

Nilgiri Estates

5-4-187/3&4, II floor, MG Road,
Secunderabad - 500 003.
Phone: +91-40-66335551

Acknowledgment of Receipt of Order In original

I hereby acknowledge that, order in original no. HYD-EXCUS-003-COM-009-23-24 dated 29.09.2023 issued by the Commissioner of Secunderabad GST Commissionerate in the case of the M/s Nilgiri Estates (Service Tax No: AAHFN0766FSD001) is received by on 16.11.2023 from the superintendent of Ramgopalpet-II range.

Regards,


Name: M. JAYAPRAKASH

Designation: Sr. Manager -
Finance & Accounts
9502288200





केंद्रीय करकेआयुक्तकाकार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL TAX
सिकंदराबादजीएसटीआयुक्तालयSECUNDERABAD GST COMMISSIONERATE
जीएसटीभवन,एलबीस्टेडियमरोड,बशीरबाग,हैदराबाद-500 004
GST BHAVAN, L.B.STADIUM ROAD, BASHEER BAGH, HYDERABAD-500 004
 OR. No.19/2020-21 – Sec- Adjn- Commr(ST) Date:29.09.2023
DIN:20231056YO0000813478

मूल आदेश संख्या/**ORDER-IN-ORIGINAL No.**

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(Passed by Shri. R. K. RAMAN, Commissioner)

प्रस्तावना

PREAMBLE

1. निजी प्रयोग के लिए इसे जिस व्यक्ति को जारी किया गया यह प्रति बिना मूल्य के दी जाती है।

This copy is granted free of charge for the private use of the person to whom it is issued.

2. वित्त अधिनियम, (1) 86 धारा की 1994के तहत, संशोधित के रूप में, इस आदेश से पीड़ित कोई भी व्यक्ति सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण की क्षेत्रीय बेंच को अपील कर सकता है, जिसकी रजिस्ट्री पहली मंजिल, एचएमडब्ल्यूएसएसबी बिल्डिंग में है।, पिछला भाग, खैरताबाद, हैदराबाद 004 500-।

Under Sec.86 (1) of the Finance Act, 1994, as amended, any person aggrieved by this order can prefer an appeal to the Regional Bench of the Customs, Excise and Service Tax Appellate Tribunal having its Registry at 1st Floor, HMWSSB Building, Rear Portion, Khairatabad, Hyderabad-500 004.

3. अपील इस आदेश के संचार की तारीख से तीन महीने के भीतर सेवा कर नियम, 1994 (1)9 नियम के तहत निर्धारित प्रपत्र एसटी 5-में दर्ज की जानी चाहिए।

Appeals must be filed in Form ST-5 prescribed under Rule 9(1) of the Service Tax Rules, 1994 within three months from the date of communication of this order.

4. अपील, प्रतिआपत्ति-, स्टे आवेदन या किसी अन्य आवेदन के प्रत्येक ज्ञापन को पूर्ण स्केप पेपर के एक तरफ डबल स्पेस में साफ फ़ोल्डर अलग एक इसे और चाहिए जाना किया टाइप सुथरा-पृष्ठा विधिवत साथ के बुक पेपर प्रत्येक मेंंकित, अनुक्रमित और मजबूती से टैग किया जाना चाहिए।

Every memorandum of Appeal, cross-objections, stay application or any other application shall be typed neatly in double spacing on one side of the full scape paper and the same shall be duly paged, indexed and tagged firmly with each paper book in a separate folder.

5. अपील के साथ ट्रिब्यूनल की क्षेत्रीय बेंच के सहायक रजिस्ट्रार के पक्ष में एक राष्ट्रीयकृत बैंक से प्राप्त राशि के लिए एक क्रॉस्ड बैंक ड्राफ्ट होना चाहिए और यह हैदराबाद में बैंक की शाखा पर होना चाहिए; और प्रतिनिधि को हस्ताक्षर करने और अपीलकर्ता की ओर से अपील करने के लिए अधिकृत करने वाले दस्तावेज, यदि अपील अधिकृत प्रतिनिधि द्वारा हस्ताक्षरित है, जैसा कि सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण नियम (प्रक्रिया), के 1982 अधिनियम शुल्क उत्पाद केन्द्रीय तहत के एफ 35 धारा है। आवश्यक तहत के 13 नियम, 1944 अनुसार के, अपील के साथ मांग की गई शुल्क या लगाए गए दंड या दोनों के %7.5की अनिवार्य पूर्व होगी। अधीन के सीमा की रुपये करोड़ 10 राशि जमा-पूर्व देय और चाहिए होनी भी राशि जमा

The appeal must be accompanied by a crossed Bank Draft for a sum as applicable obtained from a Nationalised Bank drawn in favour of the Assistant Registrar of the Regional Bench of the Tribunal and should be on the branch of bank at Hyderabad; and the documents authorizing the representative to sign and appeal on behalf of the appellant if the Appeal is signed by authorized representative, as required under Rule 13 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982. Under Section 35 F of Central Excise Act, 1944, the appeal also must be accompanied by mandatory pre-deposit amount of 7.5% of the duty demanded or penalty imposed or both and the amount of pre-deposit payable would be subject to a ceiling of Rs.10 Crore.

Sub: Service Tax – Non- payment of Service Tax by M/s. Nilgiri Estate, Ranigunj, Secunderabad for the period from 2015-16 to 2017-18 (up to June, 2017)- Issue of Order in Original – Reg.

BRIEF FACTS OF THE CASE:

M/s. Nilgiri Estates (here after referred to as 'The assessee' or 'The taxpayer') is a partnership firm situated at Soham Mansion, 5-4-187/3 & 4, 2nd Floor, M. G. Road, Ranigunj, Secunderabad-500003. The assessee is registered vide Service Tax No: AAHFN0766FSD001 under Section 69 of the Chapter V of the Finance Act 1994 under the category of 'Construction of Residential Complex Service' and 'Works Contract Services' and has undertaken to comply with the provisions of the Finance Act, 1994 and Rules made thereunder.

2. The assessee is engaged in construction of complex service which is a declared service in terms of clause (b) of Section 66 E of the Finance Act, 1994. On scrutiny of ST-3 returns it was noticed that the assessee was availing abatement in terms of Notification No.26/2012-ST as amended by Notification 2/2013 dt 01-03-2013 and as further amended and were also availing Cenvat credit on inputs which appeared to be violation of the conditions to claim abatement in taxable value of services. They were also availing abatement as 'amounts charged as pure agent'. In this regard four letters were addressed to the assessee and also to their five partners respectively as detailed below:

(i) Letter vide DIN No. 20200756YO00006KFA16, dated 23.07.2020 was sent to the assessee regarding certain discrepancies noticed during the scrutiny of ST-3 Returns and also requested to submit Balance Sheet, Form 26AS, Sanctioned plan, sale deed and construction agreement along with occupancy certificate. In compliance, the assessee has submitted Balance Sheet, Form 26AS, copies of ST-3 returns and acknowledged copy of ITR (single copy).

(ii) Letter vide DIN No. 20200756YO00006KFA16, dated 07.08.2020 was sent to the assessee requesting to submit input invoices to examine whether the cenvat credit was taken on inputs or input services. In this regard, no response was received from the assessee.

(iii) Reminder vide DIN No. 20200756YO00006KFA16, dated 21.08.2020 was sent to the assessee. In this regard, again no response was received.

(iv) A letter DIN no. 20200756YO00006KFA16, dated 28.08.2020 in e-file no.GEXCOM/SoR/15/2020-CGST-RANGE-RGPET-II-DIV-SNBD-COMMRTE-SECUNDERABAD was addressed to the assessee to submit the relevant documentary evidence regarding pure agent, invoices raised on each customers and documentary evidence pertaining to sales declared in ITR and P&L a/c. In this regard, once again no response was received.

The above said four letters were sent by speed post and by e-mail to the individual partners to the address and e-mail address declared in Form ST1.

3. Further, a letter vide DIN No. 20200756YO0000HA4ED, dt. 23.07.2020 was addressed to the Income Tax Department requesting them to provide ITR, P&L A/c and Form 26AS. The said documents were received through mail vide mail id hyderabad.dcit10.1@incometax.gov.in on 12.08.2020.

4. On scrutiny of ST-3 returns for the period from 2015-16 to 2017-18 (up to June, 2017), it was found that the assessee availed abatement under Notification No.26/2012-ST as amended by 2/2013 ST dated 01-03-2013 as further amended, and also deducted amount charged as pure agent from the gross income and paid Service Tax on the resultant taxable income through cash and Cenvat credit. ST-3 return- wise details of Service Tax paid by the assessee is tabulated as under:

Table -I

Sl. No	Year	Period Covered	Gross Taxable Income	Deductions availed	Net Taxable Income	Amount in Rupees	
						ST Payable	ST paid

				Abatement vide Nft. No. 2/ 2013	Pure Agent			Cash	Cenvat credit
1	2	3	4	5	6	7	8	9	10
1	2015- 16	April – Sept.	31817208	23862906	0	7954302	1080802	973334	107468
2		Oct. – March	57237384	42890538	50000	14296846	2058711	1021227	1037484
	Total		89054592	66753444	50000	22251148	3139513	1994561	1144952
3	2016- 17	April – Sept.	61041279	42512837	308655	18219787	2701100	1881404	819696
4		Oct. – March	93280123	63463672	2617733	27198718	4079809	2974696	1105113
	Total		154321402	105976509	2926388	45418505	6780909	4856100	1924809
5	2017- 18	April - June	12383924	8668747	0	3715177	557277	239174	318103
6	Grand Total		255759918	181398700	2976388	71384830	10477699	7089835	3387864

5. Notification No. 26/2012 ST dated 20.06.2012 provides abatement from the taxable value in respect of various services subject to the relevant conditions specified therein. Sl. No. 12 of Notification No. 26/2012 ST pertains to “Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority” and holds that the Service Tax is payable only on 30% of the value subject to the condition that (i) Cenvat credit on inputs used for providing the taxable service has not been taken and (ii) the value of land is included in the amount charged from the service receiver. Notification No. 2/2013 ST dated 01-03-2013 was issued amending the percentage of abatement and the conditions to be followed in respect of Sl. No. 12 of notification No. 26/2012 dated 20.06.2012.

6. From the Notification No. 26/2012-ST as amended by Notification 2/2013 ST dated 01.03.2013 and as further amended, it appeared that the benefit of the Notification can be availed only if the following two conditions are met:

I. Cenvat credit on inputs used for providing the taxable service has not been taken under the provisions of the Cenvat Credit Rules, 2004.

II. The value of land is included in the amount charged from the service receiver.

From the above it appeared that the restriction on availing Cenvat credit is only limited to 'inputs credit' but not 'input services credit'.

7. On perusal of the ST-3 filed by the assessee for the period from 2015-16 to 2017-18 (up to June, 2017) it was found that the assessee had availed Cenvat credit on inputs only and not on input services as shown below:

Amount in Rupees							
Sl. No.	Financial Year	ST-3 Period Covered	Opening Balance	Credit Taken on Inputs	Credit Taken on input Services directly	Cenvat Credit utilised	Balance Cenvat Credit
1	2	3		4	5	6	7
1	2015-16	April - September	0	107468	0	107468	0
2		October - March	0	1037484	0	1037484	0
3	2016-17	April - September	0	837854	0	819686	18168
4		October - March		1105113	0	1105113	0
5	2017-18	April - June	299566*	0	0	299566	0

*The assessee should have shown opening balance of Rs. 18,168/- in the return pertaining to the period October, 2016 to March, 2017 but has shown 'NIL. Balance. However, they have shown opening balance of Rs. 2,99,566/- in their return pertaining to the period April, 2017 to June, 2017.

From the above it appeared that the assessee had taken credit on inputs and utilized the same to discharge their Service Tax liability. It appeared that the assessee had violated the conditions stipulated in the notification and hence, it appeared that the assessee were not eligible for abatement under Notification No. 26/2012-ST as amended by 2/2013 ST dated 01.03.2013 and as further amended.

8. As per the ST-3 returns filed by the assessee they had deducted from the gross income an amount of Rs.29,76,388/- claiming to be amount charged as pure agent from the gross income over the period from 2015-16 to 2017-18 (up to June,2017) as shown in Table -1 above. In this regard, the assessee was requested to submit the relevant documentary evidence regarding pure agent and the services rendered as pure agent as certain conditions were to be met to claim abatement on account of pure agent as per the provisions of Rule 5 of the Service Tax Valuation Rules, 2006. The assessee had not furnished any information or documentary evidence to support their claim. Hence, it appeared that the deduction from the gross income towards "amount charged as pure agent" could not be allowed.

9. It appeared that the assessee was not eligible for abatement in terms of Notification No. 26/2012-ST as amended vide notification No. 2/2013 ST dated 01.03.2013 and as further amended and were also not eligible for deduction towards amount charged as pure agent. Therefore, it appeared that they had to pay Service Tax on the gross incomes received by them during the period from 2015-16 to 2017-18 (up to June, 2017). The gross incomes for the Financial Years 2015-16 and 2016-17 were Rs. 8,90,54,592/- and Rs. 15,43,21,402/- respectively. In respect of Financial Year 2017-18 (up to , June, 2017) the assessee had shown taxable income of Rs. 1,23,83,924/-. However, the total sales for the Financial Year 2017-18 as per Income Tax Return filed by the assessee was Rs. 16,68,99,960/- and the outward supply as per GSTR-9 return filed by the assessee for the year 2017-18 was Rs. 3,78,87,611/-. Subtracting the taxable turn over shown in GSTR-9, which covers the period from July, 2017 to March, 2018, from the total sales for the year Financial Year 2017-18 as per Income Tax Return, taxable income for the period the 2017-18 (up to , June, 2017) was worked out to Rs. 12,90,12,349/- (Rs. 16,68,99,960/- minus Rs.3,78,87,611/-).

10. Adopting the taxable values as discussed above, the Service Tax liability of the assessee for the period from 2015-16 to 2017-18(up to June,

2017) was worked out to Rs. 5,49,08,106/-. As per ST-3 returns filed by the assessee during the period from 2015-16 to 2017-18(up to June, 2017) the assessee had already paid an amount of Rs.1,04,77,699/- towards Service Tax. The assessee were liable to pay the balance Service Tax of Rs. 4,44,30,407/- as shown below:

Amount in Rupees							
Sl. No.	Year		Taxable value	Rate of Tax including applicable cesses (%)	ST Payable	ST Paid as per ST-3 returns	Balance Service Tax Payable
1	2015-16	April to June	12625000	12.36	1560450		
		July to September	19192208	14	2686909		
		October to December	27747339	14	3884627		
		Jan-March	29490045	14.5	4276057		
		Total	89054592		12408043	3139513	9268530
2	2016-17		154321402	15	23148210	6780909	16367301
3	2017-18	April to June	129012349	15	19351852	557277	18794575
Grand Total			372388343		54908106	10477699	44430407

Therefore, it appeared that the assessee was liable to pay service tax of Rs. 4,44,30,407/- (Rupees Four Crore Forty Four Lakh Thirty Thousand Four Hundred and Seven only) [including Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess] along with interest.

