CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.10950 of 2017

(Arising out of Order-in-Original No.VAD-EXCUS-001-COM/55/2016-17 dated 15/02/2017 passed by Commissioner of Central Excise & Service Tax, Vadodara)

M/s Oriental Agency, **.....Appellant**
(A/90, Vrajvihar Duplex,
Opp.Gujarat Tractor Complex,
Near Vishwamitri Bridge,
Manajalpur, Vadodara)

VERSUS

Principal Commissioner of Customs,

Central Excise & Service Tax, Vadodara **....Respondent**

(Customs, Central Excise & Service Tax, Bhavan

Race Course, Vadodara)

APPEARANCE:

Shri Ajay Banerjee, Advocate for the Appellants

Shri Rajesh Nathan, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10411/2026

DATE OF HEARING : 10 March, 2026
DATE OF PRONOUNCEMENT : 10.07.2026

SANJIV SRIVASTAVA:

This appeal is directed against order in original No VAD-EXCUS-001-COM-55-16-17 dated 15.02.2017 of the Commissioner Central Excise, Customs and Service Tax, Vadodra. By the impugned order following has been held:

"ORDER

(i) *I confirm the classification of services of On-board House-keeping Service (OBHS), Mechanised cleaning of station, pick up rags/ mugs, Cleaning of Circulating Area and Passenger Yard of station, cleaning of drains, tracks, chambers, water fountain, roof ete. of platforms, Cleaning of Pit Line, Cleaning of coaches at depot, Depot cleaning etc. provided by M/s. Oriental to different Divisions of Indian Railways and to the other clients, under the category of "Cleaning Services" as defined Section 65 (105) (zzzd) of the Finance Act, 1994 read with Section 65(246) of the Finance Act, 1994 (till 30.05.2012) and other than the services listed under Section 66D of the Finance Act, 1994 (w.e.f. 01.07.2012);*

(ii) *I confirm the classification of services of management, maintenance or repair of railway sidings/ sleepers, painting, supply and filling of sand in the electric diesel locos, watering of coaches in order to manage and maintain the water requirement of passengers etc.. under the category of "Management, Maintenance or Repair Services for Goods, Equipments and Properties" under Section 55 (105) (zzg) of Finance Act, 1994 as amended read with Section 65(64) of Finance Act, 1994 (till 30.06.2012) and other than the services listed under Section 66D of the Finance Act, 1994 (w.e.f. 01.07.2012);*

(iii) *I confirm the classification of the services of the loading, unloading, transportation of Railway rails, slippers, switches, joints and other cargos of Railways, under the category of "Cargo Handling Service" as defined under Section 65 (105) (ar) of the Finance Act, 1994 read with Section 65(23) of the Finance Act, 1994 (till 30.06.2012] and other than the services listed under Section 66D of the Finance Act, 1994 (w.e. f. 01.07.2012);*

(iv) *I determine and confirm under Section 73(2) of the Finance Act, 1994, the demand of Service Tax amounting to Rs 1,17,95,603/-(including Cess) (One Crore Seventeen Lakh Ninety Five Thousands Six Hundred and Three Only),* *not paid for the period 1st October 2009 to 30th September-2013, as demanded under first proviso to Section 73(1) of the Finance Act, 1994.*

(v) Since an amount of Rs 18,00,393/-, is voluntarily paid by the assessee towards their Service Tax liability, the same is hereby ordered to be appropriated against the above demand confirmed at Sr. No. (iv);

(vi) The interest at applicable rate on the amount of Service tax not paid by them is hereby ordered to be charged and recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(vii) I impose a penalty of Rs. 1,17,95,603/ under Section 78(1) of the Finance Act, 1994 on the assessee in respect of amount of Service tax confirmed at (iv) above. However in view of second and third proviso to Section 78(1), if Service Tax of Rs.1,17,95,603/- and interest thereon is paid within a period of thirty days from the date of receipt of this order, the penalty payable shall be twenty five percent of the confirmed Service Tax amount, at (iv) above subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;

(viii) I impose a penalty of Rs. 10,000/-on M/s Oriental Agency, Vadodara, under Section 77 of the Finance Act, 1994 for failure to obtain registration under the taxable categories of "Cargo Handling Service", "Works Contract Service" and "Design Service" and for failure to pay Service Tax by due dates and for not furnishing the information in respect of taxable services provided by them and correct taxable value in prescribed periodical ST-3 returns and for contravention of the provisions of Sections 68 & 70 of Chapter V of the Finance Act, 1994 read with Rules 4 and 7 of the Service Tax Rules, 1994.

26. This Order is issued without prejudice to any other action that may be taken against the notice under the Act and the Rules framed there under and / or under any other law for the time being in force."

2.1 Appellant is engaged in the activity of providing various taxable services viz. Cleaning Service, Management Maintenance and Repair Service, Cargo Handling Service, Works Contract Service etc. to different division of Indian Railways and other clients. They have Service Tax Registration No.AAYPT4370QSD001.

