



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



फा.सं. GEXCOM/ADJN/ST/ADC/372/2020-ADJN

DIN- 20221264WS0000777A5C

आदेश की तारीख: Date of Order: 29.12.2022

जारी करने की तारीख: Date of Issue : 13.01.2023

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

मूल आदेश सं./Order-In-Original No.: 63/CGST/Ahmd-South/JC/SR/2022-23

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

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

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

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

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

उक्त अपील की प्रति ।

Copy of the aforesaid appeal.

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

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

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

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

संदर्भ/Reference : कारण बताओ सूचना फा.सं. GEXCOM/ADJN/ST/ADC/372/2020-adjn dated 30.12.2020, issued to M/s Nehru Foundation for Development Centre for Environment Education Society, situated at Thaltej Tekra, Ahmedabad- 380 054.

M/s Nehru Foundation for Development Centre for Environment Education Society, situated at Thaltej Tekra, Ahmedabad- 380 054 (herein after referred to as "the Noticee") was registered with the Central Goods and Service Tax Department, Ahmedabad South and having registration GSTIN No. 24AAATN0549B1Z4 with effect from 01.07.2017. Prior to 01.07.2017, the said Noticee was registered with the Service Tax Department having registration no. AAATN0549BSDOO1. The said Service Tax registration is for providing the services like Management or Business Consultant Services (ii) Mandap Keeper Service ; (iii) Intellectual Property Right Service other than Copyright and Design Service other than Interior Decoration and Fashion Designing etc which were taxable services at the relevant time under the Finance Act, 1994.

2. The officers of the office of the Indian Audit & Accounts Department, office of the Principal Director of Audit (Central) Audit Bhavan, Navrangpura, Ahmedabad had audited the records of the Range office along with the records of M/s. Nehru Foundation for Development Centre for Environment Education Society, Ahmedabad (registered with the Range office) and issued an Audit report vide LAR No. 121/19-20/OW-1 70 dated 20.12.2019.

3. As per the ST-3 Returns, the Noticee has shown the turnover for the period from October, 2014 to June 2017), as under.-

TABLE-1

| Period | Mandap keeper service (Value in Rs.) | Management and Business consultant services (Value in Rs.) | Total value amount (Rs.) |
|----------------------------|---|--|--------------------------|
| October-2014 to March-2015 | 3,44,246/- | 71,94,211/- | 75,38,457/- |
| April-2015 to Sept.2015 | 3,58,596/- | 1,30,02,805/- | 1,33,61,401/- |
| October-2015 to March-2016 | 8,29,045/- | 2,01,00,128/- | 2,09,29,173/- |
| April -2016 to Sept.2016 | 2,87,531/- | 69,83,047/- | 72,70,578/- |
| October-2016 to March-2017 | 5,18,315/- | 1,27,28,942/- | 1,32,47,257/- |
| April-2017 to June-2017 | 1,80,826/- | 44,85,196/- | 46,66,022/- |
| TOTAL | 25,18,559/- | 6,44,94,329/- | 6,70,12,888/- |

4. As per the Income and Expenditure Account, the Noticee has received income under the heads "fees, Royalty, other contribution", "Recoveries/Reimbursable of Expenditure from Project/Programs" and "Miscellaneous Income" for the period from October, 2014 to June, 2017, as under:-

TABLE-2

| Period | Fees, Royalty, other contribution (Rs.) | Recoveries /Reimbursable of Expenditure (Rs.) | Miscellaneous Income (Rs.) | Total value amount (Rs.) |
|----------------------------|---|---|----------------------------|--------------------------|
| October-2014 to March-2015 | 1,74,901 | 2,86,90,771 | 19,79,950 | 3,08,45,622 |
| April-2015 to March-2016 | 33,56,172 | 6,40,02,160 | 26,66,039 | 7,00,24,371 |
| April -2016 to March-2017 | 99,73,317 | 5,21,32,757 | 40,39,007 | 6,61,45,081 |
| April-2017 to June-2017 | 0 | 1,78,95,703 | 4,36,050 | 1,83,31,753 |
| TOTAL | 1,35,04,390 | 16,27,21,391 | 91,21,046 | 18,53,46,827 |

5. Thus, there is difference between the figures declared in the ST-3 returns and the figures shown in the Balance Sheet for the period from October, 2014 to June, 2017, on which the Noticee short-paid service tax calculated as under:-

TABLE-3

| Year | Amount as per Balance Sheet (Rs.) | Amount as per ST-3 return (Rs.) | Difference (Rs.) | Rate of Service Tax | Total Service Tax payable (Rs.) |
|-----------------------------|-----------------------------------|---------------------------------|------------------|---------------------|---------------------------------|
| October, 2014 to March,2015 | 3,08,45,622 | 75,38,457 | 2,33,07,165 | 12.36% | 28,80,766 |
| 2015-16 | 700,24,371 | 3,42,90,574 | 3,57,33,797 | 14.5% | 51,81,401 |
| 2016-17 | 6,61,45,081 | 2,05,17,835 | 4,56,27,246 | 15% | 68,44,087 |
| April to June,2017 | 1,83,31,753 | 46,66,022 | 1,36,65,731 | 15% | 20,49,860 |
| TOTAL | 18,53,46,827 | 6,70,12,888 | 11,83,33,939 | | 1,69,56,113 |

