism on such expenses. The calculation of service tax on such charges is tabulated below:-

Calculation of Service Tax on Reverse Charge basis

F.Y.	Servic es	Gross Amount	Abatemc nt (75%/70 %)	Taxable Value	ST Rate	ST Payable	ST Paid	Outstan ding ST
2014-15	GTA	77,68,462	58,26,347	19,42,116	12.36	2,33,753	1,00,000	1,33,753
2015-16	GTA	5,62,690	3,93,883	1,68,807	14.5	24,477		24,477
2016-17	GTA	19,01,422	13,30,995	5,70,427	15.0	85,564		85,564
2017-18 (upto June, 2017)	GTA	13,47,390	9,43,173	4,04,217	15 C	60,633		60,633
Total		11579904				4,04,427	1,00,000	3,04,427

19.1 Against the above proposal the assessee's main argument is that they were not liable to pay any service tax for transportation of goods as they have availed service of transportation of goods and not the services in relation of transportation of goods as no goods transport agency is involved and no consignment note is issued in their case. In support of above argument the assessee has submitted a certificate from their CA/ Auditors and a sample copy of invoice purported to be issued by a transporter.

19.2 I find that on the basis of a CA certificate and a sample copy of invoice it cannot be conclusively proved that consignment

notes were not issued by the transporters concerned in all the cases. I also reply upon the judgment of Hon'ble Allahabad High Court in the case of CCE Vs, KISAN SAHKARI CHINI MILLS LTD (2019(29)GSTL292(All.) wherein the Hon'ble High Court have categorically observed as under:-

> ***"14. Tribunal while observing that transporters have not issued consignment note ignored the fact that under Section 65(50b) it has been further clarified that a consignment note or anything having similar nature but called by whatever name, would be within the ambit of Section 65(50b) of Finance Act, 1994. The term "consignment note" has no magical or technical meaning looking to the very purpose and intent of legislature in the matter."***

In view of Hon'ble High Court's above findings, issuance of any documents i.e, a bill, invoice etc., having similar details/nature like consignment note by a transporter concerned is sufficient for attracting service tax liability under the category of "Goods Transport Agency" and the assessee being a partnership firm is required to discharge the said liability under reverse charge mechanism as per the provisions of Notification No. 30/2012 ST dated 20.6.2012 as amended, even if the transporters concerned have only issued bills, invoices, chits having similar characteristic of a consignment note.

19.3 Accordingly, I find that the assessee is required to pay service tax of Rs. 4,04,427/- on merit as proposed in the SCN and amount of Rs. 1,00,000/- already paid by the assessee is required to be appropriated against the above service tax liability.

20. In the SCN, the service tax has been demanded invoking extended period of 5 years under proviso to sub-section (1) of Section 73 of the Finance Act, 1994. It is alleged that the assessee failed to obtain service tax registration and failed to file ST-3 returns and thereby failed to reflect the correct information in the ST-3 returns. It is further alleged that they have resorted to suppression of material facts by not reflecting the income accrued on account of rendering taxable services in their ST-3 returns as well as the expenses which are liable to service tax under the reverse charge mechanism. It also alleged that these facts only came into notice when the department conducted an enquiry against the assessee.

20.1 Against the invocation of extended period the assessee has mainly argued that the demand is not sustainable on the

ground of limitation also as there is no fraud or collusion of any willful mis-statement or suppression of facts of contravention of any of provisions of the said Act or the rules made there under with intent to evade payment of tax on their part. The assessee has also argued that they had not suppressed any information from department and all their transactions were reflected in their books of accounts and audited financial statements. It is the argument of the assessee that they were not liable to pay any service tax on road construction service as the same is fully exempt under Notification No. 25/2012-ST. The assessee also argued that they were also of the bona fide belief that they were not liable to pay any tax on mere transportation service provided by the truck operators in absence of any agency function involved by way of issue of consignment note in their case. The assessee has also relied upon judgments/case laws in support of their submissions.