2.2 Based on an intelligence to effect that appellant was suppressing the value of services provided, search was conducted at the premises of appellant under the panchnama dated 19.09.2013 and records were resumed. The documents viz. Annual reports, Work Contracts, Bank statements and invoices seized during the panchanama confirmed providing of taxable services non-payment of Service Tax thereon. Appellant further submitted the other documents vide their letters dated 04.12.2014. They also submitted the copy of VCES-2 as evidence that they have filed application under VCES.

2.3 They submitted copies of few contracts and 26AS details covering the period Apr-Sep, 2013 under their letter dated 09.12.2014. Further, vide their email dated 10.12.2014, they submitted the details of taxable value for the period Jan-2013 to Sep, 2013, ST-3 returns for Oct-Mar, 2013 and Apr-Sep, 2013. The said documents indicated the evasion of service tax by them.

2.4 During course of investigation statement of Shri Ghanshyam Lekhraj Tikyani, Proprietor of the Appellant was recorded on 19.09.2013 and on 09.12.2014. On the scrutiny of the details/documents, it appeared that they have been regularly providing taxable services to various divisions of Indian Railways and other clients and have not disclosed the same to the Department and have not paid service tax thereon as detailed below:

(i) *Appellant had provided On-board House-keeping Service (OBHS), Mechanised cleaning of station, pick up rags/ mugs, Cleaning of Circulating Area and Passenger Yard of station, cleaning of drains, tracks, chambers, water*

fountain, roof etc. of platforms, Cleaning of Pit Line, Cleaning of coaches at depot, Depot cleaning etc. to the divisions of Railway and cleaning and house-keeping services to other clients. These activities come under the purview of "Cleaning Activity" as defined under Section 65(24b) of the Finance Act, 1994.

(ii) From the contracts it is apparent appeared that Railways had normally made a provision in the contracts that payable service tax will have to be paid by appellants as the contracts are inclusive of all taxes which include Service Tax also. In some contracts, Service Tax is being paid by Railways over and above the contracted amount.

(iii) Indian Railways is a commercial and industrial concern. The services of cleaning given either on board or at depot or stations or of any of the premises of railway, are taxable service as covered under the definition given under the said service. All the places where different cleaning, disinfecting, exterminating or sterilizing of objects (coaches) were done were also located in "commercial or industrial building and premises thereof and hence, cleaning of these objects also attracted levy of Service Tax. The entire track, platforms, yards, depots etc. are very much the railway property or premises under the exclusive use for commercial purpose.

(iv) The services of management, maintenance or repair of railway sidings/sleepers, painting, supply and filling of sand in the electric diesel locos, watering of coaches in order to manage and maintain the water requirement of passengers etc. are duly covered under the "Management, Maintenance or Repair Services for Goods, Equipments and Properties" under Section 65 (105) (zzg) of Finance Act, 1994 as amended read with Section 65(64) of Finance Act, 1994.

(v) The loading, unloading, transportation of Railway rails, slippers, switches, joints and other cargos of Railways, without issuance of consignment note, fall under "Cargo Handling Service" as defined under Section 65 (105) (zr) of the Finance Act, 1994 read with Section 65(23) of the Finance Act, 1994.

(vi) Appellant failed to obtain Service Tax registration under the category of "Cargo Handling Service", "Design Service" and "Works Contract Service".

(vii) The aforesaid services rendered by Appellant do not fall in the negative list enlisted under Section 66D of the Finance Act, 1944. Thus, the services provided by them w.e.f. 01.07.2012 were also taxable and attracting Service Tax at the applicable rate.

(viii) From the statement dated 19.09.2013 and 09.12.2014 of Shri Ghanshyam Lekhraj Tikyani, Proprietor, it was evident that they have not discharged their Service Tax liability. The documents viz. contracts with the Railway Divisions, details of income etc. revealed that they had wrongly and fraudulently evaded the Service Tax on taxable services provided to different divisions of Railways and other clients. As, most of the contracts of Railways included Service Tax, it is evident that they had collected the same from Railways.

(ix) Appellant submitted the details as per the 26AS statement. However, they did not take the entire income reported in the Annual Report in their work-sheets. Further, w.e.f. 01.04.2011, the Point of Taxation Rules, 2011 was introduced and M/s. Oriental were required to pay Service Tax on the services provided by them in terms of Rule 3 of the said rules irrespective of the fact of receipt of payments.

(x) In their VCES application, appellant had disclosed the service tax liability of Rs.27,83,441/- while their service tax liability for the limited period 01.10.2010 to 31.12.2012, based on the work-sheet of income

produced by them works out to Rs.92,87,389/-. Further, the income for October-2007 to September-2009 and the invoices issued during April-2011 to December-2012 for which payments were not received were to be added in their VCES application. Thus, separate action under Section 111 of the Finance Act, 1994 (as introduced vide Finance Act, 2013-Service Tax Voluntary Compliance Encouragement Scheme, 2013) is to be decided by the jurisdictional Commissioner of Central Excise & Service Tax.