6. The Noticee had replied to the CERA Auditors that royalty income is not chargeable to service tax and reimbursement of project expenditure for various jobs which are under process to complete do not fall under the ambit of service tax and allocation of actual common expenditures of establishment, salary and other office expenses to the internal project will not fall under the preview of service tax. The reply of the Noticee is not tenable in view of the fact that Royalty is liable for service tax because the same has not been in the negative list and no other specific exemption has been granted by the Government. Section 65 (44) of the Finance Act, 1994, defines service to mean "any activity for consideration carried out by a person for another and includes declared services." There is a specific clarification by the CBEC vide Circular No. 192/02/2016-ST dated 13.04.2016 whereby it has been stated that service tax shall be payable on Royalty. In the said circular it is clarified that "*any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a quid pro quo for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called.*"

7. Whereas, Section 67 of the Finance Act, 1994 provides for valuation of taxable services for charging service tax, which provides as under: -

*[SECTION 67. Valuation of taxable services for charging service tax. -
(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, -*

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

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

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

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

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

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

Explanation. - For the purposes of this Section, -

(a) "Consideration" includes -

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

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

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

8. It is also observed that *Explanation* to Section 67 of the Finance Act, 1994, clarifies that (a) "consideration" includes - (i) any amount that is payable for the taxable services provided or to be provided; and (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed. Clause (a) under *Explanation* to Section 67 of the Finance Act, 1994 read as under:-

[(a) "Consideration" includes -

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

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

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

9. As per sub-rule (1) of Rule 5 of the Service Tax (Determination of Value) Rules, 2006, where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable provided or to be provided and shall be included in the value for the purpose of

charging service tax on the said service. Relevant portion of Rule 5 is reproduced as under. -

/5. Inclusion in or exclusion from value of certain expenditure or costs. -

(j) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.]

10. As per the sub clause (ii) of clause (a) of the EXPLANATION of Section 67 of the Finance Act, 1994, it is very clear that reimbursement of expenditure would also form part of consideration and would attract service tax as part of value of services provided by the Service Provider. It clearly shows that by virtue of provisions under Section 67 reimbursement of expenditure or cost would form part of valuation of taxable services for charging service tax. Reimbursements are subject to service tax unless incurred as a pure agent in terms of Rule 5 of Service Tax (Determination of Value) Rules, 2006. The said Noticee has received the money under the head Reimbursement of expenditure or cost incurred and charged, in the course of providing or agreeing to provide a taxable service. Therefore, the money received by the said Noticee and shown in the Books of Accounts i.e. Income and Expenditure Account are liable for service tax as per the sub clause (ii) of clause (a) of Explanation under Section 67 of the Finance Act, 1994.

11.. From the facts mentioned above, it appeared that the said Noticee has contravened the provisions of: -

(i) Section 67 of the Finance Act, 1994 read with Rule 5 of Service Tax (Determination of Value) Rules, 2006, in as much as they failed to determine the correct value, while filing the ST-3 returns during the material period;

(ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have failed to determine and to make payment of proper service tax during the material period within the statutory time limit prescribed;

(iii) Section 70 of the Finance Act, 1994 in as much as they have failed to self-assess the Service tax on the taxable value shown in the Half Yearly ST-3 Returns during the material period, within the stipulated time limit, resulting into short payment of Service Tax. As per the provisions of Section 70, every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him.

12. From the facts narrated in the above paras and discussion, it appeared that Mis Nehru Foundation for Development Centre for Environment Education Society, situated at Thaltej Tekra, Ahmedabad

have contravened the provisions of Section 67, 68 and 70 of the Finance Act 1994 in as much as they have short paid the liable Service tax, as provided under Section 68 of the Finance Act, 1994.

13. It further appeared that the said Noticee at no point of time disclosed the material facts to the department in any manner as well as they had not disclosed that they have received the money under the head "Fees, Royalty, other contribution" and "Recoveries/ Reimbursable of Expenditure from Project/ Programmes" and "miscellaneous Income" and contravened the provisions of Section 68 & 70 of the Finance Act, 1994. Moreover, in the present regime of liberalization, self assessment and filing of ST-3 returns online, no documents whatsoever are submitted by the Noticee to the department and therefore, the department would come to know about such non-payment of service tax only during audit or preventive/ other checks. Therefore, it appeared that the said Noticee has deliberately suppressed the material facts from the Department with an intention to avoid the payment of service tax. Hence, it appeared that this is a fit case for invoking the extended period of limitation of five years under the proviso to Section 73 (1) of the Finance Act, 1994 to recover the short/non-payment along with interest under Section 75 of the Finance Act, 1994. In the case of Mahavir Plastics vs. CCE Mumbai (2010(255) EL T 241, it has been held that if facts are gathered by department in subsequent investigation, extended period can be invoked. In the case of Lalit Enterprises vs. CST Chennai (2009 (23) STT 275, 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 in terms of proviso to Section 73 (1) of the Finance Act, 1994.

14. The government has from the very beginning placed full trust on the service provider so far Service Tax was concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence were in place. Further, a taxable service provider was not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust was placed on the service provider and private records maintained by him for normal business purposes were 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 was contravened or there was a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appeared that the said Noticee has not taken into account all the income received by them for rendering taxable services for the purpose of payment of Service Tax and thereby minimize their tax liabilities. The deliberate efforts to mis-declare the value of taxable service in ST-3 Returns and not paying the correct amount of Service Tax in utter disregard to the requirements of law and breach of trust deposited on them such outright act in defiance of law appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with intent to evade payment of Service Tax.