20.2 In this regard, as rightly alleged in the SCN, the activity of providing taxable services by the assessee, non-payment of service tax on consideration received from their clients, non-payment of service tax under reverse charge mechanism, came to light only because of proceedings initiated by the officers of the department as the assessee had not obtained service tax registration nor filed any statutory returns. This act of the assessee is tantamount to willful misstatement and suppressing the facts with an intention to evade service tax payment. In this regard, the reliance is placed upon the Hon'ble High Court of Chhattisgarh 's judgment in the case of ***Pawan Engineering Works-2019 (31) G.S.T.L. 10 (Chhattisgarh)***wherein the Hon'ble High Court has held that non-registration definitely will amount to suppression of facts. The relevant observation of the Hon'ble High Court is extracted below:

> ***10.*** *The contention of the appellant is that the extended period of 'five years' is not applicable to the instant case, as it does not come within the purview of specific Clauses at 'a, b, c, d and e'. This aspect has been considered by the Tribunal and it has been clearly held in paragraph 17 that non-registration of the appellant, in the given circumstances, definitely will amount to suppression of the relevant facts, which came to the notice of the Department, only later, on the basis of some intelligence gathered by the Preventive Officers of the Central Excise. This being the position, it squarely comes within the purview of 'sub-Clause (d)' under the proviso to Section 73(1) of the Finance Act, 1994 and hence it was open for the Department to have invoked the extended period of 'five years' for issuing the show cause notice. We are of the view that the finding rendered by the*

Tribunal is well supported by the reasoning and hence it warrants no interference.

The reliance is also placed upon the decision of the Hon'ble Tribunal in the case of M/s. Mahavir Plastics Vs. CCE Mumbai, 2010 (255) ELT 241, wherein, the Hon'ble Tribunal have held that if facts are gathered by department in subsequent investigation extended period can be invoked. I also rely upon following judgments:

(i) The Hon'ble High Court of Gujarat in the case of M/s. Salasar Dyg & Ptg Mills P Ltd Vs. CCE, Surat-I (2013(290)ELT 322(Guj) :-

In the above judgment the Hon'ble Court at para-15 of the judgment has observed that :-

"15. Upon reading the relevant provisions contained in Section 11A of the Act, it becomes clear that in case of duty which has not been levied or paid, or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion, wilful misstatement, suppression of facts, etc., period of service of notice on the person chargeable with such duty would be five years instead of one year provided in normal circumstances. Nowhere does this provision refer to the period of service of notice after fraud, collusion, wilful misstatement or suppression, etc. comes to the knowledge of the Department. In simple terms, the Department could recover unpaid duty up to a period of five years anterior to the date of service of notice when the case falls under proviso to sub-section (1) and such omission is on account of fraud, collusion, wilful misstatement, etc."

(ii) CCE Surat –I Vs. Neminath Fabrics (2010(256)ELT 369(Guj)) :- The Hon'ble High Court at para :- 19 of their judgment have observed as Under:-

"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."

The observations of Hon'ble Court in both the above cases are also relevant for invoking the extended period under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 which is *parimateria* to Section 11A of Central Excise Act, 1944.

(iii) The Hon'ble Tribunal's judgment in the case of Lakhan Singh & Co Vs. CCE, Jaipur (2016(46)STR 297(Tri.Del.) :- Some of the key observations made by the Hon'ble Tribunal in the above referred case are extracted below which are relevant from the facts and circumstances of the present case.

7.5 *The sentence underlined in the extracts of the case of Chemphar Drugs (supra) and similar observations in the case of Padmini Polymers (supra) are being pointed out generally to argue that if an assessee does not do anything to discharge his duty/tax liability and simply keeps quiet, it is not suppression. The interpretation canvassed is probably that unless the assessee has underground factories it cannot be considered as suppression. In the case of Service Tax it cannot probably be done under cellars. But it is quite often argued that the assessee was not aware of Service Tax or read the law and thought he did not have to take out registration or intimate department and if he acted so it cannot be a positive act of suppression.*

8.3 *Suppression with intent to evade payment of duty is seldom done by actions leaving trails and therefore the "positive act" that the Apex Court was referring to is not something which can always be demonstrated through existence of a physical thing or document. It is about a state of mind. This is to be judged from the facts of the case.*