(xi) For the period 01.10.2009 to 30.09.2013, appellant had evaded the Service Tax of Rs. 1,52,69,447/- (S. Tax Rs.1,48,24,706/-+ Ed. Cess Rs.2,96,494/-+ SHEC Rs. 1,48,247/-) which was required to be recovered from them as per the proviso to Section 73(1) of the Finance Act, 1994 alongwith interest and penalty. Out of the said liability, they had paid an amount of Rs. 18,00,393/ under VCES and ST-3 filed for the past period and was required to be appropriated

(xii) For the period from 01.10.2009 to 31.08.2013, the total service tax paid by appellant Rs.4,06,911/-. After the searches by the DGCEI, they paid the service tax of Rs. 18,00,393/- towards the evaded Service Tax liability for the period from 01.10.2009 to 30.09.2013 in terms of the VCES declaration filed by them. They did not paid the remaining 50% of liability declared under VCES.

2.5 Appellant in spite of having knowledge of the various provisions of Service Tax, had not paid the applicable Service Tax on the taxable services viz. "Cleaning Service", "Management, Maintenance or Repair Services for Goods, Equipments and Properties", "Cargo Handling Service" and "Other than Negative list services", provided by them to different divisions of Railways and the other clients. They had not disclosed the correct taxable value and their correct Service Tax liability details in the ST-3 returns filed by them with the Department. By willful act of suppression and mis-declaration of facts with sole intention to evade Service Tax, the extended period of five years, as provided in proviso of sub-section (1) of Section 73 of Finance Act, 1994 was invokable for demanding the Service Tax for the period from 01.10.2009 to 31.09.2013 in the subject matter.

2.6 Appellant thus contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of taxable services provided by them to the Indian Railways and the other clients:

(i) Section 69 of the Finance Act, 1994 and Rules 4 of the Service Tax Rules in as much as they failed to obtain Service Tax registration under "Cargo Handling Service as defined under Section 65 (105) (zr) of the Finance Act, 1994 read with Section 65(23) of the Finance Act, 1994, "Works Contract Service as defined under Section 65 (105) (zzzza) of Finance Act, 1994 and Design Service as defined under Section 65 (105) (zzzzd) of Finance Act, 1994 read with Section 65(36b) of the Finance Act, 1994.

(ii) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above.

(iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have failed to pay the Service Tax at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provisions.

(iv) Rule 5 of the Service Tax Rules, 1994 in as much as they have failed to furnish to jurisdictional Superintendent of Service Tax a list of all the accounts maintained by them in relation to service tax payable by them.

(v) Section 70 of the FA, 1994, read with Rule 4 and 7 of the Service Tax Rules, 1994 as they failed to assess, declare and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as prescribed.

2.7 A Show Cause Notice dated 12.12.2014 was issued to appellant asking them to show cause as to why:-

(i) On-board House-keeping Service (OBHS), Mechanised cleaning of station, pick up rags/ mugs, Cleaning of Circulating Area and Passenger Yard of station, cleaning of drains, tracks, chambers, water fountain, roof etc. of platforms, Cleaning of Pit Line, Cleaning of coaches at depot, Depot cleaning etc. provided by M/s. Oriental to different Divisions of Indian Railways and cleaning/house keeping services given to the other clients should not be treated as "Cleaning Services as defined Section 65 (105) (zzzd) of the Finance Act, 1994 read with Section 65(24b) of the Finance Act, 1994 (till 30.06.2012) and other than the services listed under Section 66D of the Finance Act, 1994 (w.e.f. 01.07.2012).

(ii) the services of management, maintenance or repair of railway sidings/ sleepers, painting, supply and filling of sand in the electric diesel locos, watering of coaches in order to manage and maintain the water requirement of passengers etc. should not be treated as "Management, Maintenance or Repair Services for Goods, Equipments and Properties under Section 55 (105) (zzg) of Finance Act, 1994 as amended read with Section 65(64) of Finance Act, 1994 (till 30.06.2012) and other than the services listed under Section 66D of the Finance Act, 1994 (w.e.f.: 01.07.2012);

(iii) the loading, unloading, transportation of Railway rails, slippers, switches, joints and other cargos of Railways should not be treated as "Cargo Handling Service as

defined under Section 65 (105) (zr) of the Finance Act, 1994 read with Section 65(23) of the Finance Act, 1994 (till 30.06.2012) and other than the services listed under Section 66D of the Finance Act, 1994 (w.e.f. 01.07.2012),

(iv) an amount of Service Tax to the tune of totally Rs. 1,52,59,447/-[Rupees One Crore Fifty Two Lakh Sixty Nine Thousand Four Hundred Forty Seven only) (S. Tax Rs. 1,48,24,706/ Ed. Cess Rs. 2,96,494/ SHEC Rs. 1,48,247/-), evaded during the period 01.10.2009 to 30.09.2013, should not be demanded and recovered from them under proviso to Section 73(1) of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994;

(v) the amount of service tax of Rs. 18,00,393/-, paid during investigation, should not appropriated against their above said evaded Service Tax liability.