15. 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 Noticee. In the instant case, the Noticee has failed to properly assess the - service tax liability and also failed to reflect the correct income / information in the ST-3 returns. They have resorted to suppression of material facts by not reflecting the expenses incurred in respect of the services liable to service tax under the reverse charge mechanism in their ST-3 returns. Accordingly; it appeared that the service tax, as above, is liable to be recovered by invoking proviso to Sec. 73 of the Finance Act, 1994 along with interest, in terms of the provisions of Sec. 75 of the Finance Act. 1994. All these acts of contraventions, omissions and commissions on the part of the said Noticee as stated in the foregoing paras, it appeared that they have willfully suppressed the facts, nature and short paid the tax with an intent to avoid the payment of service tax, rendering themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994. They are also liable to pay interest at the appropriate rates for the material period, as per the provisions of Section 75 of the Finance Act, 1994.

16. Pre-Show Cause Notice consultation, in terms of instructions issued for Litigation Management and Dispute Resolution, from File No. I 080/09/DLA/Misc/2015 dated 21-12-2015 was granted to the said Noticee on 30.12.2020, before the Additional Commissioner, Central Tax, Ahmedabad - South. Shri D. N. Surati, Chief Finance Officer and Shri Vaishal Dave, Chartered Accountant of the Noticee appeared on behalf of the Noticee and submitted that reimbursement of expenditure of salary etc. are exempt under notification no. 25/2012-ST dated 20.06.2012 and requested to look into their detailed explanation already submitted. However, the explanation submitted by them is not found to be satisfactory and hence not tenable. Therefore, it appeared that the issue cannot be settled at pre-SCN stage.

17. The Noticee was earlier registered under the Jurisdiction of the Commissioner of Service Tax, Ahmedabad. Consequent to the issue of the Notification No.12/2017-Central Excise (NT) to 14/2017-Central Excise (NT) all dated 09.06.2017, appointing the officers of various ranks as Central Excise officers & reallocating the jurisdiction of the Central Excise Officers and Trade Notice No. 001/2017 dated 16.06.2017 issued by the Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, the said Noticee is now registered under the Jurisdiction of the Commissioner, Central Goods and Service Tax, Ahmedabad South. Further, the then effective provisions of the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985, as repealed vide Section 174(1) of the CGST Act, 2017 and the then effective provisions of the Chapter V of the Finance Act, 1994, as omitted vide Section 173 of the CGST Act, 2017, and the then effective provisions of the Cenvat Credit Rules, 2004, as superseded vide notification no.20/2017-CE (NT) dated 30.06.2017, have been saved vide Section 174(2) of the CGST Act, 2017 and notification no. 20/2017-CE (NT) dated 30.06.2017. Therefore, the provisions of the said repealed/amended

Acts and Rules made there under are rightly enforceable for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice. As per Section 142(8)(a) of the CGST Act, 2017, where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act.

18. M/s Nehru Foundation for Development Centre for Environment Education Society, situated at Thaltej Tekra, Ahmedabad- 380 054 were called upon vide Show Cause Notice F. No. GEXCOM/ADJN/ST/ADC/372/2020-ADJN dated 30.12.2020 to Show Cause to the Additional Commissioner, Central Goods & Services Tax, Ahmedabad South Commissionerate having his office at 6th Floor, GST Bhavan, Near Panjara Pole, Ambawadi Ahmedabad as to why:

(1) The short payment of Service tax to the tune of **Rs.1,69,56,113/-** (Rs. One Crore, Sixty Nine Lakhs, Fifty Six Thousands, One Hundred & Thirteen Only) discussed hereinabove, should not be recovered from them under the proviso to Section 73 (1) of the Finance Act, 1944;

(2) Interest as applicable on the service tax liability at prescribed rate should not be charged and recovered from them under the provisions of Section 75 of the Finance Act 1994;

(3) Penalty should not be imposed on them under the provisions of Section 78 of the Finance Act, 1994 by restoring to willful suppression and misstatement and thereby evaded payment of Service Tax.

WRITTEN SUBMISSIONS PLACED BELOW VERBATIM:

“19. About the Centre for Environment Education

- Centre for Environment Education (CEE) was established in 1984 as a Centre of Excellence of the Ministry of Environment, Forests and Climate Change, Government of India. As a national institution, CEE's mandate is to promote environmental awareness nationwide.

- CEE develops innovative programmes and educational material and builds capacity in the field of Education for Sustainable Development (ESD). It is committed to ensure that Environmental Education (EE) leads to action for sustainable development. It undertakes field projects that demonstrate and validate the role education can play in sustainable development and preservation of Environment.

20. About the CEE — (As per the Centre of Excellence Certificate)

- CEE is Nodal Agency of the Government of India for Environmental Information System (ENVIS), National Environmental Awareness Campaign (NEAC), National Green Corps (NGC) and the Small Grants Programme (SGP). Cee has been appointed as the Executing Agency by the MoEF for implementation of National Ganga River Basin Project on Nomination Basis.

21. Facts & Back Ground:

Centre for Environment Education is mainly involved in the following task

- Under takes various projects with the motive and objective of Environment Preservation, creating awareness, Capacity Building, Providing Education etc (Detailed description of Each project is elaborated in Annual Reports as attached for your reference)
- CEE is Nodal Agency of the Government of India for Environmental Information System (ENVIS), National Environmental Awareness Campaign (NEAC), National Green Corps (NGC) and the Small Grants Programme (SGP). Cee has been appointed as the Executing Agency by the MoEF for implementation of National Ganga River Basin Project on Nomination Basis.