11. The assessee had filed ST-3 returns covering the period from 2015-16 to 2017-18 (April to June). All these returns were filed beyond due dates. In terms of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 every assessee who files ST-3 return after the due date are liable to pay Late Fee as prescribed. The assessee had paid late fee in respect of the four half yearly returns pertaining to the Financial Years

2015-16 and 2016-17 but had not paid late fee in respect of the ST-3 return pertaining to the period April, 2017 to June , 2017 which was filed 389 days beyond the prescribed due date. In terms of Section 70 read with Rule 7C (iii), for the period of delay beyond thirty days from the date prescribed for submission of such return late fee has to be paid at the rate of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return, subject to a maximum of Rs. 20,000/-. Hence, it appeared that the assessee were liable to pay late fee of Rs.20,000/- for delayed filing of ST-3 return pertaining to the period April,2017 to June, 2017.

12. From the foregoing, it appeared that M/s. Nilgiri Estates, Secunderabad had evaded Service Tax of Rs.4,44,30,407/- (Rupees Four Crore Forty Four Lakh Thirty Thousand Four Hundred and Seven Only) [including Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess] without following the requisite Service Tax procedures and by way of willful suppression and misstatement of facts and accordingly they appeared to have contravened the following provisions of Chapter V of the Finance Act, 1994 and the rules made there under with intention to evade payment of Service Tax:

- i. Section 67 of the Finance Act, 1994 read with Notification No. 26/2012-ST as amended by 2/2013-ST and 8/2016-ST in as much as they had not arrived at the correct taxable value for payment of Service Tax in respect of the different taxable services provided by them;
- ii. Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 and Rule 3 of the Pont of Taxation Rules, 2011 in as much as they had not paid the appropriate amount of Service Tax on the taxable value of services provided by them.
- iii. Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they failed to properly self-assess the

tax due on the taxable services and file periodical returns with correct details of the value of services rendered by them;

13. It appeared that M/s. Nilgiri Estates who are registered with the Department vide Service Tax No: AAHFN0766FSD001 were well aware that the services provided by them were taxable services and were liable to Service Tax by the service provider. It appeared that the assessee had availed abatement in violation of the conditions of notification No. 26/2012-ST as amended by notification No. 2/2013 ST dated 01.03.2013 and as further amended under construction of residential complex services without meeting the conditions specified therein. They had suppressed their taxable income in the ST-3 return filed for the period April, 2015 to June, 2017. But for the verification caused by the Department the short payment of Service Tax would have been un-detected.

14. Therefore, it appeared that, M/s. Nilgiri Estates had resorted to willful suppression of facts as well as contravention of statutory provisions of the Finance Act, 1994 and rules made thereunder as well as abatement notification which is available but subject to fulfilling conditions like not taking Cenvat credit on inputs as detailed above with intent to evade payment of Service Tax, hence, the extended period of limitation under proviso to Sub-section (1) of Section 73 of the Chapter V of the Finance Act, 1994 appeared invokable in this case for demanding Service Tax along with recovery of interest at applicable rates in terms of Section 75 of the Act, *ibid*.

15. In the above circumstances, M/s. Nilgiri Estates also appeared to have rendered themselves liable for mandatory penalty under Section 78 of the Finance Act, 1994 for contravention of the provisions of the Finance Act, 1994 and rules made there-under, which resulted in short-payment of Service Tax. It also appeared that M/s. Nilgiri Estates were also liable for payment of penalty under provisions of Section 77 of the Finance Act, 1994

read with Rule 7 of Service Tax Rules, 1994 for failure to show the correct details of the value of services rendered by them, in their ST-3 returns.

16. In view of the above, a Show Cause Notice was issued to M/s. Nilgiri Estates, Soham Mansion, 5-4-187/3 & 4, 2nd Floor, M.G.Road, Ranigunj, Secunderabad -500003, vide OR No. 19/2020-21-Sec.Adjn – Commr(ST) dt. 21.12.2020, wherein the assessee was called upon to show cause as to why:-

- i. an amount of Rs. 4,44,30,407/- (Rupees Four Crore Forty Four Lakh Thirty Thousand Four Hundred and Seven Only) [including Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess] should not be demanded towards short payment of Service Tax for the services rendered under construction of residential complex service, in terms of proviso to Section 73(1) of the Finance Act, 1994;
- ii. interest at the applicable rates on the above tax amount should not be recovered from them under Section 75 of the Finance Act, 1994;
- iii. Penalty should not be imposed on them under Section 77 of the Finance Act, 1994.
- iv. Penalty should not be imposed on them under Section 78 of the Finance Act, 1994.
- v. Late fee of Rs. 20,000/- (Rupees Twenty Thousand Only) should not be imposed on them under Section 70(1) of the Finance Act, 1994.

17. **Reply to Show Cause Notice:** In response to the above said notice, the authorized representative of the assessee (i.e., Hiregange & Associates Chartered Accountants) furnished a reply vide their letter dated 17.02.2021, wherein the following submissions were made:

17.1. They submitted that the present proceedings and the issuance of the impugned SCN were without authority of the law as the provisions of the

Finance Act, 1994 which authorizes the levy and collection of Service tax were repealed in terms of Section 19 of Constitution (one hundred and first amendment) Act, 2016 read with Section 173 of CGST Act, 2017. Further, Section 174 of the CGST Act, 2017 as amended only saves the proceedings already instituted before the enactment of the CGST Act, 2017 (w.e.f. 01.07.2017) whereas the issuance of the impugned SCN was initiated after 01.07.2017. Therefore, the present SCN do not sustain.

17.2. Show Cause Notice is not valid: They submitted that as per C.B.E. & C. Instruction F No.1080/09/DLA/MISC/15 dated 21st December 2015 and Circular No. 1076/02/2020-CX dated 19.11.2020, pre-show cause notice consultation is mandatory in cases involving duty of more than 50 lakhs. However, in the instant case the show cause notice was issued without pre-show cause notice consultation even though the demand involved is more than 50 lakhs. Therefore, the impugned notice becomes invalid on this ground alone. In this regard, they placed their reliance on;

- a. Amadeus India Pvt Ltd Vs CCE 2019 (25) G.S.T.L. 486 (Del.)
- b. Freight Systemns India Pvt Ltd Vs CCE 2019 (368) ELT 506 (Mad)
- c. Hitachi Power Europe GMBH Vs CBIC 2019 (27) GSTL 12 (Mad)

Further, they submitted that the show cause notice is issued based on mere assumptions and unwarranted inference that they has availed CENVAT Credit on inputs without actual examination of facts. In this regard, they relied on Supreme Court judgment in case of Oudh Sugar Mills Limited v. UOI, 1978 (2) ELT 172 (SC), wherein the Hon'ble SC categorically held that such SCN issued with assumptions and presumptions is not sustainable under the law. Therefore, on this count alone the entire proceedings in the SCN do not sustain and require to be dropped.

They further submitted that the impugned notice has considered the turnover declared in ST-3 returns for the period April 2015 to March 2017 for quantifying the demand since the same is more than turnover declared

in Income Tax return, however, for the period April 2017 to June 2017, it has compared the turnover disclosed in Income Tax Return since the turnover in income tax return is higher. This shows that the impugned notice has quantified the demand arbitrarily and it is settled law that the notice issued arbitrarily are not valid. Hence, the impugned notice needs to be dropped.

17.3. The noticee has not availed CENVAT Credit on inputs thereby eligible for abatement: They submitted that the allegation of the impugned notice that the Noticee had availed the CENVAT Credit on inputs thereby not eligible for abatement under Notification No.26/2012-ST dated 20.06.2012 is factually incorrect, as noticee has availed CENVAT Credit only on input services and had not availed any CENVAT Credit on inputs. However, while disclosing the CENVAT Credit details in ST-3 returns, noticee has erroneously disclosed the details of CENVAT Credit availed on input services as CENVAT Credit availed on inputs. Due to this clerical mistake, it appeared to the department that the noticee had availed the CENVAT Credit on inputs. The facts that they had availed CENVAT Credit only on input services and not on inputs is clearly evident from their CENVAT Credit ledgers for the disputed period wherein it was clearly mentioned that the details of input services on which CENVAT Credit is availed. They submitted CENVAT Credit statement along with corresponding ledgers, invoice copies and also submitted Chartered Accountant Certificate certifying that they have availed CENVAT Credit only on inputs services and not on inputs. They stated that since they have availed CENVAT Credit only on input services and not availed any CENVAT Credit on inputs, they have satisfied all the conditions for availing abatement under Notification No.26/2012-ST dated 20.06.2012 thereby rightly eligible for abatement. Since the Noticee has already paid the entire service tax after availing the abatement, there is no short of service tax. Hence, the impugned notice needs to be dropped to that extent. Further, they submitted that mere non-observance of procedure cannot take away the substantial benefit. In this regard reliance is placed on

- a. Sambhaji v. Gangabai — 2009 (240) E.L.T. 161 (S.C.) wherein it was held that “*Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.*”
- b. Mangalore Chemicals & Fertilizers Ltd Vs DC 1991 (55) E.L.T 437 (S.C)
- c. Dhamur Sugar Mills Ltd Vs CCE, Meerut 2010 (260) E.L.T 106 (Tri-Del)
- d. BSNL v. CCE 2012 (28) S.T.R. 624 (Tri. - Chennai)
- e. Kathiravan Pipes Pvt. Ltd. Vs. CESTAT, Chennai 2007 (5) STR 9 Mad.

Further, they submitted that mere technical interpretation of procedures to be avoided if the substantive fact of availment of CENVAT Credit on input services is evidenced by other documents such as ledger accounts of the Noticee and invoice copies is not in doubt. Further, a liberal interpretation is to be given in case of any technical lapse and relied on following case laws in support of the same;

- a. Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.)
- b. Union of India v. AV Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.)
- c. Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.)
- d. IntasPharma Ltd v. CST 2013 (32) S.T.R. 543 (Tri. - Ahmd.)
- e. Barclays Technology Centre India (p) ltd. vs. CCE 2015 (38) S.T.R. 35 (Tri. - Mumbai)

On perusal of above referred Supreme Court case laws, it is very clear that substantial benefit shall not be rejected due to mere procedural lapses. Hence, the impugned notice to that extent needs to be dropped. The assessee further submitted that the summary of the consideration received, abatement and deduction claimed, taxes payable and taxes paid is as follows:

Sl. No.	Particulars	Amount
A	Total receipts during the period April 2015 to June 2017	24,61,22,673
B	Less: Non-taxable receipts	
	a. VAT, Stamp Duty and Registration charges	46,66,354
	Other Non-taxable Receipt like Corpus Fund/ Electricity charges	14,73,840
C	Gross taxable receipts	23,99,82,479

D	Less: Abatement at 75%/70%	17,23,02,557
E	Net taxable receipts	6,76,79,922
F	Service Tax Payable	99,29,813
G	Service Tax Paid	92,10,965
H	Excess/(Short paid)	(7,18,828)

From the above referred table, it is clear that the Noticee has made an excess payment of service tax when compared to actual service tax payable. Therefore, there is no short payment of service tax.

17.4. Turnover comparison for the period April 2017 to June 2017 is incorrect due to different accounting method: The assessee submitted that service tax demand proposed in the notice on differences between the disclosures made in the financial statements/ Income tax returns and ST-3 returns. Since, both are lead by two different statues, the demand is not tenable. The difference between the turnover disclosed in ST-3 returns and Income Tax Returns is due to the reason that revenue in Income Tax Return was recognized based on percentage of completion method whereas the ST-3 returns were filed in accordance with provisions under Finance Act, 1994 and the rules made thereunder. In short, the difference is due to the following reasons:

- Disclosure of revenue in the Income Tax returns is in accordance with percentage completion method
- Disclosure in ST-3 returns is in accordance with Point of Taxation Rules, 2011 i.e. based on advances received from customer

Under the percentage of completion method, contract revenue is recognized as revenue in the statement of profit and loss in the accounting periods in which the work is performed. Contract costs are usually recognized as an expense in the statement of profit and loss in the accounting periods in which the work to which they relate is performed. Since the Income Tax Returns have to be prepared in accordance with the percentage completion method, it is pertinent to note that the revenue has to be recognized in the books of accounts irrespective of the fact that whether such amounts have been received or not. Whereas Rule 3 of Point of Taxation Rules, 2011

determines the point of taxation (POT) for the services provided. As per said rule the point of taxation shall be the date which occurs earlier in the following:

- (i) Date of invoice for service provided or agreed to be provided.
- (ii) Where invoice not issued within 30 days from the date of completion of service, then the point of taxation shall be the date of completion of service.
- (iii) In the case where a payment is received before the time specified in point (i) or (ii), the time when such payment is received, to the extent of such payment.

In the present case, they have been receiving advances from the customers before completion of the project, therefore, they have discharged service tax on the advances received and disclosed the same in ST-3 returns. The point of taxation as per Finance Act, 1994 is receipt of advance and the said compliance has been rightly made by the them, therefore, there is no short payment of service tax as per Finance Act, 1994 and the allegation of the impugned notice demanding service tax on differences between the disclosures made in the income tax returns and ST-3 returns which are lead by two different statues is not tenable and the same needs to be set aside. In this regard, they relied on:

- Indian Oil Sky Tanking Ltd Vs. Commr. of Service Tax, Bangalore—2015(38) S.T.R 221 (Tri.-Bang)
- P. Govindaraj Vs. CCE, Madurai—2014(36) S.T.R.400 (Tri.-Chennai)
- Commissioner of Service Tax, Ahmedabad Vs. Purani Ads. Pvt. Ltd.—2010(19) S.T.R.242 (Tri.-Ahmd)

Without prejudice to above, the assessee further submitted that the impugned notice has considered the outward supply turnover as Rs.3,78,87,611/- for the period July 2017 to March 2018 out of the total turnover disclosed in income tax return as Rs.16,68,99,960/-. However, it has failed to consider the Non-GST supply turnover disclosed in GSTR-09 of Rs.14,84,70,715/- and exempted turnover of Rs.12,08,090/-. Once the above turnover is considered, the total turnover disclosed in GSTR-09 for

the period July 2017 to March 2018 amounts to Rs.18,75,66,416/-. Therefore, the comparison of only outward taxable supply of Rs.3,78,87,611/- with the turnover disclosed in ITR by the impugned notice is not correct and the same needs to be dropped. With respect to turnover for the period April 2017 to June 2017, they submitted a Chartered Accountant Certifying the same.