(vi) interest on the evaded amount of Service Tax should not be demanded and recovered from them under Section 75 of Chapter V of the Finance Act, 1994.

(vii) penalty for failure to obtain registration under the taxable categories of "Cargo Handling Service", "Works Contract Service" and "Design Service" and for failure to pay Service Tax by due dates and for not furnishing the information in respect of taxable services provided by them and correct taxable value in prescribed periodical ST-3 returns and for contravention of the provisions of Sections 68 & 70 of Chapter V of the Finance Act, 1994 read with Rules 4 and 7 of the Service Tax Rules, 1994, should not be imposed upon them under Section 77 of Chapter V of the Finance Act, 1994; and

(viii) *penalty for suppression and mis-declaration of correct taxable value and evasion of Service Tax on the aforesaid taxable services should not be imposed upon them under Section 78 of Chapter V of the Finance Act, 1994.*

2.8 The show cause notice was adjudicated as per the impugned order referred in para 1 above. Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Ajay Banerjee, Advocate for the appellant and Shri Rajesh Nathan, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- demand upto 31.12.2012 is time barred as for that period they have filed an VCES declaration on 26.12.2013, duly acknowledged by the department. The action for rejection of the said declaration was to be initiated in terms of Section 111 (1) and (2) of Finance Act, 2013 within one year i.e. 25.12.2013. The show cause notice though issued on 12.12.2014 was received by them on 27.12.2014. Thus demand made in respect of cleaning service for the period before 31.12.2012 do not survive.
- Housekeeping or cleaning service provided by the appellant is exempt from payment of service tax vide Sl No 25 (a) of Notification No 25/2012-ST dated 20.06.2012. Impugned order extended the benefit of this exemption for period from 01.07.2012 to 30.09.2013. The appeal filed by the revenue aginst this part of the order has been dismissed vide Final Order No A/11846/2019 dated 24.09.2019.
- He demand on management, maintenance and repair service is also not recoverable beyond 28.06.2012 the regular period.
- The demand on cargo handling service is also not sustainable as the services provided by the appellant were actually GTA Services as the appellant is a proprietary firm and Railway is a commercial firm, the demand would in this case be on Railway. Reliance is placed on the circular No 104/7/2008-ST dated 06.08-2008.
- Service tax demand has not been properly calculated taking into account all the payments made by the

appellant. The technical issues like determination of service tax liability for the years 2010-11, 2012-13 and 2013-14 has not be addressed by the impugned order.

- They have discharged the service tax in respect of the services provided to NBCC and ESIC on regular basis. Hence demand of interest and penalty imposed in respect of these payment of service tax made regularly is bad in law.
- Contract No RJT/T/71 dated 29.01.2007 was completed on 25.02.2009 and the payments in respect of ths contract were also received. The demand made in respect of this contract is barred by limitation.
- Penalty under Section 78 should have been 50% of demand of service tax, as all the transactions in respect of which the demand has been made are recorded transactions.
- Penalty under Section 77 is bad in law, as the classification of services as cargo handling service is not acceptable and in respect other two services namely 'work contract services" and "design services", the finality is attained if the VCES declaration is not disputed by 25.12.2014.

3.3 Authorized representative reiterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

15. I have gone through the facts of the case, defense submission of the assessee, the record of the personal hearing and all available records in the matter.

16. The main issue to be decided in the case is that whether the various services, provided by the assessee to the Western Railway, were classifiable under the following categories of taxable services or not *(a) "Cleaning Services" as defined under Section 65(105)(zzzd) of the Finance Act, 1994,*

(b) "Management, Maintenance or Repair Services for Goods, Equipments and Properties" as defined under Section 65(105)(zzg) of the Finance Act, 1994 (as amended) read with Section 65(64) of the Finance Act, 1994,

(c) "Cargo Handling Service" as defined under Section 65(105) (zr) of the Finance Act, 1994 read with Section 65(23) of the Finance Act, 1994.

16.1 The SCN further alleges that on the above services provided by the assessee to Indian Railway, Service Tax is required to be paid for the reasons that the same do not qualify for exemption in terms of inclusion in the negative list of the services as provided under Section 66D of the Finance Act, 1994, w.e.f. 01.07.2012. On the other hand, assessee claimed benefit of the exemption for such services to Western Railway under Mega Exemption Not. No. 25/2012-ST dated 20.06.2012 and further pleaded that they were given to understand by their client Indian Railway that for all the services provided to Indian Railway they would be eligible for exemption from payment of Service tax. They also contended that neither the component of service tax was mentioned in the detailed estimate at the time of tender for contracts by Indian Railway nor the same found any mention in the invoice raised by them. Besides the SCN also alleges evasion of the Service Tax by way of suppression of facts with respect to the services provided by M/s Oriental under category of "Cargo Handling Service" as defined under Section 65(105) (zr) of the Finance Act, 1994 read with Section 65(23) of the Finance Act, 1994.