22. Constitution & Object

- Certificate of Centre of Excellence D.O. No. 19-8/2014 — EE Dated 07-July2014 issued by Government of India — Ministry of Environment, Forests and Climate Change.
- It is registered under the Societies Registration Act, 1860.
- Registered on 25th Aug 1984 copy attached for your reference
- 12AA on 13rd March 1986 copy attached for your reference
- 80G Registration since 11.04.2007 copy attached for your reference
- MOA copy attached for your reference
- Annual Reports Stating Main focus of the Activities are of Education, Environment Preservation, Environment awareness and related activities for the benefit of public at large. Please find Annual Reports copy attached for FY 2014-15, FY 2015-16, FY 2016-17 and FY 2017-18.

23. Reference of Notification, Act, Our Explanation

- Notification No. 25/2012-Service Tax dated- 20th June, 2012, as amended. Incorporating changes made till issuance of notification no 10/2017-Service Tax dated 8-3-2017 (Detailed Notification Attached for your reference)
- Sr. No.4 Services by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961) by way of charitable activities; (Detailed Notification Attached for the Reference)
- Definitions. — For the purpose of this notification, unless the context otherwise requires, — (iv) preservation of environment including watershed, forests and wildlife;
- CEE under takes various projects with the motive and objective of Environment Preservation & Education, creating awareness, Capacity Building, All Activities are focused for the environment education and preservation only (Detailed description of Each project is elaborated in Annual Reports as attached for your reference)
- CEE is working as "pure agent"

As per Rule 5 of Service Tax (Determination of Value) Rules, 2006 Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service

provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely: -

- (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured
- (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;
- (iv) the recipient of service authorizes the service provider to make payment on his behalf;
- (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

- CEE under takes various projects with the motive and objective of Environment Preservation & Education, creating awareness, Capacity Building, All Activities are focused for the environment education and preservation only and works as the "PURE AGENT "Only.

24. Actual Expenditure incurred and Recovery against the expenditure during the respective years.

October 2014 — March 2015

Fees, Royalty, Other Contribution:

As mentioned in the SCN in Table 2: 174901/-

We Submit as follows: -

| Fees, Royalties and Other Contributions | | Amt Rs. |
|---|--------|---------|
| Miscellaneous Income — Royalty | 174901 | |
| Total | | 174901 |

As Mentioned, Royalty income is liable to pay service tax but would like to mention here that we are not in to the business category and royalty is not our pure income. Such income is received on materials prepared for Environment Education, Awareness and Preservation material thus there will not be any tax incidence in the above. (Ledger Attached for your reference)

Recoveries / Reimbursable of Expenditure

As mentioned in the SCN in Table 2: 2,86,90,771/-

Actual Expenditure incurred and Recovery against the expenditure during the year.

| | |
|--|--------------------|
| Financial Year | Oct 14 to March 15 |
| | Amt |
| Total Salaries & Adm other Exp — (A) | 28690771 |
| (Less) 501.11 Recovery of Staff Time From Projects | 22272089 |
| (Less) 501.13 Recovery of Infrastructure Usages | 1162195 |
| (Less) 501.14 Recovery From Project | 1001115 |
| (Less) 501.12 Recovery of Overheads Projects | 4255371. |
| | |

Here above we have figure out the actual expenditure incurred on salary, Administrative and other expenses and recover of expenditure through allocation to our own projects. It is showing that recovery is not our additional income but it is part of our expenditure. In the Statement of Income & Expenditure it has been shown both the side for the presentation purpose. Thus it would not be Considered as Income. Detailed Ledgers as well as the sample proof of the salaries paid and recovered are attached for your reference.

Miscellaneous Income

As mentioned in the SCN in Table 2: 19,79,950/-

| Misc. Income: | Amount Rs |
|--------------------------|-----------|
| CEESHARC | 360 |
| General | 200804 |
| Hono,Discount Etc | 17000 |
| Hostel Facility | 177375 |
| Infra. Facility | 242251 |
| Sale of Scrape | 1120 |
| Audit Recovery | 831540 |
| INDICA | 68942 |
| QUALIS | 123642 |
| ARIA | 145040 |
| MINI BUS | 56690 |
| Sales Proceeds of Assets | 115185 |
| | |
| Total | 1979950 |

Here above we have figure out the actual expenditure incurred on, Administrative and other expenses and recover of expenditure through allocation to our projects. It is showing that recovery is not our additional income but it is part of our expenditure.

April 2015 — March 2016

Fees, Royalty, Other Contribution:

As mentioned in the SCN in Table 2: 33,56,172/-

We Submit as follows: -

| | | |
|---|---------|---------|
| Fees, Royalties and Other Contributions | | Amt Rs. |
| Miscellaneous Income — Royalty | 326564 | |
| Consultancy from projects | 1678077 | |
| Misc. Income Infrastructure charges | 1351531 | |
| Total | | 3356172 |

As Mentioned, Royalty income is liable to pay service tax but would like to mention here that we are not in to the business category and royalty is not our pure income. Such income is received on materials prepared for Environment Education, Awareness and Preservation material thus there will not be any tax incidence in the above.

Consultancy From Projects (Rs. 16,78,077/-) are already considered for the Service Tax and the Tax is already paid on the same.

Misc. Income Infrastructure charges (Rs.13,51,531/-) are already considered for the Service Tax and the Tax is already paid on the same.