17.5. Amounts received as pure agent shall not be included in the taxable value:

17.5.1. The assessee submitted that they have collected certain amounts towards VAT, Stamp duty, electricity charges from the customers and the same were paid to the respective departments on actual basis. They collected the actual amounts from their customer and the customers are aware of the facts that these amounts are paid to the third party and not towards provision of construction services. The fact of claiming of deduction is also disclosed in the ST-3 returns filed by the assessee for the disputed period. They submitted that amounts collected by them as pure agent of recipient of service are as follows

- a. Corpus fund which is collected was transferred to Nilgiri Estate Owners Association, a registered society responsible for maintaining common amenities of the project. The amount collected is totally kept in separate bank account and transferred to society/association once it is formed; collection of corpus fund & keeping in separate bank account and subsequent transfer to association/society is statutory requirement;
- b. Electricity deposit is collected & totally remitted/deposited with the 'electricity board' towards electricity consumption charges. These electricity charges were paid for completed villas that were lying vacant on behalf of the purchasers and debited to their account. These charges were later recovered from such purchasers of such villas.

- c. Service tax collected & remitted to the Central government as per the provisions of Finance Act, 1994;
- d. Stamp Duty, Registration Charges and VAT Collected as per State Stamp Act and VAT Act, 2005 and remitted the same to the respective department. Noticee has collected the actual amounts incurred for the same and have not added any margin.

As seen from the above, all these charges collected i.e, 'other non-taxable receipts' are statutory charges/deposit and received as mere reimbursements of expenses/charges incurred/paid on behalf of customers and does not involve any provision of service. Hence, same shall be excluded from the taxable value *inter alia* in terms of Rule 5(2) of Service tax (determination of value) Rules, 2006.

17.5.2. The assessee further stated that Section 66 of Finance Act, 1994 levies service tax at a particular rate on the value of taxable service. Section 67(1) makes the provisions of the section subject to the provisions of Chapter V which includes Section 66. This is a clear mandate that the value of taxable services for charging service tax has to be in consonance with Section 66 which levies a tax only on the taxable service and nothing else. There is thus inbuilt mechanism to ensure that only the taxable service shall be evaluated under the provisions of 67. Reading Section 66 and Section 67(1) together and harmoniously, it is clear that in the valuation of the taxable service, nothing more and nothing less than the consideration paid as *quitpro quo* for the service can be brought to charge in the sense that only the service actually provided by the service provider can be valued and assessed to service tax. Therefore, undoubtedly of taxing the reimbursements runs counter and is repugnant to Sections 66 & 67, *ibid*. What is brought to charge under the relevant Sections is only the consideration for the taxable service. That being a case inclusion of expenditure reimbursements in the value of taxable service goes beyond the charging provision which is not at all permitted. The above referred amounts which was paid to respective departments on behalf of customers are

nothing but pure reimbursements. In this regard, they relied on the decision of;

- (a) the Hon'ble Supreme Court Judgment in case of Union of India and ANR Vs. Intercontinental Consultants and Technocrats Pvt. Ltd.—2018 (10) GSTL 401 (SC);**
- (b) ICC Reality & Others Vs CCE 2013 (32) S.T.R. 427 (Tri. - Mumbai);**
- (c) Karnataka Trade Promotion Organisation v. CST 2016-TIOL-1783-CESTAT-BANG.**

17.5.3. The assessee further submitted that the amounts received as corpus fund are in the nature of “deposits” and thus does not amounts to consideration received for provision of taxable service thereby not liable to service tax. In this regard, reliance is placed on:

- (a) Vijay Shanthi Builders Ltd Vs CST 2018 (9) GSTL 257 (Tri-Chennai);
- (b) CCE Vs Ashok Matches and Timber Industries Pvt Ltd 2018 (6) TMI 716 – CESTAT Chennai;
- (c) ICC Reality & Others Vs CCE2013 (32) S.T.R. 427 (Tri. - Mumbai);
- (d) Karnataka Trade Promotion Organisation v. CST 2016-TIOL-1783-CESTAT-BANG;
- (e) M/s Alpine Estates Vs CCE, Secunderabad 2019-TIOL-3829-CESTAT-HYD.

17.5.4. The assessee further stated that they have remitted all the taxes collected from the customers to the Government. They enclosed copy of challans evidencing the payment of stamp duty, VAT, e.t.c. with the reply. The assessee submitted that reimbursements shall be excluded from taxable value in terms of Rule 5(2) of rules, ibid. The pre-requisite is that the expenses should have been incurred by the person on behalf of the service recipient and the expenses so incurred should be reimbursed to him on actual basis, which were duly satisfied in the instant case as explained below.

One of the condition to satisfy pure agent concept is that the service provider acts as a pure agent of the recipient of service when he makes

payment to the third party for the goods or services procured. In the instant case they have satisfied all the conditions as given in the explanation to become pure agent as follows;

- Noticee having a contractual agreement with the recipient of service to act as his pure agent of recipient of service i.e, agreement of sale and sale deed (They submitted sample copies of sale deed)
- Noticee neither intends to hold nor hold any title to the goods or services for instance i.e. stamp duty, registration charges or VAT (They submitted sample copies of VAT Challans)
- Noticee has not used such goods or services procured and the same were directly used by the service recipient and not by Noticee
- Noticee has received only the actual amount paid to the third party i.e. electricity department, registration department and VAT department as evident from the amounts received and challans paid to VAT department

The assessee further stated that once the noticee satisfies the pure agent conditions then it needs to check whether all the conditions given for availing the deduction as pure agent is satisfied or not. In this regard, they submitted how the conditions given for availing the deduction as pure agent is satisfied in the present case. To explain the same, Noticee is herewith taking the example of sale made to customer by name 'Srimahavishnu Vinjamuri (V.S.M Vishnu)'. Further they submitted that one of the conditions for getting deduction is that the service provider should act as a pure agent as recipient of service when he makes a payment to third party for the goods or services procured. In this regard, they stated that majority of the amounts are received towards VAT and Stamp duty which needs to be paid by the purchaser of flat while getting the same registered in his name. This fact is also known to the VAT and Registration department. From this, it is clear that they are acting as pure agent when he is making payment to

third party for goods or services (submitted copy of VAT challan and sale deed evidencing the payment of stamp duty). The second condition is that the recipient of service receives and uses the goods and services so procured by the service provider in his capacity as pure agent of recipient of service. In this regard, they submitted that whatever the services that are procured by the pure agent were duly used by the recipient of service such as water and electricity charges. Further, it is also evident from the fact that the electricity meters were registered in the name of the recipient of service, therefore, the persons other than the recipient of service is not authorized to use such services. The third condition is that the recipient of service is liable to make payment to the third party and he authorizes the service provider to make payment on his behalf. In this regard, they submitted that the flat was registered in the name of the recipient of service and water supply and electricity supply was received by the recipient of service, therefore, he is liable to make payment for the same but for the purpose of said payment the recipient of service has authorized the noticee to make payment for such services. This can be evidenced from Para 17 of the agreement of sale (submitted copy of agreement of sale). The fourth condition is that the recipient of services authorizes the service provider to make payment on his behalf. In this case, they submitted that the recipient has authorized them to make payment on behalf of customer. This can be evidenced from Para 17 of agreement of sale. The fifth condition is that 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. In this regard, they submitted that the recipient of service is aware of the fact that all the above referred services were procured by them from the third party. Therefore, it is clear that the recipient of service is aware that the goods are procured from the third party. The sixth condition is that 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. In this regard, they stated that they are recovering the expenses by issuing a invoice separately and the said reimbursements were not clubbed with the

construction services. The seventh condition is that the service provider recovers from the recipient of service only such amount as has been paid by him to the third party. In this regard, they submitted that they have recovered only the amounts which were incurred and they have not collected anything in excess of expenses incurred by the noticee. The eight and last condition is that the goods or services procured by the service provider from the third party as a pure agent of recipient of service are in addition to the services provides on his own account. In this regard, they submitted that the services provided on reimbursement basis is over and above the services of construction provided by the noticee. Therefore, they completely satisfies the conditions of a 'Pure Agent' as set out in Rule 5(2) of the Valuation Rules. In this regard, they relied on **Pharmalinks Agency (I) Pvt. Ltd. Vs CCE, 2015 (37) STR 305(Tri. - Mumbai)**. Since they had satisfied the condition for availing the deduction for pure agent, the allegation of the impugned notice is not correct and the same needs to be dropped.

17.6. Extended Period of Limitation is not invokable: Without prejudice to the above, it is submitted that the demand for the period from April 2015 to September 2015 is time barred since show cause notice has been served on the noticee beyond 5 years from the relevant date. The demand for the said period expired on 05.05.2020 whereas SCN was issued on 21.12.2020. Thereby, SCN served is time barred. The averment of impugned SCN taking the time extension given under Ordinance 2020 do not sustain as it lacks the legislative competence to amend the repealed enactments. In this regard, reliance is placed on the Hon'ble HC decision in case of Reliance Industries Ltd Vs State Of Gujarat 2020-TIOL-837-HC-AHM-VAT.

They further stated that as submitted in the preceding paragraphs, they have not availed any CENVAT Credit on inputs, thereby, rightly eligible for claiming the abatement under Notification No.26/2012-ST dated 20.06.2012. Once they are eligible for availing the abatement, there is no short payment of service tax as alleged by the impugned notice. Also, they

are of bonafide belief that the amounts claimed as pure agent is rightly eligible. Further, the fact of availment of abatement and claiming of deduction as pure agent is also disclosed in the ST3 returns. Thereby, there is no suppression of facts to invoke extended period of limitation.

They further submitted that 'lapse would not have come to light but for the investigation of department', standing alone cannot be accepted as a ground for confirming suppression, Misstatement or Mis-declaration of facts. More so considering the fact that the very objective of conducting the Audit of records of an assessee is to ascertain the correctness of payment of duty etc., any shortcomings noticed during the course of Audit, itself cannot be reasoned that the deficiency was due to mala fide intention on the part of assessee. In this regard, relied on LANDIS + GYR LTD Vs CCE 2013 (290) E.L.T. 447 (Tri. - Kolkata). They have never hidden any information from the department and they have submitted whatever the information required by the department. If they have intention to suppress the facts, they would not have submitted the information asked by the department and this shows that Noticee was under bonafide belief that the compliance made by them is correct.

They submitted that the details of availment of abatement and deduction as pure agent were disclosed in ST-3 returns. The Authorities have all the information in their hands, the authority can examine the issue as and when the Returns are filed and can conclude the liability of service tax on that itself. Authority has the duty to verify the returns in time. Therefore, invocation of larger period of limitation is not valid and requires to be set aside. In this regard, they relied on the following to support the above view:

- Sarabhai M. Chemicals v. CCE, Vadodara - 2005 (179) E.L.T. 3 (S.C.)
- Shree Shree Telecom Pvt Ltd., Vs. CCE Hyderabad [2008 (232) E.L.T. 689 (Tri. - Bang.)
- Sopariwala exports pvt. Ltd v. CST 2014 (36) S.T.R. 802 (Tri. - Ahmd.)

They further submitted that department is well aware of the facts which is evident from department letter dated 24.09.2018 wherein it has stated that the department has scrutinised their ST-3 returns and observed certain discrepancies. They have also submitted a reply dated 12.10.2018. However, the issue involved in the present show cause notice that they had availed the CENVAT Credit on inputs and claimed deduction under pure agent were never pointed out by the department. This has led to the belief that the compliance made by them is correct. Hence, suppression of facts cannot be attributed to the present case. In this regard, they placed their reliance on Nizam Sugar Factory vs. C.C.E, A.P. 2006 (197) E.L.T. 465 (S.C.). Once the department has verified the returns and had not pointed out any discrepancies. But again after expiry of 2 years, the issuance of show cause notice invoking extended period of limitation is not correct and the same needs to be dropped.

They further stated that intention to evade payment of tax is not mere failure to pay tax. It must be something more i.e. the assessee must be aware that tax was leviable/credit was inadmissible and he must act deliberately to avoid such payment of tax. Evade means defeating the provision of law of paying tax and it is made more stringent by the use of word 'intent'. Where there was scope for doubt whether tax is payable or not, it is not 'intention to evade payment of tax'. reliance is placed on Tamil Nadu Housing Board v. CCE, 1994 (74) ELT 9 (SC). Mere non-payment/short payment of tax does not mean that they have willfully contravened the provisions with the intent to evade payment of tax. In this regard reliance is placed on Uniworth Textiles Ltd. v. Commissioner 2013 (288) E.L.T. 161 (S.C.) They further submitted that all the entries are recorded in books of accounts and financial statements nothing is suppressed. Hence the extended period of limitation is not applicable. They placed their reliance on LEDER FX Vs DCTO 2015-TIOL-2727-HC-MAD-CT and Jindal Vijayanagar Steel Ltd. v. Commissioner — 2005 (192) E.L.T. 415 (Tri-bang).

They further submitted that the entire period from April 2015 to March 2017 falls beyond normal period of limitation (30 months) as tabulate below. Hence the proposed demand to that extent requires to be dropped on the count of limitation.

Sl. No.	Period	Return filing date	The date till which SCN can be issued	Demand Proposed
1	01.04.2015 to 30.09.2015	05-11-2015	05-05-2018	92,68,530
2	01.10.2015 to 31.03.2016	20-07-2016	20-01-2019	
3	01.04.2016 to 30.09.2016	15-11-2016	15-05-2019	1,63,67,301
4	01.10.2016 to 31.03.2017	06-09-2017	06-03-2020	

17.7. Interest and Penalties are not imposable: Without prejudice to the foregoing, The assessee submitted that when service tax is not applicable, the question of interest and penalties does not arise. It is a natural corollary that when the principal is not payable there can be no question of paying any interest as held by the Supreme Court in *Prathiba Processors Vs. UOI, 1996 (88) ELT 12 (SC)*. They further submitted that all the grounds have taken for “Extended period of limitation is not invokable” is equally applicable for a penalty as well.

They further submitted that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bona-fide belief that the offender is not liable to act in the manner prescribed by the statute. They relied on *Hindustan Steel Ltd. v. State of Orissa —1978 (2) E.L.T. (J159) (S.C.)*. They further submitted that as this is not the case of will-full evasion, no intention to evade duty, and suppression of facts, the imposition of penalty under Section 78 of the Finance Act, 1994 is not sustainable. In this regard, they relied on following case laws;

(a) *Indian Coffee Workers’ Co-Op. Society LtdVsC.C.E. & S.T., Allahabad 2014 (34) S.T.R 546 (All)*;

(b) *Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C.)&Commissioner Of Central Excise, VapiVs Kisan Mouldings Ltd 2010 (260) E.L.T 167 (S.C.)*.

The assessee further submitted that the impugned SCN has not at all explained why penalty requires imposing under section 77 of the Finance Act, 1994. As the penalty proposed under section 77 without any allegations, the same is not sustainable and requires to be dropped. If the penalty under section 77 of the Finance Act, 1994 is levied for non/misdeclaration of information in the ST-3 returns, in that case, they submitted that such imposition of penalty is not warranted in absence of said legal background. In this regard, they place their reliance on Godavari Khore Cane Transport Co. (P) Ltd v. CCE 2012 (26) S.T.R. 310 (Tri. - Mumbai).