16.2 The assessee further contended that the subject SCN is time barred for the reasons they received the subject

SCN on 27th Dec. 2014, but they filed the VCES-2013 declaration on 26.12.2013. Therefore they claimed that the subject SCN was time barred in terms of Section 111 of the Finance Act, 2013 for having been issued to them after one year i.e. beyond the period stipulated under Section 111 for service of SCN. The assessee however failed to produce any documentary evidence in support of their claim. Besides on carefully going through the case file I find that the subject SCN was issued on 12.12.2014 and a letter No. V/Adj/CR/Case Transfer/12/2014-15 dated 17.12.2014 was issued by the Additional Commissioner addressed to the Commissioner, Central Excise, Customs & Service Tax, Vadodara-1, for transferring of the SCN for favour of adjudication. Therefore, even if the letter dated 17.12.2014 issued by the Additional Commissioner is considered being coterminous with issue and service thereof to the Show Cause Noticee, the unsubstantiated contention of assessee cannot be accepted.

17. I find that M/s Oriental were awarded the contracts for various works and they provided the services as under:-

a. On-board House-Keeping Services (OBHS), Mechanised Cleaning of station, pick up rags/mugs, Cleaning of Circulating Area and Passenger Yard of station, cleaning of drains, tracks, chambers, water fountain, roof etc. of platforms, Cleaning of Pit Line, Cleaning of coaches at depot, Depot cleaning etc. to the Indian Railway and cleaning and housekeeping services to other clients. From the Scope of work description mentioned in the letter of acceptance/tender schedule of Western Railway, I find that the same primarily related to mechanized cleaning, washing, sanitation of railway coaches, yards, depots, pits, and adjoining areas in addition to cleaning of drains, tracks, chambers, water fountains, roof, platforms, passenger yards and stations. The Western Railway using coaches, yards, *depots apparently for the commercial purpose, and the definition of 'Cleaning Services, as provided under Section 65(24b) of the Finance Act, 1994 is appropriately applicable here. Therefore from the nature of work as discussed above, such activities are appropriately coming under the purview of "Cleaning Activity" as defined under Section 65(24b) of the Finance Act, 1994. Accordingly the services provided by them are held "Cleaning Services" as defined under Section 65(105) (zzzd) of the Finance Act, 1994,*

b. *Services of Management, Maintenance or in Repair of Railway sidings/sleepers, painting, supply and filling of sand in the electric diesel locos, watering of coaches in order to manage and maintain the water requirement of passengers etc. As per the work description, mentioned the relevant Work Completion Certificate, issued by Western Railway, the same is described as "Lubrication of elastic rails clips and painting of rails to protect from all corrosion in coastal area". Besides I also find from the available record materials that M/s Oriental has done the work of supply and filling of sands in the electric diesel locos, watering of coaches in order to manage and maintain the water requirement of passengers, and such activities are appropriately covered under "Management Maintenance or Repair Services for Goods" under Section 65(105)(zzg) of the Finance Act, 1994 as amended read with Section 65(64) of the Finance Act, 1994.*

c. *Services of loading, unloading, transportation of Railway rails, slippers, switches, joints and other cargos of Railway, without issuance of consignment note, and which therefore shown in the SCN to be falling under Cargo Handling Service" as defined under Section 65(105)(zr) of the Finance Act, 1994 read with Section 65(23) of the Finance Act, 1994.*

18. I have carefully gone through the facts of the case and also the documents including 26AS of M/s Oriental and the documents scanned and displayed in Para-4 of the SCN and wherefrom I find that M/s Oriental had been awarded contracts for the above services by Western Railway, Food Corporation of India and NBCC Ltd., and also they received payments from these clients. I further find that the above contracts were awarded to M/s Oriental under various authority letters wherein services to be provided were quoted clearly with cost of work/tender amount and wherein liability of taxes were explicitly casted upon the awardee viz. M/s Oriental. The relevant pages of the Letters/Letters of Acceptance/Tenders schedules for the above mentioned services are displayed in Para-4 of the SCN.

18.1 I find that M/s Oriental is engaged in the activities of providing taxable services as defined under Section 65(105) of the Finance Act, 1994; however they have not taken registration for some of the services they routinely provided to the Railway and other clients. I find that M/s Oriental has been engaged in providing Cleaning Services, Management, Maintenance and Repairing Services, Cargo Handling Services, Work Contract Services etc., however they obtained Service Tax Registration only for Cleaning Services and Management, Maintenance and Repairing Services. I also find that for the taxable services of Cargo Handling, Design Service and Work Contracts service they admittedly have not taken any registration as such.

18.2 The SCN has raised the demand of Service Tax amounting to Rs. 1,52,69,447/- from M/s Oriental for the period from 01.10.2009 to 30.09.2013. This amount is alleged in the impugned SCN to have been evaded by M/s Oriental by way of willful act of suppression and mis-declaration with respect to the services provided to the various clients including Western Railway, Foods

Corporation of India and NBCC Ltd. and payments received there against and subsequent service tax liabilities.