Recoveries / Reimbursable of Expenditure

As mentioned in the SCN in Table 2: 6,40,02,160/-

Actual Expenditure incurred and Recovery against the expenditure during the year.

| | |
|---|-----------|
| Financial Year | 2015-16 |
| | Amt |
| Staff Salaries | 131950040 |
| Administrative and other Expenses | 25849090 |
| Total Salaries & Adm other Exp —(A) | 157799130 |
| Less) 501.11 Recovery of Staff Time From Projects | 46015610 |
| (Less)Staff Time Recoverable From Groups | 0.00 |
| Less) 501.13 Recovery of Infrastructure Usages | 3726412 |
| Less) 501.14 Recovery From Project Projects | 9981991 |
| , Less) 501.12 Recovery of Overheads Projects | 4278147 |
| total Recoveries — (B) | 64002160 |
| | |
| Salaries & Administration, other Exp | 93796970 |

Here above we have figure out the actual expenditure incurred on salary, Administrative and other expenses and recover of expenditure through a cation to our own projects. It is showing that recovery is not our additional income but it is part of our expenditure. In the Statement of Income & Expenditure it has been shown both the side for the presentation purpose. Thus it would not be Considered as Income. Detailed Ledgers as well as the sample proof of the salaries paid and recovered are attached for your reference.

Miscellaneous Income

As mentioned in the SCN in Table 2: 26,66,039/-

| Misc. Income | | Amount Rs. |
|--|--------|----------------|
| CEESHARC | 13120 | |
| General | 107546 | |
| Hon & Discount | 1200 | |
| Hostel facility | 176155 | |
| Infrastructure facility | 735000 | |
| Sundry Balances Written off | 314921 | |
| Sale proceeds of Assets | 37710 | |
| Gain on sales of movable assets | 6300 | |
| Vehicle — Indica | 205398 | |
| Vehicle — Qualis | 270099 | |
| Vehicle — Aria | 628048 | |
| Vehicle - Mini Bus | 111325 | |
| Miscellaneous Income - Audit Recovery | 59217 | |
| Total | | 2666039 |

Here above we have figure out the actual expenditure incurred on, Administrative and other expenses and recover of expenditure through allocation to our projects. It is showing that recovery is not our additional income but it is part of our expenditure.

April 2016 — March 2017

Fees, Royalty, Other Contribution:

As mentioned in the SCN in Table 2: 99,73,317/-

We Submit as follows: -

| Fees, Royalties and Other Contributions | | Amt Rs. |
|--|---------|----------------|
| Miscellaneous Income — Royalty | 132165 | |
| Consultancy from projects | 9030687 | |
| Misc. Income Infrastructure charges | 810465 | |
| Total | | 9973317 |

As Mentioned, Royalty income is liable to pay service tax but would like to mention here that we are not in to the business category and royalty is not our pure income. Such income is received on materials prepared for Environment Education, Awareness and Preservation material thus there will not be any tax incidence in the above. (Ledger Attached for your reference)

Consultancy From Projects (Rs. 90,30,687/-) are already considered for the Service Tax and the Tax is already paid on the same. (Ledger Attached for your reference)

Misc. Income Infrastructure charges (Rs.8,10,465/-) are already considered for the Service Tax and the Tax is already paid on the same. (Ledger Attached for your reference)

Recoveries / Reimbursable of Expenditure

As mentioned in the SCN in Table 2: 5,21,32,757/-

Actual Expenditure incurred and Recovery against the expenditure during the year.

| | |
|---|-----------|
| Financial Year | 2016-17 |
| | Amt |
| Staff Salaries | 127165409 |
| Administrative and other Expenses | 25783857 |
| Total Salaries & Adm Other Exp-(A) | 152949266 |
| Less) 501.11 Recovery of Staff Time From Projects | 28853308 |
| (Less)Staff Time Recoverable From Groups | 15667679 |
| (Less) 501.13 Recovery of Infrastructure Usages | 2288618 |
| (Less) 501.14 Recovery From Project | 2606803 |
| (Less) 501.12 Recovery of Overheads Projects | 2716349 |
| | |
| Total Recoveries -(B) | 52132757 |
| | |
| Net Salaries & Administration, Other Exp. | 100816509 |

Here above we have figured out the actual expenditure incurred on salary, Administrative and other expenses and recover of expenditure through allocation to our own projects. It is showing that recovery is not our additional income but it is part of our expenditure. In the Statement of Income & Expenditure it has been shown both the side for the presentation purpose. Thus it would not be considered as Income. Detailed Ledgers as well as the sample proof of the salaries paid and recovered are attached for your reference.

Miscellaneous Income

As mentioned in the SCN in Table 2: 40,39,007/-

| Misc. Income | | Amt. Rs. |
|-----------------------------|--------|----------|
| CEESHARC | 5400 | |
| General | 78019 | |
| Hon & Discount | 31500 | |
| Hostel facility | 699775 | |
| Infrastructure facility | 890620 | |
| Sundry Balances Written Off | 2400 | |
| Sale proceeds of Assets | 482733 | |
| Champ MOU Printing Charges | 9770 | |
| Indica | 186638 | |
| Qualis | 24760 | |
| Aria | 569932 | |
| Mini Bus | 8300 | |
| Brio | 49160 | |
| | | 4039007 |

Here above we have figure out the actual expenditure incurred on, Administrative and other expenses and recover of expenditure through allocation to our projects. It is showing that recovery is not our additional income but it is part of our expenditure.