17.8. Late fees is not payable: The assessee submitted that the late fee applicable for the delay in filing of returns was already discharged vide Challan No. 00127 dated 20.10.2018 and the same is evident in the letter 12.10.2018 submitted by the them in response to the notice dated 24.09.2018. As the required amount is already discharged, there is no requirement to pay any further late fee amount.

18. Personal Hearings: In this case, the following Personal Hearings were held;

18.1. A Personal Hearing (PH) was held on 14.06.2021 and Sri Venkata Prasad P., Chartered Accountant, Hiregange & Associates attended the PH on behalf of the assessee. He stated that three issues were covered in the Show Cause Notice, which are mentioned hereunder :

Issue No.1: The notice has proposed to deny abatement of 75% on the taxable value on the premise that they had availed Cenvat Credit on inputs in violation of the conditions specified under Notification No. 26/2012-ST dt. 20.06.2012 as amended. In this regard, the authorized representative submitted that the assessee had availed Cenvat Credit on input services only and not on inputs, but inadvertently they had reflected the credit availed in the input column instead of showing the same in input services

column. In order to substantiate their claim, they had furnished Cenvat Credit ledgers and Chartered Accountant's Certificate along with their reply dated 17.02.2021. He promised to furnish a month wise statement of Cenvat Credit availed on input services and a list of invoices with detailed description, in support of the credit availed on input services.

Issue No.2: The notice had alleged that the assessee had deducted amounts charged as pure agent from the gross income and had paid Service Tax on the resultant income. However, they had not furnished any documentary evidence in support of their claim. Hence the deduction towards amounts charged as Pure Agent was liable to be rejected. In this regard, it was submitted that they had incurred expenditure of Corpus Fund, VAT, Stamp Duty and Electricity Bills on behalf of the Flat Purchasers and had collected the same from them. Hence they were eligible for deduction as Pure Agent. In this regard, they promised to submit (i) an Excel Sheet giving the year wise break up of the Corpus Fund in respect of each Flat and final transfer of Corpus Fund to the Flat Owners' Association. (ii) Sample Current Bills in respect of a few flats and details of corresponding amounts collected from them.

Issue No.3: In respect of the difference between, the amounts declared in ST-3 returns and Income Tax returns, they promised to furnish a year wise reconciliation Statement.

As promised during the personal hearing, the authorised representative of the assessee furnished another reply dated 04.09.2021, wherein the following submissions were made:

(i) They submitted Month-wise statement of CENVAT credit availed on input services and a list of invoices with detailed description in support of the credit availed on input services. With respect to corpus fund and electricity charges, they submitted that the amounts of Rs.29,76,388/- claimed as deduction (as pure agent mentioned in the notice) for the period

from April, 2015 to June, 2017 is received towards VAT, registration charges and service tax. The bifurcation of the same is as follows:

Period	Deductions claimed in ST-3	VAT and registration	Service Tax
April 15 to September 2015	0		
October 2015 to March 2016	50,000	50,000	0
April 2016 to September 2016	3,08,655	2,13,955	94,700
October 2016 to March 2017	26,17,733	20,43,235	5,74,498
April 2017 to June 2017	0	0	0
Total	29,76,388	23,07,190	6,69,198

In this regard they submitted that they have not received any amount towards corpus fund or electricity charges during the disputed period. However, they have inadvertently mentioned as received in Para 35 of the reply to Show Cause Notice. The corpus fund and electricity charges would be collected from the customers at the time of handing over of flat and in the instant case, the said amounts are collected from customers after implementation of GST (sine the handing over was made then). Since they have not received any amount towards corpus fund and electricity charges, there is no warrant for submission of any further documents in this regard.

(ii) They stated that while filing the ST-3 returns they have missed to declare certain amounts which are received as pure agent of recipient of service. The details of the same are as follows

Period	Actual amount received	Declared in ST-3	Not declared in ST-3
April 15 to September 2015	5,50,000	-	5,50,000
October 2015 to March 2016	50,000	50,000	-
April 2016 to September 2016	3,08,655	3,08,655	-
October 2016 to March 2017	26,48,798	26,17,733	31,065
April 2017 to June 2017	36,34,072	0	36,34,072
Total	71,91,525	29,76,388	42,15,137

The above referred amounts are received towards VAT and registration charges and reimbursement of service tax from the customers. These are received as pure agent of recipient of service, therefore, they have claimed

the same as deduction while paying service tax. The bifurcation of the amount received towards VAT and registration charges and service tax is as follows

Period	VAT, registration charges	Service Tax	Total
2015-16	50,000	5,50,000	6,00,000
2016-17	22,88,255	6,69,198	29,57,453
2017-18	25,69,341	10,64,731	36,34,072
Total	49,07,596	22,83,929	71,91,525

To evidence that they have collected the actual amount incurred towards VAT and registration charges, they submitted the copies of sale deed along with registration fees and VAT payment challan. With respect to service tax collected from the customers, they submitted copy of ledger accounts of the customers.

(iii) The assessee requested to consider the below mentioned table in place of table given in Para 18 of the reply to the SCN. At the time of filing the reply to SCN, they have considered the amounts received towards sale deeds only as the turnover instead of actual receipts during the disputed period. Hence, they request to consider the below table while passing the order;

Particulars	15-16	16-17	17-18	Total
Total receipts	8,90,54,592	15,43,21,402	1,60,17,996	25,93,93,990
Less: VAT, Stamp duty	50,000	22,88,255	25,69,341	49,07,596
Less: Othe non-taxable receipts	5,50,000	6,69,198	10,64,731	22,83,929
Total receipts after deductions	8,84,54,592	15,13,63,949	1,23,83,924	25,22,02,465
Less: Abatement at 70/75%	6,63,40,944	10,59,54,764	86,68,747	18,09,64,455
Taxable turnover	2,21,13,648	4,54,09,185	37,15,177	7,12,38,010
Service Tax payable	31,20,878	67,79,508	5,57,277	1,04,57,663
Service tax paid in ST-3	31,39,523	67,80,908	5,57,277	1,04,77,708
Short/(Excess)				(20,045)

(iv) The details of service tax payment can be verified from the ST-3 returns filed which are enclosed to reply to SCN. The service tax collected from the customer would not match with the service tax paid during the disputed period as they are making service tax payment at the time of receipt of payment but collecting the same from the customer at the time of handing over the flat.

(v) With respect to reconciliation between ST-3 returns and Income Tax Return for the period April 2017 to march 2018, they submitted that it is taking more time than expected for preparing the same. Hence, they requested 10 days more time to submit the same.

In continuation of their above submission dated 04.09.2021, the assessee made additional submission vide letter dated 24.09.2021. Wherein, they made following submission:

(i) The turnover declared in the ITR and the turnover declared in GST/ST-3 returns will not match as the revenue recognition adopted under both acts are completely different. While the revenue recognised in ITR is recognised as per the percentage completion method, the value of supply under CGST Act, 2017 is on receipt basis.

(ii) The impugned notice has considered the outward supply turnover under GST as Rs.3,78,87,611/- for the period July 2017 to March 2018 and compared the same with turnover disclosed in income tax return as Rs. 16,68,99,960/-. The differential amount of Rs. 12,90,12,349/- was taken as turnover for the period April 2017 to June 2017. In this regard, they submitted that the impugned notice has not considered the Non-GST supply turnover disclosed in GSTR-09 of Rs. 14,84,70,715/- and exempted turnover of Rs.12,08,090/-. The details of total turnover for the period July 2017 to March 2018 is as follows;

S. No	Particulars	Amount
1	B2C Supplies	3,78,87,611
2	Supplies liable under RCM	17,34,529
3	Exempted Supply	12,08,090
4	Non-GST Supply	14,84,70,715
5	Total Value of supply	18,93,00,945

6	Less: Supplies liable under RCM	17,34,529
7	Turnover as per GSTR 9	18,75,66,416

Once the above turnover is considered, the total turnover disclosed in GSTR-09 for the period July 2017 to March 2018 amounts to Rs.18,75,66,416/-. Therefore, the turnover of Rs.3,78,87,611/- considered by the impugned notice for the period July 2017 to March 2018 is not correct.

(iii) With respect to the turnover declared in the ITR, they stated that the revenue recognised in ITR is based on percentage of completion method. The reconciliation between revenue recognised in ITR and revenue disclosed in GST returns is as follows;

SI NO	Particulars	Amount
A	Revenue recognised	16,68,99,960
B	Other Income	13,58,012
C	Total turnover as ITR (Audited Financial statements)	16,82,57,972
D	Less: Turnover from April 2017 to June 2017	12,80,904
E	Add: Unadjusted advances at the end of FY	3,64,38,455
F	Less: Unadjusted advances at the beginning of FY	1,83,87,813
G	Total (C-D+E-F)	18,63,08,614
H	Turnover as per GSTR – 9	18,75,66,416
I	Unreconciled	23,102

In this regard, they submitted that there is no major difference between the income declared in ITR and income declared in GST Returns. Further, we would like to submit that the actual amounts received during the period April 2017 to June 2017 is Rs. 1,60,17,996/-, out of which an amount of Rs.1,23,83,924/- was received towards taxable services and the same was clearly disclosed in ST-3 return filed for such period. The balance amount of Rs. 36,34,072/- was received towards reimbursements of VAT, Registration Charges and Service Tax, however, the same was not disclosed in ST-3 returns as the same are not liable to service tax. The fact was also informed to your good office vide Para 5 of our letter dated 04.09.2021. Therefore, the turnover of Rs.1,60,17,996/- shall be considered as turnover for April 2017 to June 2017 as against the turnover considered by the impugned notice of Rs.12,90,12,349/-.

18.2. In this case, another PH was held on 24.09.2021, wherein the authorised representative of the assessee made the following Submissions :

- (i) With regard to the proposal for disallowing the abatement in terms of Notification No. 26/2012 – ST raised in the notice, he stated that in ST 3 returns his client has inadvertently reported Cenvat Credit taken on input service in the column meant for inputs, thereby the Department officers proposed disallowance of abatement as conditions of the Notification regarding non-availment of CENVAT Credit on inputs are not fulfilled. They furnished statement showing bill wise CENVAT Credit taken on input services. He promised to produce some bills/ invoices covering major portion of the CENVAT Credit within three days to established their claim that they have taken CENVAT Credit only on input services not on inputs and therefore, his client is entitled to abatement. He promised to produce month wise CENVAT Credit taken on inputs and input services and reconcile the entire amount of CENVAT Credit availed by them, within the aforesaid time.
- (ii) The client have paid VAT & Registration Charges on behalf of the buyers of the Villa only as Pure Agent. There was no issue of payment of Electricity charges and Corpus Fund during the material period of the case.
- (iii) In response of the difference between the amounts declared in the ST-3 returns and the income tax returns, they promised to furnish a year wise reconciliation statement. He further stated that the accounting patterns for Income Tax (basing on Percentage of finishing of the works) and service tax (as per Point of Taxation Rules) are different and he would reconcile the differences.

18.3. In this case, another personal hearing was held on 28.09.2021, wherein the authorized representative of the assessee reiterated the submissions made in their reply dated 17.02.2021 and 04.09.2021, and he further stated the followings:

- (i) Their client has taken CENVAT Credit only of input services and not in respect of any goods. He further emphasized that all the input services such as advertising service, security service, renting of car, consultancy

charges etc. are all eligible services. He admitted that they have availed excess CENVAT Credit of Rs.3,20,104/- in the year 2016-17 and they are willing to pay the same along with applicable interest. He promised to provide the CENVAT Credit details month wise and service wise.

(ii) His client incurred an expenditure of Rs.29,76,388/- during the period from April, 2015 to June, 2017 as a pure agent towards VAT, registration charges and stamp duty. He produced copies of the registration charge receipt and the related sale deed containing details of registration fee, stamp duty etc. He also promised to produce the customer ledger and stamp duty ledger in 4-5 days.

(iii) Regarding reconciliation between the figures in the Income Tax Returns (ITR's) and the ST-3 Returns, he stated that in the ITR's income was shown based on the percentage of completion. He undertook to produce the party wise ledgers in 4-5 days.

18.4. In this case, another personal hearing was held on 22.11.2022, wherein the authorized representative of the assessee made following submissions:

(i) Their client has taken CENVAT Credit only of input services and not in respect of any goods. He further emphasized that all the input services such as advertising service, security service, renting of car, consultancy charges etc. are all eligible services. He promised to provide the CENVAT Credit details, month wise and service wise certified by the Chartered Accountant. As regard the excess CENVAT Credit of Rs.3,20,104/- availed in the year 2016-17, he promised to get the payment done by the client within a week's time.

(ii) His client incurred an expenditure of Rs.29,76,388/- during the period from April, 2015 to June, 2017 as a pure agent towards VAT, registration charges and stamp duty. He had produced copies of the registration charge receipt and the related sale deed containing details of registration fee, stamp duty etc. in the earlier hearing. He also promised to produce the customer ledger and stamp duty ledger within a week's time.

(iii) Regarding reconciliation between the figures in the Income Tax Returns (ITR) and the ST-3 Returns, he stated that in the ITR's income was shown based on the percentage of completion. He undertook to produce the party wise ledgers within a week's time.

18.5. In this case, another personal hearing was held on 05.09.2023, wherein the authorized representative of the assessee reiterated the submissions made in their earlier replies. He further stated that he will submit the reconcile statement between ITR and ST-3 Returns & GST Returns for the entire project along with supporting documents by 11.09.2023. Further, he stated that he has nothing more to submit and requested to drop the proceedings. As promised during the hearing, they submitted reconciliation statement between ITR and ST-3 returns & GST returns vide their letter dated 19.09.2023 for the period from 2015-16 to 2021-22, and they stated that the turnover in income tax return is recognised based on the percentage of completion method as per Accounting Standard 7, whereas, the turnover declared in ST-3 returns and GSTR-3B are based on Point of Taxation Rules, 2011 and Time of Supply provisions as per Section 13 of CGST Act, 2017. Since, the basis is different, the same cannot be compared and proposed the demand for short payment of service tax. The reconciliation statement between ITR and ST-3 returns & GST submitted by the taxpayer is as under;

M/s Nilgiri Estates- details of turnover recognised in Income Tax Returns									
Sl No.	Particulars	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	Total
A	Total estimated revenue	57,72,28,633	57,72,28,633	60,06,22,500	64,26,46,790	65,73,55,000	64,73,55,000	64,73,55,000	
B	Total estimated cost	46,00,13,646	46,00,13,646	47,80,73,492	50,36,98,492	50,03,39,620	48,76,82,952	48,51,47,483	
C	Expenses for the current period	5,04,57,261	12,18,84,633	13,26,35,836	6,12,95,383	4,09,08,151	6,30,76,891	98,89,328	
D	Total expenses till the year	5,04,57,261	17,23,41,894	30,49,77,730	36,62,73,113	40,71,81,264	47,02,58,155	48,01,47,483	
E	Percentage of Completion	11%	37%	64%	73%	81%	96%	99%	
F	Revenue recognised in ITR	6,33,14,156	15,29,41,767	16,68,99,574	8,41,56,285	6,76,50,129	8,92,63,246	1,64,58,108	64,06,83,266
G	Profit	1,28,56,895	3,10,57,134	3,42,63,738	2,28,60,902	2,67,41,978	2,61,86,355	65,68,780	

Turnover as per ST-3 return and GST returns									
Sl No.	Particulars	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	Total
A	Turnover disclosed in ST-3 returns	8,90,54,592	15,43,21,402	1,60,17,996	-	-	-	-	25,93,93,990

B	Turnover disclosed in GSTR-09	-	-	18,63,58,326	7,05,25,712	5,10,81,537	10,99,88,897	11,46,639	41,91,01,111
C									67,84,95,101

In addition to above submission, they also submitted copies of all invoices on which CENVAT Credit has been availed for the period 04/2015 to 06/2017.