8.4 *All the cases pointed out were with reference to a registered assessee and before self-assessment system came into existence. With the scheme of self-assessment the onus on the part of the assessee to disclose information to the department has become all the more important. The first step in such disclosure is taking registration. The second step is in filing returns filling all columns in the return in a bona fide manner and not in a clever manner.*

8.5 *If ignorance of law is not a defence a wrong understanding of law can be a much lesser defence.*

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10. *Now let us consider the facts of the present case. At least 15 out of the 22 items of work specified are about loading of cargo. Some of the other items of work also have nexus to such cargo handling. The definition of the relevant entry in Finance Act, 1994*

covers loading as also of unloading of cargo. By a simple understanding of the matter the activity will be covered by the definition. The question whether loading through automated systems would be covered arises out of a legal interpretation. By simple understanding of the definition if the service is covered it is necessary that the service provider discloses the facts to the department and seeks clarification. If the person concerned just waits for the department to come and knock at his door it is a mental state demonstrating suppression with intention to evade. It is not necessary that such state of mind is demonstrated by an act like displaying a board or having a letterhead holding out his activity to be just trading (just as an example of an activity not subjected to Service Tax) with no mention of his main activity of cargo handling, though such an act will show a higher level of culpability. In such a situation also it can be argued in defence of the assessee that there was no positive act since he did not state anywhere that he was not doing "cargo handling". A reading of the decisions with due regard to the facts of each case would show that the Apex Court was not talking of this type of positive act.

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22. *Apart from examining merit of the case thoroughly, learned Technical Member also examined the issue of time bar as well as applicability of penal provisions of law and concession, if any, permissible in imposing penalty in both the cases. He leniently held that grant of option for depositing 25% of tax towards penalty within 30 days of receipt of the appeal order shall serve useful purpose of law. He accordingly decided the matter on all aspects against the appellants except grant of concession in penalty. While reaching to such conclusion, he was of the clear mind that when law was well known to the appellants who were not infants, there is no scope to grant any relief on time bar aspect since positive act of suppression surfaced on record. That barred the appellants from pleading time bar. He succinctly brought out how the appellants acted to the detriment of Revenue in Paras 10 to 12 of the order.*

20.3 I have also gone through the case laws relied upon by the assessee and find that none is squarely applicable from the facts and circumstances of the present case.

20.4 Accordingly, I find that extended period of limitation under sub-section (1) of Section 73 of the Finance Act, 1994 has been rightly invoked in the SCN for demanding service tax from the assessee. I also find that the assessee is also liable for payment of interest under Section 75 of the Finance Act, 1994 on the service tax.

21. I find that the Penalty under Section 77(1) (a) of the Finance Act, 1994 is required to be imposed upon the assessee for failure to take service tax registration as per the provisions of Section 69 of the Finance Act, 1994.

21.1 I also find that the proposal has also been made in the SCN to impose penalty under Section 78 of Finance Act, 1994 upon the assessee. The assessee in their submission has opposed the same relying on case laws of various Appellate Authorities in this regard.

21.2 The penalty under Section 78 of Finance Act, 1994 is attracted when Service Tax is demanded and confirmed invoking the extended period of time and short-levy or short-payment or non-levy or non-payment is on account of fraud or collusion or wilful misstatement and suppression of facts and contravention of any of the provisions to chapter V of the Finance Act, 1994 or to the rules made there under, with an intent to evade payment of Service Tax. In the present case, as discussed in preceding paragraphs, the extended period of limitation is found to be rightly invoked to demand service tax from the assessee,as they suppressed the material facts from the department with an intention to evade payment of service tax. Resultantly, the penal provisions of Section 78 of Finance Act, 1994 are attracted mandatorily as held by the Hon'ble Supreme Court in the case of *UOI* v. *M/s.RAJASTHAN* SPINNING & WEAVING MILLS-2009 (238) E.L.T. 3 (S.C.) on the issue of imposition of penalty under Section11AC of the Central Excise,1944, which is *parimateria* to Section 78 of Finance Act, 1994.