April 2017 — June 2017

Recoveries / Reimbursable of Expenditure

As mentioned in the SCN in Table 2: 1,78,95,703/-

Actual Expenditure incurred and Recovery against the expenditure during the year.

| Financial Year | Oct 14 to March 15 |
|--|--------------------|
| | Amt |
| Total Salaries & Adm other Exp— A) | 17895703 |
| (Less) 501.11 Recovery of Staff Time From Projects | 13330050 |
| (Less) 501.13 Recovery of Infrastructure Usages | 1277208 |
| Staff time recoverable from Groups | 2616786 |
| (Less) 501.12 Recovery of Overheads Projects | 671659 |

Here above we have figure out the actual expenditure incurred on salary, Administrative and other expenses and recover of expenditure through allocation to our own projects. It is showing that recovery is not our additional income but it is part of our expenditure. In the Statement of Income & Expenditure it has been shown both the side for the presentation purpose. Thus it would not be considered as Income. Detailed Ledgers as well as the sample proof of the salaries paid and recovered are attached for your reference.

Miscellaneous Income

As mentioned in the SCN in Table 2: 4,36,050/-

| Misc Income | Amt Rs. |
|--------------------------|---------|
| General | 3850 |
| Hostel Facility | 145800 |
| Infra. Facility | 237300 |
| INDICA | 10736 |
| ARIA | 4804 |
| BRIO | 29668 |
| Sales Proceeds of Assets | 3902 |
| Total | 436050 |

Here above we have figure out the actual expenditure incurred on, Administrative and other expenses and recover of expenditure through allocation to our projects. It is showing that recovery is not our additional income but it is part of our expenditure.

Several Case law in the support of our submission are attached here with.

25. SECTION 73. Recovery of service tax not levied or paid or short-levied or short paid or erroneously refunded.

- (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "thirty months", the words "five years" had been substituted.

Explanation— Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of thirty months or five years, as the case may be.

- (6) For the purposes of this section -"relevant date" means, —
- (i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —
 - (a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
 - (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
 - (c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

26. SCN has been issued apparently on the basis of an extended period of 5 years from the relevant date. However, the said extended period of 5 years is applicable only in following situations:

- (I) Fraud
- (II) Collusion
- (III) Misstatement
- (IV) Concealing information with the wilful intent to defraud revenue
- (V) Not following any provisions of law.

In present case of the Assessee, there is no Fraud / Collusion / wilful misrepresentation from the assessee regarding F.Y. 2015-16, 2016-17, 2017-18 transaction, and has filled Income tax Return with all facts and particulars. The relevant date is separately provided under section 73(6) as the date when the return was due to be filed. Therefore, for the period FY 2015-16, 2016-17, 2017-18 the 30 months' time period relevant date has expired before the said SCN have been served on the assessee concerned.

27. Personal Hearing: A personal hearing was held by the undersigned on 29.11.2022, during which Shri D.N Surati, Chief Finance Officer and Shri Vaishal Dave, Advocate, appeared and reiterated the written reply dated 01.02.2021 and claimed exemption as per Notification No. 25/2012-Service Tax dated 20.06.2012.

Discussion and findings: - I have carefully gone through the facts of this case and the submissions made by Nehru Foundation for Development Centre for Environment Education Society, the Noticee.

28. While auditing records of the Range Office and that of the Noticee, the Officers of Principal Director of Audit, CAG, (Central), Ahmedabad, observed that during the period from October, 2014 to June, 2017, the Noticee had not reported the income received under the heads "fees, royalty and other contribution", "recoveries/reimbursable expenditure from Project programs" and "Miscellaneous income", in their Service tax returns and have thus, less paid Service tax.

29. The difference in the income received under various heads compared to the relevant ST-3 returns, during the above period is summarized below on which differential Service tax payable has been worked out and demanded in the Show Cause Notice.

| Year | Amount as per Balance Sheet (Rs) | Amount as per ST-3 return (Rs) | Difference (Rs) | Rate of Service tax as percentage | Total Service tax payable on the difference (Rs) |
|------------------------------|----------------------------------|--------------------------------|-----------------|-----------------------------------|--|
| October, 2014 to March, 2015 | 30845622 | 7538457 | 23307165 | 12.36 | 2880766 |
| 2015-16 | 70024371 | 34290574 | 35733797 | 14.5 | 5181401 |
| 2016-17 | 66145081 | 20517835 | 45627246 | 15% | 6844087 |
| April, 2017 to June, 2017 | 18331753 | 4666022 | 13665731 | 15% | 2049860 |

30. After considering the defence reply, I am required to examine whether the demand is sustainable and if so, whether any penalty is to be imposed.

31. In their submissions, the Noticee has contended that their Institution was established as a centre of excellence of the Ministry of Environment, Forests and Climate Change, Government of India, and as a national Institution, their mandate is to promote environmental awareness nationwide. It was submitted that they undertake various projects with the motive and objective of Environment Preservation, creating awareness, Capacity building, Providing Education etc.

32. They have further submitted that being registered under Section 12AA of the Income Tax Act, 1961, they are entitled to exemption available at serial no. 4, in Notification No. 25/2012-Service Tax dated 20.06.2012. Against the said serial number, the Notification provides for exemption to Services by an entity registered under Section 12AA of the Income Tax Act, 1961, by way of charitable activities and the term “charitable activities” is defined in paragraph 2 (k) of the said Notification, which is reproduced below:

*(k) “charitable activities” means activities relating to – (i) public health by way of – (a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence forming substance such as narcotics drugs or alcohol; or (b) public awareness of preventive health, family planning or prevention of HIV infection; (ii) advancement of religion , spirituality or yoga ; (iii) advancement of educational programmes or skill development relating to,- (a) abandoned, orphaned or homeless children; (b) physically or mentally abused and traumatized persons; (c) prisoners; or (d) persons over the age of 65 years residing in a rural area; (iv) preservation of environment including watershed, forests and wildlife; (v) ****;*

33. The Noticee has claimed the benefit for “(iv) preservation of environment including watershed, forests and wildlife”, which is covered under the definition of charitable activities in the Notification.