DISCUSSION AND FINDINGS:

19. I have carefully gone through the (i) Show Cause Notice, (ii) Reply to the notice, (iii) Additional submissions dated 04.09.2021, 24.09.2021, 19.09.2023 and 21.09.2023 (iv) Oral submissions made at the time of hearings held and (v) records available in the file.

20. The main issue for determination in the case on hand is as furnished hereunder;

- (i) Whether show cause notice is valid or not;
- (ii) Whether the assessee is eligible for abatement in terms of Notification No.26/2012-ST dated 20.06.2012(as amended) or not;
- (iii) Whether the assessee are eligible for claiming exclusion from the value on income received against the expenditure or cost incurred as pure agent on behalf of the client;
- (iv) Whether demand for the period from April, 2017 to June 2017 raised in the notice is correct or not;
- (v) Whether extended period of limitation is invokable or not;
- (vi) Whether interest and penalties are imposable or not;
- (vii) Whether late fees is payable or not.

Now I would like to examine each of issues involved in this case one by one as under along with detailed observations:

21. Whether show cause notice is valid or not:

21.1. The assessee stated in their reply to notice that the show cause notice is not valid due to followings reasons;

- (i) The SCN was issued without authority of the law
- (ii) Section 174 of the CGST Act,2017 only saves the proceedings which were already instituted before the enactment of CGST Act, 2017, whereas the impugned SCN was initiated after 01.07.2017,
- (iii) The impugned SCN was issued without pre- consultation provided under Circular No.1076/02/2020-CX dated 19.11.2020 even though the demand involved is more than 50 lakhs,
- (iv) The SCN is based on mere assumptions and unwarranted inference that they have availed CENVAT Credit on inputs without actual examination of facts.
- (v) The impugned notice has quantified the demand arbitrarily and it is settled law that the notice issued arbitrarily are not valid.

21.2. Conjoint reading of Section 173 and 174(2)(e) of CGST Act, 2017 would show that while bringing an omission to the provision of Chapter V of the Finance Act of 1994, a savings clause for continuing with the proceedings initiated/to be initiated was also duly provided. Section 174(e) of CGST Act, 2017 expressly empowered the Competent Authorities to initiate and institute fresh proceedings under the omitted chapter V of the Finance Act, 1994 and the rules framed there under, despite the said omission by Section 173 of CGST Act. There was nothing to suggest that the “duty, tax, surcharge” etc. should relate to proceedings initiated under Chapter V of the Finance Act, 1994 before the coming into force of the CGST Act, and not to proceedings initiated under the enactments after the coming into force of the CGST Act. If the submission of the assessee “Section 174 of the CGST Act,2017 only saves the proceedings which were already instituted before the enactment of CGST Act, 2017” is to be accepted, it would mean that all evasions of service tax and all infractions of the provisions of the Finance Act, 1994 which remained suppressed and uninvestigated up to the point of time when the said Chapter V of the Finance Act was omitted and when CGST Act was enacted, would go uninvestigated without the violators of the law being brought to justice. It should not be construed that the

Parliament intended to grant blanket immunity to all assesseees whose past acts and omissions may, otherwise, fall foul of the provisions of Chapter V of Finance Act, 1994. It is to be noted that the intention of the Parliament was clearly to save not only ongoing investigation, inquiry, verification etc. but also to specifically enable the initiation of fresh investigation, inquiry verification etc. in respect of acts and omissions relating to inter alia, the erstwhile service tax regime.

In this regard, I would like to refer the case law where Honourable Delhi High Court, in the case of Vianaar Homes Private Limited Vs Assistant Commissioner CGST, concluded that authorities had power under Section 174(2)(e) of the CGST Act, 2017 to institute any investigation, inquiry, verification, assessment proceedings, adjudication, etc. under Rule 5A of the Service Tax Rules. In the judgement, Honourable High Court has decided the issue very categorically at para 33 of the judgement which is reproduced for clarity as under:

[IV] SCOPE OF THE AUDIT/VERIFICATION PROCEEDINGS – WHETHER SECTION 6 OF GCA OR SECTION 174 OF THE CGST ACT PROHIBITS INVOCATION OF RULE 5A AFTER 01.07.2017?

33. Lastly, we shall deal with the contention regarding the scope of the audit/verification proceedings and whether the exercise carried out under Rule 5A of the Service Tax Rules, 1994 cannot result in any tax becoming due. We don't find any merit in the Petitioner's submission that the expression "duty, tax, surcharge, fine, penalty, interest as are due or may become due" appearing in section 174(2)(d) can only mean such duty which has been crystalized prior to the 01.07.2017. The audit/verification is a process prior to adjudication. If audit/verification would lead to any tax not paid or short paid, the adjudicatory process would necessarily follow. It can therefore not be construed that the service tax shall become due only consequent to the exercise of powers under sections 72 and 73 of the Finance Act, 1994. The Petitioner may be right to the extent of saying that the audit under Rule 5A is qualitatively and materially different from an audit under section 72A of the Finance Act, 1994. However, we are not concerned with the scope of the audit. Before us, the material question is whether the audit/verification contemplated under Rule 5A is saved despite the repeal of Chapter V. The Petitioner is wrong. Audit/verification contemplated under Rule 5A is saved despite the repeal of Chapter V. The Petitioner is wrong in contending that no obligation or liability has been accrued or incurred by it. The obligation to pay service tax arose at the time of

rendering taxable service, which fell during the disputed period, at which time Chapter V was very much in force. The service tax is levied on providing of taxable service and is paid by the assessee on self-assessment basis. Therefore, the liability and obligation to pay tax accrued in terms of the provisions of the Finance Act whenever a taxable event occurred. If service tax has not been paid or short paid, the Service Tax Department would acquire the right to recover the said tax. This is done inter alia on the basis of the best judgment assessment under section 72, and by initiating recovery proceedings under section 73 of the Finance Act, 1994. Therefore, 'such duty' cannot be construed to mean only that which forms the subject matter of proceedings under section 72 and 73 of the Finance Act. The necessary corollary is that the investigation, inquiry, verification (including scrutiny and audit) that falls within the ambit of section 174(2) of the Act would include proceedings that were initiated prior to action under section 72 and 73 of the Finance Act, 1994. We also find merit in the submission of Mr.Harpreet Singh that a contrary interpretation would mean that all cases of duty evasion, where the adjudicatory process has not commenced, have to be ignored. That is clearly not the intent of the saving clause. The Supreme Court in Harnek Singh (supra), while interpreting the words "anything duly done or suffered thereunder" used in clause (b) of Section 6 of GCA (which are also found in Section 174(2)(b) of the CGST Act), has observed that these words used by the legislature in a saving clause are intended to provide, unless a different intention appears, that the repeal of an Act would not affect anything duly done or suffered thereunder. In the said case, the Court also referred to Universal Imports Agency v. Chief Controller of Imports and Exports, [1961] (1) SCR 305 :AIR (1961) SC 41, and held that "the expression "things done" was comprehensive enough to take in not only the things done but also the effect of the legal consequence flowing therefrom". Thus, having regard to the language used in the saving clause of the CGST Act as well as Sections 6 and 24 of the General Clauses Act, along with the legislative intent behind the repeal and enactment, we hold that Rule 5A of Service Tax Rules,1994 framed under the repealed/omitted chapter V of the Finance Act, 1994, is saved.

Thus, having regard to the language used in the saving clause of the CGST Act along with the legislative intent behind the repeal and enactment, I hold that the department is well within its authority in issuing the notice and taking up the same for adjudication.

21.3. As per para 5 of CBIC Master circular No. 1053/02/2017-CX dated 10/03/2017 pre consultation with the noticee before issue of Show Cause

Notice is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice. In this case, the department made correspondence with the assessee for which the assessee also responded to the queries of the department. The SCN was issued after completion of correspondence between the department and the assessee. From this it is clear that spirit of pre-consultation is satisfied in this case. Pre consultation need not involve physical presence of the assessee or their representative. It can be in any form i.e. correspondence as happened in the case on hand. Even after correspondence with the assessee, the assessee did not come forward to discharge their service tax liability on the amounts which were not declared by them in the Service tax Returns (ST-3) filed by them. The correspondence between the department and the tax payer makes it very clear that the assessee had not accepted the contention of the department that service tax has to be paid on the amounts that were not declared in ST-3 returns but declared in Income tax returns. In as much as the assessee chose not to pay service tax on the said amounts, the department had no option but to demand the service tax by issue of present Show cause notice. In this case, show cause notice was issued after affording proper opportunity to the assessee. It is not a case where show cause notice was issued all of a sudden. Sufficient correspondence took place between the assessee and the department. The idea behind pre consultation is to give an opportunity to the assessee, as part of trade facilitation, to explain their stand on the queries of the department and the same has been satisfied in this case. Hence, contention of the assessee regarding non adhering to CBIC Master circular No. 1053/02/2017-CX dated 10/03/2017 on pre-consultation of show cause notice does not hold water.

Para 5 of the Board Circular No.1079/03/2021-CX dated 11th November, 2021 which was issued subsequently has clarified that it is not mandatory for the cases where proviso to sub-section of section 73 is invoked for recovery of duty/tax. The Para 5 is reproduced here for clarity:

“5. It is, therefore, reiterated that pre-show cause 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) wilful mis-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.”

As the present case falls under this category as mentioned above, it is not mandatory for the pre-consultation before issue of the notice.

21.4. Further, in the ST-3 returns the assessee themselves declared the CENVAT Credit availment in the column provided for Inputs, but in the reply to SCN they claim that they have mistakenly claimed under inputs but the credits relate to input services. In this scenario, the assessee's contention that “the SCN is based on mere assumptions and unwarranted inference that they have availed CENVAT Credit on inputs without actual examination of facts” and “the impugned notice has quantified the demand arbitrarily” is beyond the facts. Hence, their contention is mis-leading and not acceptable.

21.5. In view of the above, I hold that the show cause notice is valid and the assessee's contentions in this regard are not sustainable.

22. Whether the assessee are eligible for abatement in terms of Notification No.26/2012-ST dated 20.06.2012(as amended) or not:

22.1. In the notice it is alleged that the assessee have availed and utilised CENVAT Credit on Inputs in violation of conditions specified under Notification No.26/2012-ST dated 20.06.2012(as amended). Hence, they are not eligible for abatement in terms of this notification. In this regard, the

assessee submitted that they had availed cenvat credit on Input services only, not on Inputs, whereas in the ST-3 returns they had inadvertently reported CENVAT Credit taken on input services in the column meant for inputs, thereby the Departmental Officers proposed disallowance of abatement as conditions of the notification regarding non-availment of CENVAT Credit on inputs are not fulfilled. Hence, they are eligible for abatement under Sl. No. 12 of Notification No. 26/2012-ST, dated 20.06.2012. In support of their contentions, the assessee have submitted list of Input Service invoices along with copies of the same for the period from April, 2015 to June 2017 on which cenvat credit availed.

22.2. In order to verify the veracity of the claim, the invoices/bills furnished in the additional reply dated 21.09.2023, are examined. It is seen from the invoices and CENVAT Credit details submitted by the assessee, that the assessee had received various services. To examine the eligibility of credit, I would like to discuss the definition of 'Input Services' provided under Section 2(l) of CENVAT Credit Rules, 2004.

*RULE 2(l) : Input Services "Input Service" means any service,- (i) used by a provider of output service for providing an output service; or (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal; **but excludes,-***

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for –

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or **(B) Services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods;** or (BA) Service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or (C) **such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;**

In the light of the above definition the credit on input services is examined. Some services have no direct nexus to the activity of providing output service rendered by the assessee that is "Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority". Some of the services falls under the exclusion clause in the definition of input services as provided in section 2(l) of the Cenvat credit rules, 2004. Accordingly, eligible and ineligible credit on input services is as furnished hereunder:

Sl. No.	Period	Total input services Credit as per invoices	Eligible	Ineligible
1	2015-16	10,54,156	10,40,572	13,584
	2016-17	15,41,096	14,60,745	80,351
	04/2017 to 06/2017	2,49,628	2,37,598	12,030
	Total:	28,44,880	27,38,915	1,05,965

For invoice wise details a annexure is attached to this order. As per invoices submitted by the assessee, it is evident that the assessee had availed and utilised CENVAT Credit on Input Services, not on Inputs. Hence, the assessee's submission in this regard is acceptable, that they have mistakenly shown in the ST-3 returns under Inputs instead of Input services, as they have produced copies of the invoices of the input services along with their service tax credit ledger account. From the above table, I find that during disputed period, the assessee are eligible for CENVAT Credit of Rs.10,40,572/- for the period 2015-16, Rs.14,60,745/- for the period 2016-17 and Rs.2,37,598/- for the period 2017-18 (April'17 to June'17) on input services.