18.3 I find that M/s Oriental filed VCES-1 under VCES-2013 on 26.12.2013, declaring therein the 'service tax dues' as Rs.27,83,441/- however which was found not correct from the work-sheet of income produced by M/s Oriental themselves. As per the work-sheet of income, the service tax due for the period 01.10.2010 to 31.12.2012 was found to be Rs.92,87,389/- and besides income for the period of October-2007 to September-2009 and invoices issued during April-2011 to December-2012 for which payments were claimed but not received were also liable to be accounted for in the VCES-1. Therefore not only the said VCES declaration is grossly flawed and substantially false in terms of Section 111 of the Finance Act, 2013 but also incomplete in many sense and rightly therefore not taken up in the instant case. Thus, I find that M/s Oriental failed to correctly declare their service tax liability and forfeited the benefit thereof as provided under the Finance ACT, 2013 under Voluntary Compliance and Encouragement Scheme-2013. I find that the revenue was correct in not issuing VCES-3 as the present show cause notice was already issued before expiry of 1 (one) year period.

18.4 I find that the services shown provided by M/s Oriental are not included under the services listed under negative list in terms of Section 66D of the Finance Act, 1994 (w.e.f. 01.07.2012). These services shown by M/s Oriental as provided to Western Railway and other clients are the services, other than those, mentioned under Section 66D of the Finance Act, 1994. Before 01.07.2012, the services of Cleaning Services, Management, Maintenance and Repairing Services & Cargo Handling Services were falling under definition of the taxable services under Section 65(105) (zzzd) read with Section

65(24b), Section 65(105) (zzg) read with Section 65(64) and Section 65(105)(zr) read with Section 65(23) of the Finance Act, 1994.

18.5 I find that M/s Oriental provided services of loading, unloading, transportation of Railway rails, slippers, switches, joints and other cargos of Railway, without issuance of consignment notes as duly admitted by the proprietor Shri Ghanshyam L. Tikyani in his statement dated 09.12.2014. Such acts therefore shall not come under purview of the Goods Transport Agency (GTA) as claimed by M/s oriental. Because Section 65B(26) of the Finance Act, 1994 clearly says on GTA that, "Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called." Moreover as per Rule 4B of the Service tax Rules, 1994, a GTA is required to issue consignment note, except when transport of goods by road is exempted. I am therefore of the view that the provisions of CBEC Circular No. 354/98/2015-TRU dated 5th Oct. 2015 is not attracted in the case as contended by M/s Oriental during the PH proceeding on 28.01.2016. I find that in the Tender Schedule of the Western Railway, Description of work is described as, "Transportation of Ordinary PRC sleepers, Special Type of PRC Sleepers for SEJ, LC Sleepers. Bridge approach sleepers, Sleepers for Points and X-ings etc. from various sleeper factories like Godhra, Kharsaliya, Digsar etc. with contractor's own suitable vehicle like truck/ trailor, unloading and placing the same with contractors own labour, tools and plants as directed by the Engineer in Charge (The loading of these sleepers shall be done by the sleeper factory)". So here in the instant case I find that services provided by M/s Oriental is merely not the transportation of goods but also includes collecting safely the goods (Ordinary PRC Sleepers, Bridge approach sleepers etc.) from various factories, unloading, placing *the transported goods with their own labour, tool, plants as directed by the Engineer in Charge under safe handling. Hence I find that it was not only the transportation of the goods, but also the collection from different places (factory/depot), Loading, Unloading and safe delivery to the place of choice of Railway was also there which were done by M/s Oriental. Against the above handling (loading, unloading and safe delivery) and transportations of the goods/cargo of Western Railway, M/s Oriental is paid the charges as per the tender agreement/schedule (rate is shown against quantity and distance) with Western Railway. In view of the above, I find that such services provided by M/s Oriental fall under the category of "Cargo Handling services" as defined under Section 65(105)(zr) read with Section 65(23) of the Finance Act, 1994.*

19. M/s Oriental contended in their defense submission dated 06.02.2015 that Western Railway is also a Government Authority as per definition and clarification given by CBEC. For the definition of 'Government Authority', they relied on the Definition Clause 2(s) of the Not. No. 25/2012-ST dated 20.06.2012 for the same wherein the Government Authority is defined as under,

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

This definition of Government Authority was effective from 01.07.2012 upto 30.01.2014. After 30.01.2014, a body can be 'government authority' set up by Government by resolution. Earlier during the period 01.07.2012 to 30.01.2014, such body was 'government authority' only if it was set up by Act of Parliament or a State Legislature.

They further contended that the services provided by them fall under purview of the entry no. 25(a) of the Exemption Notification No.25/2012-ST dated 20.06.2012, and that they were informed by the Western Railway that the services provided to Western Railway would be exempted from payment of Service tax however no documentary evidences are produced in support of this claim. Moreover in view of the fact that element of all taxes shown in the documents of Western Railway payable by awardee as discussed above, this contention of M/s Oriental is not tenable in so far as taxability is concerned.