34. I find that while they are registered as a society with the declared objective of promoting environmental awareness nationwide, they have not mentioned in their defence any specific work or project undertaken by them which can qualify to be called as “preservation of environment including watershed, forests and wildlife”. Since exemption is available for the specific charitable activity, unless the specific activity undertaken and how it would qualify for the exemption is disclosed, the benefit cannot be extended. In view of the above, since the specific charitable activity performed is not mentioned, I find the benefit of exemption cannot be extended merely on the basis of the purpose declared for registration.

35. My above view gets support from paragraph 16 of the judgment of Hon’ble Supreme Court in the case of Rajasthan Spinning. and Weaving. Mills Ltd Vs Collector of C.Ex., Jaipur, reported at 1995 (77) E.L.T. 474 (S.C), which is reproduced below:

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

36. Thus, the claim for exemption cannot be accepted and the expenses and reimbursement are liable to Service Tax.

37. With reference to the various reimbursable expenditure incurred by them as found from their books of accounts and on which no service tax has been paid, the Noticee has contended that they are working as a “pure agent” in terms of rule 5 of the Service Tax (Determination of Value) Rules, 2006 and therefore, the expenditure or costs incurred by the service provider as a pure agent of the recipient of service has to be excluded from the value of taxable service.

38. I find that the Noticee has not explained the particulars of various projects undertaken, and in what capacity they are involved, to justify the claim of pure agent. Information like what kind of services are provided, who are the service recipients and who is the third party to whom the payment is made for the goods or services procured and overall, what role the Noticee play in the projects to justify the claim of pure agent are not disclosed. In the absence of relevant information, merely quoting the sub rule (2) of rule 5 of the Service Tax (Determination of Value) Rules, 2006 cannot justify the contention and it is not possible to even verify the facts to arrive at any conclusion. I may, however, mention here that a pure agent, who works for another person, does not account for total proceeds in his account, which has happened in this case. A Pure Agent is merely concerned with his commission that would be shown in his account. In view of the above position of law and facts, I conclude that the Noticee cannot claim to be a “pure agent” and no deduction from the actual expenditure incurred as disclosed in their books of accounts can be granted, whether under the head recovery of staff time, infrastructure usage, Overhead projects or any other item.

39. I may further mention here that with effect from 14.05.2015, the definition of taxable service in Section 67 has been amended and in the Explanation therein, the definition of consideration in clause (a) has been amended as follows:

Explanation. — For the purposes of this section, —

(a) [“consideration” includes —

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

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

40. In view of the amended provision, no abatement in value of reimbursable expenses can be granted for the period subsequent to the amendment.

41. However, for the period from October, 2014 to March, 2015, recoveries /reimbursable expenditure is shown in the Income and Expenditure Account and demand of Service tax raised on the said value. Since the definition of taxable value for the period prior to 14 th May, 2015 did not consider reimbursable expenses as part of the taxable value, demand raised for the period from October, 2014 to March, 2014 is required to be vacated.

42. My above conclusion gets strengthened from the judgment of Hon’ble Supreme Court of India in the case of M/s Intercontinental Consultants and Technocrats Pvt Ltd reported in 2018 (10) G.S.T.L. 401 (S.C.). In that matter, revenue filed appeal before the Hon’ble Supreme Court, and it was decided by the apex Court holding that reimbursable expenses cannot be considered for valuation of taxable services for the period under reference in that case. Summary of paragraphs 24 and 29, of the judgment of Hon’ble Supreme Court reported in 2018 (10) G.S.T.L. 401 (S.C.) is reproduced below:

“Service Tax (Determination of Value) Rules, 2006 - Rule 5 - Reimbursable expenses - Inclusion of reimbursable expenses in valuation of services - Under Section 67 of Finance Act, 1994, amount which is not calculated for providing taxable service cannot part of valuation of service - Hence, Rule 5 ibid was ultra vires Section 67 ibid - It was more so as amendment to Section 67 ibid by Finance Act, 2015 to include reimbursable expenditure or cost in consideration for services, indicated realisation of legislature that these were not includible before amendment - This amendment was prospective as it was substantive and not merely declaratory. [paras 24, 29]”

43. *Respectfully* following the Apex Court decision, I conclude that Service tax demand for the period from October, 2014 to March, 2015, amounting to Rs 28,80,766/- is to be vacated. However, reimbursable expenses incurred as well as the income under the Miscellaneous category head for the subsequent period would be liable to Service tax.

44. On the issue of fees, royalty and other contribution, the Noticee has contended that they are not into the business category and royalty is not their pure income; that such income is received on materials prepared for Environment Education, Awareness and Preservation material and thus, there will not be any tax incidence.

45. I find that royalty payable on intellectual property right service attracts service tax as it is not covered under negative list. There is no case for exemption made out and merely claiming that the income received is towards materials prepared for Environment Education, Awareness and Preservation without any material evidence supporting such contention would not be acceptable. Such income is liable to Service tax.

46. Recoveries and reimbursable expenditure: I have already recorded my findings that recovery of reimbursable expenditure is liable to service tax with effect from 14.05.2015 in view of the amendment in Section 67. Similarly, miscellaneous income related to provision of service and income from consultancy are also liable to service tax and they have mentioned tax is paid on such income. I find that only the amount of consideration that is in excess of the value declared in ST-3 declarations have been considered in the Notice for demanding Service tax and therefore, even if tax is paid on certain income, there is no duplication of demand involved. As the tax demanded for the period 2015-16 to June, 2017 has not been paid, they are also liable to pay interest on the delayed payment of tax.