In the light of the availment of cenvat credit only on input services but mistakenly shown in the column of inputs, I would like to examine the eligibility for the abatement for the taxpayer as provided in the Notification No.26/2012-ST, dated 20.06.2012 (as amended). The relevant portion of Notification No.26/2012-ST, dated 20.06.2012 (as amended) is reproduced here for the sake of discussion;

Sl. No. 12 of notification No. 26/2012-ST, dated 20.06.2012:

Sl. No.	Description of taxable service	Percentage	Conditions
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority.	25	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The value of land is included in the amount charged from the service receiver

Notification No. 2/2013 ST dated 01-03-2013 which came into force on 01.03.2013 amended Sl. No. 12 of notification No. 26/2012 ST as under:

Sl. No.	Description of taxable service	Percentage	Conditions
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is		(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT

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22.4. In view of the assessee's claim that they have availed credit only on input services is acceptable, I would like to extend the benefit of abatement provided as per the Notification No.26/2012-ST, dated 20.06.2012 (as amended). On verification of the documents and sample copies of sale deeds furnished by the tax payer vide their letter dated 19.09.2023, it is found that out of the 185 Nos villas constructed and sold by the assessee, 18 nos (24,35,79,89,100,109,114,116,153,156,163,164,166,170,180,183,184,185) are of more than area of 2000 sq ft, thus not satisfying the condition of 12 (a)(i) of the Notification as mentioned at Sl No.12 of the Notification 26/2012-ST as amended by Notification No.09/2013-ST dated 08.05.2013 which is relevant for the period 2015-16. The conditions are reproduced below;

12 (a): For a residential unit satisfying both the following conditions, namely;

- i) the carpet area of the unit is less than 2000 square feet; and
- ii) the amount charged for the unit is less than rupees one crore;

Basing on the details of receipt of advance amounts furnished by the tax payer vide their letter 24.9.2021, it is found that they have received an amount of Rs.47,90,500/- from the buyers of Villas bearing No.24,35 and 79 (whose areas are more than 2000sq fts) during the year 2015-16. In view of the above, I hold that they are not eligible for 75% abatement as provided at Sl.12(a) of the Notification in respect of the above advances received from the said buyer, but they are eligible for 70% abatement under Sl.No.12(b) of the said Notification and tax is payable on 30% of the value (which includes land value) in terms of Sl. No.12(b) of Notification No.26/2012-Service Tax dated 20.06.2012 (as amended by Notification No.9/2013-Service Tax dated 8th May 2013). Regarding the balance amount received from other buyers of the villas of less than 2000 sq ft for the period April, 2015 to March, 2016, they are eligible for 75% abatement. I find that the tax payer is rightly eligible for 70% abatement in terms of Sl. No.12 of Notification No.26/2012-Service Tax, dated 20.06.2012 (as amended by Notification No.8/2016-Service Tax, dated 1st March 2016) for the period April, 2016 to June, 2017.

23. Whether the assessee are eligible for claiming exclusion from the value on income received against the expenditure or cost incurred as pure agent on behalf of the client:

23.1. In the notice, it is alleged that the assessee had deducted from the gross income an amount of Rs.29,76,388/- claiming to be amount charged as pure agent over the period from 2015-16 to 2017-18(up to June'17); that during the verification, the assessee had not produced relevant documentary evidence regarding pure agent in support of their claim; that hence, the deduction was not allowed. The assessee vide their submission made on 04.09.2021 stated that the amounts claimed as deduction is received towards VAT, Registration charges and Service Tax from the customers; that these are received as pure agent of recipient of service; that therefore they had claimed the same as deduction while paying service tax. To evidence the amount collected towards VAT and registration charges, they submitted the copies of sale deed along with registration fees and VAT payment challans. With respect to service tax collected from the customers, they submitted copy of ledger accounts of the customers.

23.2 In this regard, it is pertinent to mention that the concept of "Pure Agent" is provided in Service Tax (Determination of Value) Rules, 2006. Hence, Rule 5(2) of the valuation rules is reproduced as under;

Rule 5(2) provides that expenditure or cost that service provider incurs, as pure agent on behalf of the client, shall be excluded from the value, if service provider fulfill prescribed conditions.

- (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 authorises 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.

Explanation 1. – For the purposes of sub-rule (2), “pure agent” means a person who –

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

Explanation 2. – For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice

23.2. On examination of the documents along with the Service Tax determination of Value Rules, 2006 and the concept of “pure agent” as discussed above, I find that the assessee being a service provider has not fulfilled the conditions mentioned in above Para in respect of rule 5(2) of the Service Tax (Determination of Value) Rules, so that they have not complied with to claim the benefit of “Pure Agent” in as much as they failed to provide

evidence that the recipients of service have authorized him to make such payment to the third party as mentioned in condition (iv) of rule 5(2); that the amount collected is to be separately shown in the invoice raised as per condition (vi) of the said rule; the service provider recovers from the recipient of service only such amount as has been paid by him to the third party as per condition no (vii); that the assessee has collected the actual amount equal to the expenditure he incurred on behalf of the receivers of service as per the explanation 1 of the said rule, etc. In view of the above, the assessee's contention in this regard to the extent of amount of Rs.29,76,388/- claimed in the ST-3 returns under the head of the "Pure Agent" for the period from 2015-16 to 2017-18 (up to June, 2017) is not acceptable as per law.

24. Whether demand for the period from April, 2017 to June 2017 raised in the notice is correct or not:

24.1. In the notice, taxable income was calculated on the income of Rs.16,68,99,960/- shown in ITR filed for FY 2017-18 and income of Rs.3,78,87,611/- shown in GSTR-9 filed for the period 2017-18 (July'17 to March'18) as the assessee had not submitted the data called for during the verification. Accordingly, the taxable income was worked out to Rs.12,90,12,349/- for period from April, 2017 to June, 2017 (Rs.16,68,99,960 - Rs.3,78,87,611). In this regard, the assessee vide their letter dated 24.09.2021 stated that the impugned notice had not considered the Non GST supply turnover disclosed in GSTR-09 of Rs.14,84,70,715/- and exempted turnover of Rs.12,08,090/-. Further, they submitted that the revenue recognised in ITR is based on percentage of completion method. Submitting the reconciliation between revenue recognized in ITR and revenue disclosed in GST returns, they stated that there is no major difference between both (detailed at para 18.1 above). Further, they submitted that the actual amounts received during the period from April, 2017 to June, 2017 is Rs.1,60,17,996/-, out of which an amount of Rs.1,23,83,924/- was received towards taxable services and the same was

clearly disclosed in ST-3 Returns filed for such period; that the balance amount of Rs.36,34,072 was received towards reimbursement of VAT, Registration charges and Service Tax, however, the same was not disclosed in ST-3 returns as the same are not liable to service tax; that therefore, they requested to consider the turnover of Rs.1,60,17,996/- for the period from April, 2017 to June, 2017 in place of Rs.12,90,12,349 as proposed in the notice. Further, they submitted reconciliation statement having the turnover disclosed in IT returns, ST-3 returns and GST returns.

24.2. It is seen from the taxpayer submission dated 19.09.2023 that there is a difference in the turnover declared in ITR and ST-3 returns & GSTR-9 return for the period 2017-18. In this regard the assessee clarified that in the ITR the turnover was shown on percentage of completion method as per Accounting Standard 7, whereas, the turnover declared in ST-3 returns and GSTR-3B returns are based on Point of Taxation Rules, 2011 and Time of Supply provisions as per Section 13 of CGST Act, 2017. Since, the basis is different, the same cannot be compared and cannot propose the demand for short payment of service tax.

In the show cause notice, the taxable value was arrived at basing on income shown in income tax return by subtracting taxable turnover as shown in GSTR-9. Now, the assessee has submitted reconciliation statement of their supply made during the period April, 2017 to March, 2018, wherein they declared that during the service tax period i.e. April, 2017 to June, 2017 they had supply of services for the value of Rs.1,60,17,996/- and during the GST period i.e. July, 2017 to March, 2018 they had supply of services for the value of Rs.18,63,58,326/- totaling to Rs.20,23,76,322/-. Further they claimed that out of Rs.1,60,17,996/-, Rs.1,23,83,924/- was reflected in ST-3 return and remaining Rs.36,34,072 was received as reimbursement of VAT, Registration Charges, Service Tax, etc. In support of their claim they submitted ST-3 Returns for the period April-June, 2017 and GSTR-9 for the period from July, 2017 to March, 2018. With regard to supply of services

during the period April-June, 2017, I find that the assessee's submission that they had supplied services for turnover of Rs.1,60,17,996/- during the service tax period from April, 2017 to June, 2017 is acceptable. In respect of an amount of Rs.36,34,072 claimed to be received towards reimbursement of VAT, Registration charges and Service Tax, the same was neither disclosed in ST-3 returns under the head "pure agent" nor they have furnished any evidence satisfying the conditions as provided in the rule 5(2) of the Service Tax Determination of value rules, 2006 as already discussed in para 23.2 above. The claim, that this amount is not disclosed in the return as no service tax is payable on this, does not hold water as the similar amounts of reimbursements were disclosed in their previous ST-3 returns under head "pure agent". More so, devoid of any documentary evidences in support of their claim, the assessee's contention in this regard could not be accepted. From the above I find that the turnover of Rs.1,60,17,996/- is a taxable turnover.

25. In view of the foregoing, allowing abatement in terms of Sl. No.12 of Notification No.26/2012- Service Tax, dated 20.06.2012 (as amended), the service tax liability is worked out year wise at the prevailing rate of service tax as under:

Period:2015-16

(amount in Rs.)

	2015-16 (01.4.2015 to 31.5.2015) rate of service tax 12.36%	01.06.2015 to 14.11.2015 Service tax rate 14%	15.11.2015 to 31.3.2016) service tax rate 14.5%	Total ST Payable
Gross taxable income	8200000	35082792	45771800	
Amount received from villas of area of more than 2000 sq ft	425000	3059250	1306250	
Abatement in terms of Notification No. 26/2012- ST, dated 20.06.2012 (as amended) (@70%) in respect of Villas of more than 2000 sq ft area	297500	2141475	914375	
Amount received from villas of less than 2000 sq ft area	7775000	32023542	44465550	

Abatement in terms of Notification No. 26/2012-ST, dated 20.06.2012 (as amended) (@75%) in respect of Villa of less than 2000sq ft area	5831250	24017657	33349163	
Net taxable income	2071250	8923660	11508262	
Service Tax payable	256007	1249312	1668698	3174017
Service Tax paid in Cash as per ST-3 returns				1994561
Service Tax paid through CENVAT Credit as per ST-3 returns				1144952
Eligible CENVAT Credit				1040572
Service Tax balance to pay				138884

Period: 2016-17

(Amount in Rs.)

	2016-2017 (01.4.2016 to 31.5.2016) rate of service tax 14.5 %	01.06.2016 to 31.3.2017 Service tax rate 15 %	Total ST Payable
Gross taxable income	21246250	133075152	
Abatement in terms of Notification No. 26/2012-ST, dated 20.06.2012 (as amended) @70%	14872375	93152606	
Net taxable income	6373875	39922546	
Service Tax payable	924212	5988382	6912594
Service Tax paid in Cash as per ST-3 returns			4856100
Service Tax paid through CENVAT Credit as per ST-3 returns			1924809
Eligible CENVAT Credit			1460745
Service Tax balance to pay			595749

Period: 2017-18(April 17 to June'17)

(Amount in Rs.)

	2017-18(April' 17 to June'17)
Gross taxable income	16017996
Abatement in terms of Notification No. 26/2012-ST, dated 20.06.2012 (as amended) @ 70%	11212597
Net taxable income	4805399
Service Tax payable @ 15%	720810
Service Tax paid in Cash	239174
Service Tax paid through CENVAT Credit in ST-3 return	318103

Eligible CENVAT Credit	237598
Service Tax balance to pay	244038

Hence, I find that the assessee are liable to pay service tax including cesses of Rs.1,38,884/- for the period 2015-16, Rs.5,95,749/- for the period 2016-17 and Rs.2,44,038/- for the period 2017-18 (April'17 to June'17) totaling to Rs.9,78,671/- for the period from April, 2015 to June, 2017 and balance amount of Rs.4,34,51,736/- (Rs.4,44,30,407 - Rs.9,78,671/-) is not tenable under law.

26. Whether extended period of limitation is invokable or not:

26.1. In respect of extended period of limitation, the assessee contended that the demand for the period from April, 2015 to September, 2015 is time barred, as show cause notice was served on them beyond 5 years from the relevant date. The demand for the said period expired on 05.05.2020 whereas SCN was issued on 21.12.2020. They also submitted that the averment of impugned SCN taking the time extension given under Ordinance 2020 do not sustain as it lacks the legislative competence to amend the repealed enactments. In this regard, reliance is placed on the Hon'ble HC decision in case of Reliance Industries Ltd Vs State of Gujarat 2020-TIOL-837-HC-AHM-VAT.

26.2 Last date which was falling during the period from 20.03.2020 to 30.12.2020 for issuing show cause notices specified under Chapter V of the Finance Act, 1994 have been extended up to 31.12.2020 by virtue of The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 read with Notification dated 27.06.2020 and 30.09.2020 issued by the Government of India in view of prevailing COVID-19 pandemic situation. In the instant case the assessee and filed their ST-3 returns for the period April-September, 2015 on 05.11.2015. Accordingly, the last date for issuance of show cause notice in terms of proviso to Section 73(1) of Finance Act, 1994 was 04.11.2020. Thus the due date of issuance of show cause notice falls under the period for which extension up to 31.12.2020 was

provided under above said Ordinance 2020. The SCN was issued on 21.12.2020 well before the end date for issuing notice i.e. 31.12.2020. Hence, the contention of the assessee in this regard is devoid of any legal basis and cannot be accepted.

26.3. Further, the assessee stated that as they are eligible for availing the abatement and for deduction of amount towards pure agent as disclosed in the ST3 returns, there is no suppression of facts to invoke extended period of limitation. In this regard, I would like to mention that as per ST-3 returns they have claimed the abatement without fulfilling condition prescribed for abatement under Notification No.26/2012- Service Tax dated 20.06.2012. They have also claimed the deduction in the ST-3 returns on accounts of pure agent without fulfilling the conditions prescribed under Service Tax (Determination of Value) Rules, 2006. Thus, they have suppressed the facts with intention to avoid payment of duty.

26.4. They further submitted that 'lapse would not have come to light but for the investigation of department', standing alone cannot be accepted as a ground for confirming suppression, Misstatement or Mis-declaration of facts. More so considering the fact that the very objective of conducting the Audit of records of an assessee is to ascertain the correctness of payment of duty etc., any shortcomings noticed during the course of Audit, itself cannot be reasoned that the deficiency was due to mala fide intention on the part of assessee. In this regard, it is pertinent to mention here that in the milieu of self-assessment regime, the statutory obligation is cast upon taxpayer to take registration, assess the tax liability on taxable service provided, pay the service tax and submit the statutory returns within stipulated time. It places greater onus on the service provider to conform to the highest standards of integrity in disclosure of information in the statutory returns. The responsibility of making voluntary disclosure of rendering a service is on the service provider under the system of self-assessment. In the instant case, the service provider had not declared their correct liability in the ST-3

returns. Only on verification of the documents received from the Income Tax department, the fact of short-payment of service tax, as mentioned *supra*, has come to light and but for this, short-payment of service tax would have gone unnoticed causing loss to the exchequer. The taxpayer has wilfully suppressed the relevant information from the Department and contravened various provisions of the Act with an intent to evade payment of service tax. In view of the above, the case law cited by them cannot be said to be applicable to them as it is evident that they deliberately suppressed the facts to evade the payment of tax.