19.1 I however find that the services shown rendered by M/s Oriental viz. "On-board House-Keeping Services (OBHS), Mechanised Cleaning of station, pick up rags/mugs, Cleaning of Circulating Area and Passenger Yard of station, cleaning of drains, tracks, chambers, water fountain, roof etc. of platforms, Cleaning of Pit Line, Cleaning of coaches at depot, Depot cleaning etc. to the Indian Railway fall under the purview of the services at entry no. 25(a) of the Exemption Notification No. 25/2012-ST dated 20.06.2012 which is us under,

"Services provided to Government, a local authority or a governmental authority by way of

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation: or

Old before 11-7-2014 (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation, or

(b) repair or maintenance of [3][a vessel] old before 1-3-2013 [a vessel or an aircraft]"

I am therefore of the view that for the reasons the demand is raised in the SCN for the period from 01.10.2009 to 30.09.2013 on the Cleaning Services, defined under Section 65(105)(zzzd) of the Finance Act, 1994 read with Section 65(24b) of the Finance Act, 1994, M/s Oriental is entitled for the exemption from payment of Service Tax on such services falling under purview of the services under entry no. 25(a) of the Not. No. 25/2012-ST dated 20.06.2012 (w.e.f. 01.07.2012). I further hold that this exemption is available to M/s Oriental from 01.07.2012 to 30.09.2013, and for the period 01.10.2009 to 30.06.2012, no such exemption shall be available to M/s Oriental for the said services, for the reasons the subject exemption notification came into effect from 01.07.2012 and before that no such exemption was available on such services even if provided to the Government authority, apart from the fact that such services not coming under the ambit of definition of services under Negative List under Section 66D of the Finance Act, 1994. As a matter of fact I hold that Service Tax is payable on the Cleaning Services provided to the Western Railway and other clients for the period 01.10.2009 to 30.06.2012. The amount of Service tax payable on the Cleaning Services falling under Section 65(105)(zzzd) of the Finance Act, 1994 read with Section 65(246) of the Finance Act, 1994, for the period from 01.10.2009 to 30.06.2012, thereby comes to Rs.30,45,816/-, as worked out from the Annexure-A & B to the SCN after considering the benefit of exemption for the period 01.07.2012 to 30.09.2013 amounting to Rs.32,43,209/-.

19.2 In so far as the services of "Repair, Management and Maintenance Service are concerned, having been shown provided to Western Railway by M/s Oriental, and Service Tax demanded there upon for the period from 01.10.2009 to 30.09.2013, I find that the same falls under Section 65(105) (zzg) of the Finance Act, 1994 as amended read *with Section 65(64) of the Finance Act, 1994. I further find that the subject services eligible for exemption from payment of Service tax in view of the amendment made to the Not. No. 24/2009-S.T dated 27th July 2009, vide Not. No. 54/2010-ST dated 21st Dec. 2010 by substituting the words <u>"management, maintenance or repair of roads, bridges, tunnels, dams, airports, railway and transport terminals for management, maintenance or repair of road"</u> and whereby scope of exempted services was expanded. I also find that subsequent to this amendment, from 21st Dec. 2010, the exemption Not. No. 24/2009-ST got rescinded in view of Mega Exemption Not. No: 25/2012-ST, came into effect from 01.07.2012. In the said Mega Exemption Not. No. 25/2012-ST, such services provided to Railway are not listed for exemption. Besides this service also not coming under ambit of the services under Negative List in terms of Section 66D of the Finance Act, 1994 (came into effect also from 01.07.2012) and in view of which I find that Service Tax stands payable on these services post to 30.06.2012 and onwards. Therefore the benefit of exemption is available to M/s Oriental in this service only for the period from 22.12.2010 to 30.06.2012. I further find that out of the period of demand (from 01.10.2009 to 30.09.2013) as per SCN, the Service Tax is payable on the services of "Repair. Management and Maintenance Service so provided to Western Railway and other clients for the period 01.10.2009 to 21.12.2010 and then from 01.07.2012 to 30.09.2013. In view of the above, the Service Tax on the taxable service of Repair, Management and Maintenance Service worked out from the Annexure-A & B comes to Rs 22,93,104/- (including cess), which I held is payable by M/s Oriental under the Finance Act, 1994. I hold that above service tax amount is payable after considering M/s Oriental eligible for benefit of exemption in terms of Not. No. 54/2010-ST to the "Repair, Management and Maintenance Service", provided for the* *period from 22.12.2010 to 30.06.2012, totally amounting to Rs.2,30,635/- (including cess).*

19.3 I intend to rely on the decision of Hon'ble High Court of Bombay, in the case of Central Railway Vs CCE, Nagpur, reported in 2013 (31) STR 234 (Bom), wherein, in relation to the services provided of work of management and repair of railway sidings, demand for the period prior to exemption notification 24/2009-ST dated 27 July 2009, was held prima facie sustainable.

20 I further find that 26AS statement of M/s Oriental does not reflect correctly the entire receipt of income as reported in the Audited Annual Reports in their worksheet. From 01.04.2011, Point of Taxation Rules, 2011 (POT Rules) was introduced to,

a. introduce provisions relating to payment of service tax on accrual basis instead of receipt basis, and
b. to specify date relevant for determining rate of service tax.