47. I find that the Noticee has not disclosed the total amount received towards various taxable services in their Service Tax returns and they have also not paid the proper amount of tax. Merely because they are a society registered under Section 12AA of the Income Tax Act, 1961, they have claimed exemption under Notification No. 25/2012-Service Tax dated 20.06.2012 and they have not substantiated the claim for exemption. Further, they have split the value of services and reimbursable amounts were not considered towards the taxable value inspite of the amendment in the definition of service. In view of all of the above, the Noticee has resorted to wilful suppression of relevant facts and mis-declaration for not paying the appropriate amount of Service tax and hence, they are liable to penalty under Section 78 of the Finance Act, 1994.

48. Some of the appellate decisions cited in their favour are listed below:

1) CESTAT Final Order No. A/521/2013-WZB/C-1(CSTB) dated 15.03.2013 in the case of JM Financial Services Pvt Ltd Vs Commissioner, Service Tax, Mumbai.

This case involved demand of service tax on sharing of income on IPO financing between non-banking financial companies and tax on common expenses towards infrastructural support service under Business Support Service category. The facts involved in this case are entirely different.

2) Final Order No. A/387/2007-WZB/C-II/(C.S.T.B.), dated 25-5-2007 in Appeal No. ST/281/2006-Mum. This case also involved a different issue, where the appellant acted as an agent of a software Company where as the department alleged them to be a management consultant.

3) Final Order Nos. A/2250-2253/2013-WZB/C-I(CSTB), dated 18-11-2013 in Appeal Nos. ST/137-140/2008-Mum in the case of Kumar Beheray Rathi Vs CCE, Pune III.

In this case, the appellants, who are builder/developer, were served notice for maintenance and repair service on the grounds that they were making payments on behalf of various buyers of flats to various authorities (Municipal Corporation, Revenue authorities etc.) and various service providers (such as security agency, cleaning service providers etc.) and they were not charging anything on their own. The payments made cost on cost basis were debited from the deposit account and they only acted as trustee or as pure agent. It was held that the assessee was not provider of Maintenance and Repair service to flat buyers.

The issue involved is not similar to the present case.

4) Final Order No. A/1374/2014-WZB/C-I(CSTB), dated 19-8-2014 in Appeal No. ST/61/2009-Mum (Pharma Link Agency (India) Pvt Ltd.

The agency, engaged in clearing and forwarding agency service, were receiving freight charges for which separate agreement with service receiver was there. Payment of expenses by assessee and reimbursement of charges by service recipient. It was held that the assessee was acting as pure agent as transportation not undertaken as part of C & F agency functions. This citation is also not similar to the issue at hand.

I find the Noticee has relied on citations that are not relevant to the present Show Cause Notice.

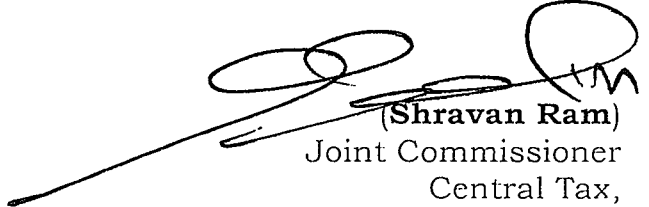
49. I further find that the saving clause in Section 174 (2) of the CGST Act, 2017 gives the legal sanctity to the proceedings initiated under the Show Cause Notice and this Order.

50. In consideration of my above findings, I hereby pass the following Order.

O R D E R

- (1) I hereby uphold the demand of Service tax amounting to **Rs 1,40,75,347/-** under Section 73 (2) of the Finance Act, 1994.
- (2) I hereby vacate the demand of Service tax amounting to **Rs 28,80,766/-** as reimbursable expenses were not liable to tax before 14.05.2015.
- (3) I order recovery of Interest at the applicable rate under section 75 of the Finance Act,1994 in respect of confirmed demand at (1) above;
- (4) I hereby impose a penalty of Rs 1,40,75,347/- under Section 78 of the Finance Act, 1994. *In case the service tax demanded at (1) above and the interest payable is paid within a period of thirty days from the date of receipt of this Order, the penalty payable under this Section shall be twenty-five per cent, subject to such reduced penalty is also paid within such period.*

The Show Cause Notice F.No. GEXCOM/ADJN/ST/ADC/372/2020-ADJN dated 20.12.2020 is accordingly disposed of.


(Shраван Ram)
 Joint Commissioner
 Central Tax,
 Ahmedabad South

F.No. GEXCOM/ADJN/ST/ADC/372/2020-ADJN

Date: 29.12.2022

BY R.P.A.D/

To

Ms Nehru Foundation for Development
 Centre for Environment Education Society,
 Thaltej Tekra,
 Ahmedabad 380 054.

Copy to:

1. The Principal Commissioner, Central Tax, Ahmedabad South.
2. The Assistant Commissioner, Central Tax, Division-VI, Ahmedabad South.
3. The Deputy/Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South.
4. The Superintendent, Central Tax AR-I, Div.-VI, Ahmedabad South
5. The Principal Director of Audit (Central), Audit Bhavan, Navrangpura, Ahmedabad 380 009 with reference to LAR -121/19-20 dated 20.12.2019.
- ✓ 6. The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website
7. Guard file.