21.3 I find that the assessee involved in taxable services, was required to file periodical service tax returns in terms of the provisions of Section 70(1) of the finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994. However, since the assessee has failed in doing so, I find that they are liable for payment of late fees in terms of the provisions of Rule 7C of the Service Tax Rules, 1994 as calculated under:

S.No.	F.Y.	Time period	Late fee Rs.
(i)	2014-15	April to Sep	20000
(ii)	2014-15	Oct to March	20000
(iii)	2015-16	April to Sept.	20000
(iv)	2015-16	Oct to March	20000
(v)	2016-17	April to Sept.	20000
(vi)	2016-17	Oct to March	20000

(vii)	2017-18	April to June	20000
Total			Rs.1,40,000

21.4 In view of my above findings, I pass the following order:

ORDER

i) I order that the amount of Rs.6,84,87,481/-and Rs. 1,22,75,333/- is to be considered as taxable value in terms of the provisions of Sec. 67 of the Finance Act, 1994;

ii) I confirm the demand of Service Tax amounting to **Rs. 1,07,78,165/- (Rupees One crore seven Lakhs seventy eight thousand one hundred and sixty five only)** (Rs. 9027283+ Rs.17,50,882/-) on above taxable value of the taxable service provided by the assessee during the period from 2014-15 to 2017-18 (upto June 17) under proviso to Sub-Section (1) of Section 73 by invoking extended period of five years;

iii) I confirm the demand of Service tax to the tune of **Rs. 4,04,427/- (Rs. Four Lacs Four Thousand Four Hundred Twenty Seven only)** on the taxable service chargeable to tax under the reverse charge mechanism during the period from 2014-15 to 2017-18 (upto June 17) proviso to Sub-Section (1) of Section 73 by invoking extended period of five years; I also order to appropriate the amount of **Rs. 1,00,000/- (Rupees One lakh only)** paid by the assessee vide DRC-03 Debit Entry No. DC2406190404932 dated 28-06-2019 against above liability;

iv) I order to charge and recover interest at the appropriate rate on the service tax amount as mentioned in (ii) and (iii) above, under Section 75 of the Finance Act, 1994;

v) I impose a penalty of **Rs. 10,000/- (Rupees Ten thousand only)** under Section 77(1) (a) for failure to take service tax registration as per the provisions of Section 69 of the Finance Act, 1994;

vi) I impose a penalty of **Rs.1,11,82,592/- (Rupees One crore eleven lakhs eighty two thousand five hundred ninety two only)** under Section 78 of the Finance Act, 1994 for the above mentioned contraventions. 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 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;

vii) I order recovery of late fees of **Rs.1,40,000/- (Rs. One lakh Forty Thousand only)** from the assessee in terms of the provisions of Rule 7C of the Service Tax Rules, 1994 for not filing their ST-3 returns for the period from April 14 to June 17 within the prescribed time frame.

(T.G.Rathod)
Additional Commissioner
CGST, Ahmedabad (South)

F.No.STC/04-56/Bhavani Construction/O&A/2019-20 Dated:- 14/12/2022

DIN-20221264WS0000020420

By Registered Post A.D./Speed Post/Email

To,

1) M/s. Bhavani Construction Company,
6, New Vaishali Society,
Opp. Devashish School,
Bodakdev, Ahmedabad.

2) M/s. Bhavani Construction Company,
C/o. Vipul Barot,
Flat No.S/3RF-18, Lower Camp,
Tata Joda West Colony,
Joda, Odisha-758 034.

Copy to:

(1) The Commissioner, Central Goods and Services Tax, Ahmedabad South, Ahmedabad.
(2) The Deputy/Assistant Commissioner, CGST Division, Satellite-VII, Ahmedabad South, Ahmedabad
(3) Deputy/Asstt. Commissioner (TAR), CGST, Ahmedabad South
(4) The Superintendent Range-I, CGST, Division-Satellite, Ahmedabad South, Ahmedabad
(5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website
(6) Guard file.