26.5. The assessee further submitted that department is well aware of the facts which is evident from department letter dated 24.09.2018 wherein it has stated that the department has scrutinised their ST-3 returns and observed certain discrepancies. They have also submitted a reply dated 12.10.2018. However, the issue involved in the present show cause notice that they had availed the CENVAT Credit on inputs and claimed deduction under pure agent were never pointed out by the department. This has led to the belief that the compliance made by them is correct. Hence, suppression of facts cannot be attributed to the present case. It is noticed from the above said their reply dated 12.10.2018 that the range officer conducted return scrutiny which were marked for 'review and correction'. In the return scrutiny, the discrepancy reflected in the return is only verified. This is a preliminary scrutiny only, not detailed scrutiny/audit on assessee's accounts. The verification of abatement under the notification and deduction of amount towards pure agent is the matter of detailed scrutiny/ audit of the records of the assessee. Thus, without verification of the accounts, the suppression of facts could not be unearthed. Hence, the assessee's contention that the department is well aware of the facts is not acceptable.

26.6. The assessee further submitted that all the entries are recorded in books of accounts and financial statements, nothing is suppressed. Hence the extended period of limitation is not applicable. In this regard, I would

like to mention that entry recorded in books of accounts and financial statements cannot give liberty to them not to disclose correct figure in the statutory returns. Here, it is pertinent to mention that Section 70 of Finance Act, 1994 provides manner of furnishing of service tax returns, wherein it is clearly mentioned that every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish a return, as may be prescribed. Hence, the assessee's submission in this regard is not acceptable.

26.7. In view of the above, I find that the assessee's contention in respect of "Invocation of extended period of limitation" is not acceptable. Hence, I hold that the extended period of limitation in terms of the proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 has rightly been invoked against the assessee for the demand of service tax.

27. Whether interest and penalties are imposable or not:

27.1. **Interest:** As per Section 75 of Finance Act 1994, if the person liable to pay Service Tax fails to pay the same by the due date, he is required to pay Service Tax along with interest at the applicable rates for the period of delay, i.e., for the period from the due date to the date of actual payment. For ready reference, the provisions of Section 75 ibid is reproduced hereunder;

SECTION 75. Interest on delayed payment of service tax. — Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed.

Provided that in the case of a person who collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government, on or before the date on which such payment is due, the Central Government may, by notification in the Official Gazette, specify such other rate of interest, as it may deem necessary.

Provided further that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by three percent per annum.

In the instant case, the assessee had provided the taxable service and had received consideration. Whereas, they had failed to discharge their Service Tax liability till date and hence I hold that the assessee is liable to pay interest on the amount of Rs.9,78,671/- (as mentioned at para 25 above) for the period starting from the due date till the date of actual payment.

27.2. Penalty under Section 78 of Finance Act, 1994:

27.2.1. With regard to imposition of penalty under Section 78 of the Finance Act, 1994 in the show cause notice, the taxpayer contended that this is not the case of will-full evasion, no intention to evade duty, and suppression of facts, the imposition of penalty under Section 78 of the Finance Act, 1994 is not sustainable. In this regard, they relied on the decision made in the following cases:

- (a) Indian Coffee Workers' Co-Op. Society Ltd Vs C.C.E. & S.T., Allahabad 2014 (34) S.T.R 546 (All), and
- (b) Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C.) & Commissioner Of Central Excise, Vapi Vs Kisan Mouldings Ltd 2010 (260) E.L.T 167 (S.C.).

27.2.2. Upon a careful reading of Section 78 (1) of the Finance Act, 1994, it is evident 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 fraud or collusion or wilful misstatement or suppression of facts or contravention of any of these provisions of Chapter V of Finance Act, 1994 or of the Rules made thereunder with an intent to evade payment of service tax, the person liable to pay such service tax as may be determined under sub section 2 of Section 73, shall also be liable to pay a penalty equal to hundred percent of service tax determined, in addition to such service tax and interest thereon. Therefore, I hold that in the instant case, mandatory penalty equal to service tax not paid is imposable on the assessee under Section 78(1) of the Finance Act, 1994, as they have wilfully suppressed the facts from the Department with an intention to evade payment of service tax.

27.2.3. It is pertinent to note that in the following judicial pronouncements, demanding of penalty in terms of Section 78 of the Finance Act, 1994 has been upheld by various judicial fora. These decisions are squarely applicable to the facts of the instant case.

- (i) Commissioner of C. EX., Mumbai Versus M/s Sunil Silk Mills, reported in 2011 (267) E.L.T. 438 (S.C.) Hon'ble Apex Court in Civil Appeal Nos. 4453-4454 of 2003, held that;

*Penalty - Quantum of - Compounded levy scheme - Tribunal exercising discretion reduced penalty although held that case of Rule 96ZQ of erstwhile Central Excise Rules, 1944 - Sub-rule (5) of Rule 96ZQ ibid using expression "shall" indicating that provision mandatory - Similar view by Supreme Court in Dharamendra Textile Processors [2008 (231) E.L.T. 3 (S.C.)] rejecting plea that Rules 96ZQ and 96ZO ibid having concept of discretion inbuilt in them - Supreme Court in Rajasthan Spinning and Weaving Mills [2009 (238) E.L.T. 3 (S.C.)] holding that application of Section 11AC of Central Excise Act, 1944 although would depend upon conditions stated therein, but once section applicable, **authority having no discretion** in quantifying penalty - Rule 96ZQ ibid presently directly applicable - Tribunal's order set aside - Rule 96ZQ ibid*

- (ii) Commissioner of C. EX., Surat-I Versus Neminath Fabrics Pvt Ltd reported in 2010 (256) E.L.T. 369 (Guj.)

Penalty - Short payment of tax is enough to impose penalty under Section 78 of Finance Act, 1994.

27.2.4. It is pertinent to note that the case laws relied upon by the assessee are not relevant to the present case and are distinguishable on facts as brought out above.

27.3. **Penalty under Section 77 of Finance Act, 1994:** In the show cause notice, it is mentioned that the taxpayer had not submitted necessary documents evidencing their claim in the ST-3 returns for abatement and deduction towards pure agent and also data shown in the returns during the verification as called for by the proper officer. In this regard, I would like to examine the provisions provided under Section 77 of Finance Act, 1994. Section 77 is reproduced as under;

SECTION 77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. —

(1) Any person, —

(a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to ten thousand rupees;

(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to [ten thousand rupees];

(c) who fails to —

(i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or

(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or

(iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to ten thousand rupees or two hundred

rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to ten thousand rupees;

(e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ten thousand rupees.

(2) Any person, who contravenes any of the provisions of this Chapter or any rules made there under for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees.

From the above extracts of Section 77, it is clear that any person who fails to furnish information / produce documents called for is liable for a penalty which may extend to ten thousand rupees. In the instant case, during the verification, for seeking clarification on abatement and also on deduction of amount towards pure agent, the department had sent a letter to them and also sent two reminder letters but they did not respond. Hence, I find that they are liable for a penalty of Rs.10,000/- in terms of Section 77(1)(c) of Finance Act, 1994 and assessee's contention in this regard is not acceptable. The case law relied upon by them has no relevance to the facts of the case.

28. Whether late fees is payable or not: The assessee stated that the late fee applicable for the delay in filing of return was already discharged vide Challan No. 00127 dated 20.10.2018 and as the required amount is already discharged, there is no requirement to pay any further late fee amount. As seen from the notice that late fee of Rs.20,000/- has been demanded for delay in filing of ST-3 return for the period from April, 2017 to June, 2017. On examination of the submission and challan submitted by the assessee, I find that they have paid the late fee of Rs.20,000/- vide Challan No.00127 dated 20.10.2018 much before issuance of the show

cause notice for the delayed filing of return pertaining to the period from April, 2017 to June, 2017. Since, the assessee have already discharged their late fee liability as proposed in the notice, there is no requirement to pay the same again.

29. Now I find it pertinent to extract and reproduce the saving provisions contained in Section 174 of the CGST Act, 2017 effective from 01.07.2017 for ease of reference and understanding. Section 174 reads as under:

“Section 174. (1)

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

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

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

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

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

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

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

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

[Emphasis Supplied]

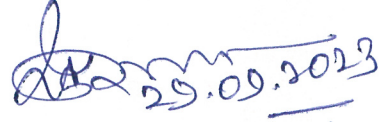
30. Accordingly, in terms of the provisions of Section 174 (2) (e) of the CGST Act, 2017 and in view of my findings aforementioned, I pass the following orders:-

ORDER

- (i) I determine and order for recovery of Service tax amounting to an amount of Rs.9,78,671/- (Rupees Nine Lakh Seventy Eight Thousand Six Hundred Seventy One Only) (including Krishi Kalyan Cess and Swacch Bharat Cess), being the Service Tax payable by the assessee for providing taxable services during the period from April 2015 to June 2017 in terms of Section 73(2) of the Finance Act, 1994;
- (ii) I drop the demand of Rs.4,34,51,736/- (Rupees Four Crore Thirty Four Lakh Fifty One Thousand Seven Hundred Thirty Six Only) which is not tenable under law as detailed supra out of the total demand of Rs.4,44,30,407/- (Rupees Four Crore Forty Four Lakh Thirty Thousand Four Hundred Seven Only) in view of the discussions above.
- (iii) I order for recovery of interest from the assessee at the applicable rate(s) on the amount mentioned at Sl. No. (i) above, in terms of Section 75 of the Finance Act, 1994;
- (iv) I impose a Penalty of Rs.10,000/- (Rupees Ten Thousand Only) on the assessee in terms of section 77(1)(c) of Finance Act 1994;
- (v) I impose a Penalty of Rs.9,78,671/- (Rupees Nine Lakh Seventy Eight Thousand Six Hundred Seventy One Only) on the assessee in terms of Section 78 of Finance Act 1994. However, if the amount determined at Sl. No. (i) above is paid along with interest within a period of thirty days from the date of receipt of this order, in terms of proviso to Section 78(1) ibid, the penalty payable under Section 78 will be reduced to twenty five percent of Service Tax so determined,

provided the reduced penalty is also paid within the said period of thirty days.

(vi) I drop the late fee of Rs.20,000/- (Rupees Twenty Thousand Only) proposed under Section 70(1) of the Finance Act, 1994, as the same was already paid by them as discussed in Para No.28 above.


(R. K. RAMAN)
COMMISSIONER

✓ To,
The M/s. Nilgiri Estates,
5-4-187/3 & 4,
2nd Floor, Sohan Mansion,
M. G. Road, Ranigunj,
Secunderabad-500003

Copy submitted to the Chief Commissioner of Customs & Central Tax, GST Bhavan, Opp. to L.B. Stadium, Basheerbagh, Hyderabad.

(Kind attention:Review Section)

Copy to:

1. The Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate - **with a direction to take necessary action for serving the Order in Original on the assessee under dated acknowledgement and forward the same to this office for record purpose.**
2. The Assistant Commissioner (Arrears), Central Tax, Hqrs. Office, Secunderabad GST Commissionerate.
3. The Superintendent of Central Tax, Ramgopalpet-II Range, Secunderabad GST Division, Secunderabad GST Commissionerate.
4. Master Copy / Spare Copy / Office Copy

13	30.06.2017	B. Anand Kumar	1,59,267	9,017	Final charges for Labor & Equipment for construction of Villa No.12
14	30.06.2017	B. Anand Kumar	1,59,267	9,017	Final charges for Labor & Equipment for construction of Villa No.8
15	30.06.2017	B. Anand Kumar	1,59,267	9,017	Final charges for Labor & Equipment for construction of Villa No.5
16	30.06.2017	B. Anand Kumar	1,59,267	9,017	Final charges for Labor & Equipment for construction of Villa No.4
17	30.06.2017	B. Anand Kumar	1,59,267	9,017	Final charges for Labor & Equipment for construction of Villa No.3
18	30.06.2017	B. Anand Kumar	1,59,267	9,017	Final charges for Labor & Equipment for construction of Villa No.2
19	30.06.2017	B. Anand Kumar	1,59,267	9,017	Final charges for Labor & Equipment for construction of Villa No.1
20	30.06.2017	Sri Bhavani Ads	6,900	900	Yanampet Incoming, Yanampet Outgoing
21	17.06.2017	Vama Media	4,151	101	Advertisement in Eenadu Publication
22	30.06.2017	Soham Modi Huf	17,490	990	Hire charges for Cab
23	30.06.2017	United Security Services	43,406	5,662	Security Service
24	30.06.2017	Modi Properties Pvt Ltd.	57,500	7,500	Administration Charges
25	30.06.2017	Soham Modi Huf	24,380	1,380	Hire charges
26	03.06.2017	Vama Media	3,686	89	Advertisement in Sakshi Publication
27	17.06.2017	Sri Bhavani Ads	23,000	3,000	Thumkunta
28	17.06.2017	Sri Bhavani Ads	23,000	3,000	Yanampet Incoming, Yanampet Outgoing
29	31.05.2017	United Security Services	43,812	5,714	Security Service
30	31.05.2017	Soham Modi Huf	24,380	1,380	Hire charges
31	28.04.2017	Soham Modi Huf	24,380	1,380	Hire charges
Total:			41,29,492	2,49,628	

Total Ineligible Credit:	12,030	(Bold Row indicates ineligible credit)
Total Eligible Credit:	2,37,598	

68	21.11.2016	B. Anand Kumar	1,59,267	9,017	Final charges for Labor & Equipment for construction of Villa No.11
69	20.03.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.69
70	20.03.2017	B. Anand Kumar	2,48,173	14,047	Final charges for Labor & Equipment for construction of Villa No.26
71	20.03.2017	B. Anand Kumar	2,48,173	14,047	Final charges for Labor & Equipment for construction of Villa No.59
72	20.03.2017	B. Anand Kumar	2,48,173	14,047	Final charges for Labor & Equipment for construction of Villa No.57
73	20.03.2017	B. Anand Kumar	2,48,173	14,047	Final charges for Labor & Equipment for construction of Villa No.54
74	20.03.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.42
75	20.03.2017	B. Anand Kumar	2,48,173	14,047	Final charges for Labor & Equipment for construction of Villa No.34
76	20.03.2017	B. Anand Kumar	2,48,173	14,047	Final charges for Labor & Equipment for construction of Villa No.33
77	20.03.2017	B. Anand Kumar	2,48,173	14,047	Final charges for Labor & Equipment for construction of Villa No.25
78	20.03.2017	B. Anand Kumar	5,54,248	31,373	Final charges for Labor & Equipment for construction of Villa No.35
79	20.03.2017	B. Anand Kumar	3,92,465	22,216	Final charges for Labor & Equipment for construction of Villa No.6
80	20.03.2017	B. Anand Kumar	5,51,333	31,207	Final charges for Labor & Equipment for construction of Villa No.79
81	31.03.2017	Soham Modi Huf	24,380	1,380	Rent charges of Cabs
82	31.03.2017	Modi Properties Pvt Ltd.	57,500	7,500	Administration Charges
83	31.03.2017	United Security Services	40,157	5,237	Security Service
84	11.03.2017	Varna Media	8,994	219	Advertisement in Times of India Publication
85	23.03.2017	V Green Media Pvt Ltd	8,172	180	Advertisement in Saakshi Publication
86	20.03.2017	V Green Media Pvt Ltd	13,665	300	Advertisement in Eenadu Publication
87	09.03.2017	V Green Media Pvt Ltd	5,513	262	Demo Tent "Nilgiri Homes"
88	25.03.2017	Soham Modi Huf	10,070	570	Hire charges
89	02.03.2017	Sri Bhavani Ads	23,000	3,000	Thumkunta
90	28.02.2017	United Security Services	39,284	51,245	Security Service
		Total:	191,51,915	15,41,096	

Total Ineligible Credit:	80,351	(Bold Row indicates ineligible credit)
Total Eligible Credit:	14,60,745	

PERIOD:		04/2017 to 06/2017			
Sl No.	Date	Supplier Name	Bill amount	Service tax(including cesses)	Remarks
1	30.06.2017	Naveen Arts	20,700	2,700	Hoarding display charges
2	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.78
3	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.67
4	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.66
5	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.51
6	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.50
7	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.49
8	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.48
9	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.47
10	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.46
11	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.45
12	30.06.2017	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.44

21	06.09.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.23
22	06.09.2016	B. Anand Kumar	1,59,265	9,017	Final charges for labor & Equipment for construction of Villa No.22
23	06.09.2016	B. Anand Kumar	1,59,265	9,017	Final charges for labor & Equipment for construction of Villa No.18
24	06.09.2016	B. Anand Kumar	1,59,265	9,017	Final charges for labor & Equipment for construction of Villa No.17
25	06.09.2016	B. Anand Kumar	1,59,265	9,017	Final charges for labor & Equipment for construction of Villa No.10
26	16.07.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.65
27	16.07.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.63
28	16.07.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.58
29	16.07.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.56
30	16.07.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.55
31	16.07.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.30
32	16.07.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.23
33	16.07.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.27
34	30.09.2016	Soham Modi Huf	14,310	810	Rent charges of Cabs
35	31.08.2016	Soham Modi Huf	14,310	810	Rent charges of Cabs
36	31.08.2016	Modi Properties Pvt Ltd.	57,500	7,500	Administration Charges
37	26.07.2016	B. Anand Kumar	2,12,000	12,000	Mobilization advance for Labor & Equipment for Villa Nos.5 & 49
38	17.07.2016	B. Anand Kumar	6,36,000	36,000	Mobilization advance for Labor & Equipment for Villa Nos.3,36,37,38,42 & 43
39	06.07.2016	B. Anand Kumar	7,42,000	42,000	Mobilization advance for Labor & Equipment for Villa Nos.4,12,13,39,40,41 & 50
40	04.07.2016	B. Anand Kumar	5,30,000	30,000	Mobilization advance for Labor & Equipment for Villa Nos.2,8,53,67 & 77
41	30.07.2016	Soham Modi Huf	14,310	810	Hire charges
42	28.07.2017	Modi Properties Pvt Ltd.	57,500	7,500	Administration Charges
43	29.06.2016	Modi Properties Pvt Ltd.	57,500	7,500	Administration Charges
44	28.02.2017	Soham Modi Huf	14,310	810	Rent charges of Cabs
45	20.03.2017	Modi Properties Pvt Ltd.	41,40,000	5,39,984	Royalty (Category: Real Estate Agents)
46	28.02.2017	Modi Properties Pvt Ltd.	57,500	7,500	Administration Charges
47	01.02.2017	Impressions Advertising	62,100	8,100	Advertisement towards outdoor hoardings
48	18.02.2017	Sri Bhavani Ads	3,335	436	Thurkapally Wooden Sticks
49	07.02.2017	Sri Bhavani Ads	23,000	3,000	Thumkunta
50	31.01.2017	United Security Services	40,732	5,313	Security Service
51	31.01.2017	Modi Properties Pvt Ltd.	57,500	7,500	Administration Charges
52	25.01.2017	Soham Modi Huf	14,310	810	Car Hire charges
53	06.01.2017	Sri Bhavani Ads	5,865	766	Flex Mounting Charges, Bhongiri wooden sticks, Wooden structure remove
54	02.01.2017	Impressions Advertising	62,100	8,100	Advertisement towards outdoor hoardings
55	06.01.2017	Sri Bhavani Ads	23,000	3,000	Thumkunta
56	31.12.2016	Soham Modi Huf	14,310	810	Car Hire charges
57	21.12.2016	Modi Properties & Investments Pvt. Ltd.	57,500	7,500	Administration Charges
58	05.12.2016	Sri Bhavani Ads	5,175	675	Flex Mounting Charges, Thumkunta
59	05.12.2016	Sri Bhavani Ads	23,000	3,000	Thumkunta
60	07.12.2016	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.76
61	07.12.2016	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.71
62	07.12.2016	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.70
63	07.12.2016	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.75
64	07.12.2016	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.68
65	07.12.2016	B. Anand Kumar	2,45,258	13,883	Final charges for Labor & Equipment for construction of Villa No.74
66	30.11.2016	Modi Properties & Investments Pvt. Ltd.	57,500	7,500	Administration Charges
67	30.11.2016	Soham Modi Huf	14,310	810	Car Hire charges

53	28.03.2016	B. Anand Kumar	5,29,000	29,000	Mobilization advance for labor & Equipment for Villa Nos.25, 45, 57, 68, & 69
54	26.03.2016	B. Anand Kumar	6,34,800	34,800	Mobilization advance for labor & Equipment for Villa Nos.7, 70, 71,72,74, & 76
55	26.03.2016	B. Anand Kumar	7,40,600	40,600	Mobilization advance for labor & Equipment for Villa Nos.6,29,34,60,64,75 & 79
56	26.03.2016	B. Anand Kumar	9,52,200	52,200	Mobilization advance for labor & Equipment for Villa Nos.10,11,18,21,22,23,26,30, & 58
57	25.03.2016	B. Anand Kumar	6,34,800	34,800	Mobilization advance for labor & Equipment for Villa Nos.16,32,33,55,59, & 73
58	25.03.2016	B. Anand Kumar	7,40,600	40,600	Mobilization advance for labor & Equipment for Villa Nos.9,17,24,27,28,56 & 65
59	25.03.2016	B. Anand Kumar	5,29,000	29,000	Mobilization advance for labor & Equipment for Villa Nos.31, 52, 61, 62 & 63
60	28.03.2016	B. Anand Kumar	1,58,965	8,715	Final charges for labor & Equipment for construction of Villa Nos.9
61	28.03.2016	B. Anand Kumar	2,44,795	13,420	Final charges for labor & Equipment for construction of Villa Nos.73
62	25.03.2016	B. Anand Kumar	2,47,704	13,579	Final charges for labor & Equipment for construction of Villa Nos.31
63	31.03.2016	United Security Services	28,682	3,632	Security Service
64	31.03.2016	Modi Properties & Investments Pvt. Ltd.	57,250	7,250	Administration Charges
65	17.03.2016	M. R. Publicities	45,800	5,800	Display charges for one Hoarding at R.K. Puram Flyover
66	10.03.2016	Sri Bhavani Ads	22,900	2,900	Yanampet Incoming, Yanampet Outgoing
67	31.03.2016	Modi Properties & Investments Pvt. Ltd.	41,22,000	5,22,000	Royalty
		Total:	126,29,928	10,54,156	

Total Ineligible Credit: 13,584 (Bold Row indicates ineligible credit)

Total Eligible Credit

1040572

PERIOD:		2016-17			
Sl No.	Date	Supplier Name	Bill amount	Service tax(including cesses)	Remarks
1	22.06.2016	Team Labs and Consultants	4,14,000	54,000	Bill issued to M/s Modi & Modi constructions & Nilgiri Estates, for Preparation of Environmental NOC
2	31.05.2016	Modi Properties Pvt Ltd.	57,250	7,250	Administration Charges
3	31.05.2016	Soham Modi Huf	14,324	824	Car Hire charges
4	30.04.2016	United Security Services	28,682	3,632	Security Service
5	30.04.2016	Modi Properties Pvt Ltd.	57,250	7,250	Administration Charges
6	30.04.2016	Soham Modi Huf	14,324	824	Car Hire charges
7	11.04.2016	Sri Bhavani Ads	22,900	2,900	Yanampet Incoming, Yanampet Outgoing
8	21.11.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa Nos.29
9	21.11.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa Nos.53
10	21.11.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.60
11	21.11.2016	B. Anand Kumar	1,59,267	9,017	Final charges for labor & Equipment for construction of Villa No.7
12	21.11.2016	B. Anand Kumar	1,59,267	9,017	Final charges for labor & Equipment for construction of Villa No.21
13	21.11.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.64
14	31.10.2016	Soham Modi Huf	14,310	810	Rent charges of Cabs
15	29.10.2016	Modi Properties Pvt Ltd.	57,500	7,500	Administration Charges
16	06.09.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.61
17	06.09.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.62
18	06.09.2016	B. Anand Kumar	2,48,173	14,047	Final charges for labor & Equipment for construction of Villa No.32
19	06.09.2016	B. Anand Kumar	5,54,248	31,373	Final charges for labor & Equipment for construction of Villa No.24
20	06.09.2016	B. Anand Kumar	3,92,465	22,236	Final charges for labor & Equipment for construction of Villa No.16

M/s. Nilgiri Estates - Details of CENVAT Credit availed on Input Services

PERIOD: 2015-16					
Sl No.	Date	Supplier Name	Bill amount	Service tax(including cesses)	Particulars of the Bill
1	22.08.2015	Varna Media	5,680	123	Charges for Advertisement Publication in Times of India
2	29.08.2015	V Green Media Pvt Ltd	8,160	167	Advertisement in Saakshi Publication
3	10.04.2015	Impressions Advertising	7,011	771	Printing and mounting charges
4	30.09.2015	United Security Services	19,894	2,443	Security Service
5	01.10.2015	Soham Modi Huf	14,256	756	Rent charges of Cabs
6	01.10.2015	Modi Properties & Investments Pvt. Ltd.	57,000	7,000	Administration Charges
7	30.09.2015	Modi Housing Pvt Ltd	13,680	1,680	Hording Rental Charges
8	04.09.2015	Soham Modi Huf	14,256	756	Rent charges of Cabs
9	01.09.2015	Modi Properties & Investments Pvt. Ltd.	57,000	7,000	Administration Charges
10	11.07.2015	V Green Media Pvt Ltd	13,784	283	Advertisement in Eenadu Publication
11	03.08.2015	Soham Modi Huf	14,256	756	Rent charges of Cabs
12	15.07.2015	Varna Media	15,833	332	Advertisement in The Hindu Publication
13	15.07.2015	United Security Services	21,675	2,662	Security Service
14	01.08.2015	Modi Housing Pvt Ltd	13,680	1,680	Hoarding rental charges
15	08.07.2015	Uni Ads Limited	56,160		Advertisement and service charges, (Service tax portion not indicated)
16	13.07.2015	Soham Modi Huf	14,256	756	Hire charges
17	02.08.2015	Impressions Advertising	61,560	7,560	Advertisement towards outdoor hoardings
18	30.06.2015	United Security Services	17,324	2,127	Security Service
19	31.05.2015	United Security Services	16,343	2,007	Security Service
20	30.04.2015	Modi Properties & Investments Pvt. Ltd.	56,180	6,180	Administration Charges
21	01.06.2015	Modi Properties & Investments Pvt. Ltd.	57,000	7,000	Administration Charges
22	15.04.2015	Uni Ads Limited	9,888	1,088	Fles print charges and mounting charges (advertisement)
23	15.05.2015	V Green Media Pvt Ltd	13,537	247	Advertisement in Eenadu Publication
24	02.05.2015	Impressions Advertising	63,371	6,971	Advertisement towards outdoor hoardings
25	14.04.2015	V Green Media Pvt Ltd	13,537	247	Advertisement in Eenadu Publication
26	20.04.2015	V Green Media Pvt Ltd	8,141	149	Advertisement in Saakshi Publication
27	10.04.2015	Impressions Advertising	60,674	6,674	Advertisement towards outdoor hoardings
28	08.04.2015	Varna Media	14,686	302	Advertisement in The Hindu Publication
29	29.02.2016	Soham Modi Huf	14,324	824	Rent charges of Cabs
30	29.02.2016	United Security Services	19,981	2,530	Security Service
31	26.02.2016	Modi Properties & Investments Pvt. Ltd.	57,250	7,250	Administration Charges
32	29.01.2016	M.R.Publicities	45,800	5,800	Display charges for one Hoarding at R.K. Puram Flyover
33	08.02.2016	Sri Bhavani Ads	22,900	2,900	Yanampet Incoming, Yanampet Outgoing
34	31.02.2016	Soham Modi Huf	14,324	824	Rent charges of Cabs
35	31.01.2016	Modi Properties & Investments Pvt. Ltd.	57,250	7,250	Administration Charges
36	31.12.2015	Soham Modi Huf	14,324	756	Car Hire charges
37	30.11.2015	United Security Services	10,657	1,350	Security Service
38	30.11.2015	United Security Services	9,285	1,140	Security Service
39	30.11.2015	Soham Modi Huf	7,162	412	Car Hire charges
40	14.11.2015	Soham Modi Huf	7,128	378	Car Hire charges
41	30.11.2015	Modi Properties & Investments Pvt. Ltd.	28,625	3,625	Administration Charges
42	14.11.2015	Modi Properties & Investments Pvt. Ltd.	28,500	3,500	Administration Charges
43	02.11.2015	Soham Modi Huf	14,256	756	Car Hire charges
44	31.10.2015	United Security Services	19,894	2,443	Security Service
45	01.11.2015	Modi Properties & Investments Pvt. Ltd.	57,000	7,000	Administration Charges
46	30.06.2015	Soham Modi Huf	14,310	810	Rent charges of Cabs
47	31.05.2015	United Security Services	30,136	3,816	Security Service
48	26.03.2016	B. Anand Kumar	2,47,704	13,579	Final charges for Labor & Equipment of Vila No.52
49	31.03.2016	B. Anand Kumar	3,17,400	17,400	Mobilization advance for labor & Equipment for Villa Nos. 1, 14, & 19
50	30.03.2016	B. Anand Kumar	3,17,400	17,400	Mobilization advance for labor & Equipment for Villa Nos. 47, 48, & 78
51	29.03.2016	B. Anand Kumar	2,11,600	11,600	Mobilization advance for labor & Equipment for Villa Nos. 20, & 46
52	28.03.2016	B. Anand Kumar	6,34,800	34,800	Mobilization advance for labor & Equipment for Villa Nos.15, 35 44, 51, 54, & 56