Upto 01.04.2011, the provision was that service tax was payable on receipt basis i.e. on receipt of payment of the invoice or bill from customer or receipt of advance, whichever would be earlier. Then w.e.f. 01.04.2011, service tax was payable on billing basis and not on receipt of payment basis i.e., on accrual basis and not on cash basis Then Section 67A of the Finance Act, 1994 was inserted w.e.f. 28.05.2012, as per which the rate and value of service tax, shall be the rate of service tax in force or as applicable at the time when the taxable service has been provided or agreed to be provided. I further find that as per Rule 3(a) of the Point of Taxation Rules, 2011 (POT,2011), unless otherwise provided (i.e. except cases covered under Rules 4 to 9 of POT, 2011), time when Invoice for service provided or to be provided is issued, shall be point of taxation However in the instant case i find that M/s Oriental failed to pay the Service Tax on the *services provided by them in terms of Rule 3 of POT, 2011 despite the facts that they received payment against issuance of invoices by them to their clients i.e. service recipients.*

21. In terms of the impugned SCN, I find that total amount of Service Tax attracted on the taxable services provided by M/s Oriental, during the period from 01.10.2009 to 30.09.2013 (as per calculation done in Annexure A&B to the SCN) comes to Rs.1,56,76,358/-. However an amount of Rs.4,06,911/- was paid by M/s Oriental before initiation of investigation. Therefore I find that after appropriation and adjustment of the above deposited amount against the confirmed amount of Service Tax liability for the period 01.10.2009 to 30.09.2013, the amount recoverable from M/s Oriental works out to Rs. 1,52,69,447/- (including cess) (Rupees One Crore Fifty Two Lakh Sixty Nine Thousand Four Hundred Forty Seven only.

21.1 In view of the above, I thus find that out of the total demand of Service Tax, raised in the SCN for an amount of Rs. 1,52,69,447/- (including cess) (Rs.1,28,59,338/- + Rs.28,17,020/- - Rs.4,06,911/), Rs.62,89,025/-(including cess) was demanded against Cleaning Services, Rs.25,23,739/- (Rs.22,93,104/- + Rs.2,30,635/) was demanded against Management Maintenance or Repair Services, Rs.38,56,969/- was demanded against Cargo Handling Services and an amount of Rs.1,89,604/- (including cess) was demanded against other services. I hold that M/s Oriental is entitled for exemption of Rs.32,43,209/- (including Cess) on Cleaning Services, and of Rs.2,30,635/- (including Cess on Management, Maintenance or Repair Services. In view of the above and after considering the entitlement for exemption, I hold that amount of Rs.1,17,95,603/- (including Cess) (One Crore Seventeen Lakh Ninety Five Thousands Six Hundred and Three Only), is recoverable, from M/s Oriental Agency *under the Finance Act, 1994 for the reasons of having been evaded by way of suppression and mis-statement of facts as discussed herein above*.

22. I therefore in view of the above find that M/s Oriental has evaded the payment of Service Tax totally amounting to Rs.1,17,95,603/- (including Cess) (One Crore Seventeen Lakh Ninety Five Thousands Six Hundred and Three Only) by way of willful suppression and mis-statement of vital facts with regard to their providing of taxable services and the receipt of payments there against and subsequent discharging of service tax liability thereon. This fact is evidenced in view of the facts discussed at length in Para supra including statement dated 19.09.2013 and 09.12.2014 of Proprietor Shri Ghanshyam Lekhraj Tikyani, the ST-3 Returns filed by them, work-sheet of income produced by them, 26AS form and the Audited Annual Reports. I therefore hold that Service Tax amounting to Rs 1,17,95,603/- (including Cess) (One Crore Seventeen Lakh Ninety Five Thousands Six Hundred and Three Only), is rightly recoverable from M/s Oriental under proviso to Section 73(1) of the Finance Act, 1994. Further, M/s Oriental being liable to pay the tax in accordance with the provisions of Section 68 of Finance Act, 1994 and rules made there-under, whereas failed to assess and credit the tax to the account of the Central Government within the period prescribed, I hold them liable to pay interest on delayed payment of service-tax in terms of Section 75 of the Finance Act, 1994. I also hold the deposit of amount of Rs. 18,00,393 made between 05.10.2013 to 17.07.2013 (as shown in Para 9.5 of the SCN) by M/s Oriental, liable for appropriation and adjustment against the Service Tax liability as above.

23 I find that the assessee has failed to assess the Service Tax properly on the taxable services rendered by them and failed to file prescribed Service Tax return in the manner *and form prescribed. I further find that charges of failure to get the Registration under taxable categories of Cargo Handling Service, work Contract Service. and Design Service, failure to pay the Service Tax by due dates and failure to correctly assess the service tax and duly account for the same in the ST-3 returns are conclusively proved in the SCN. The above acts and omissions resulted in gross contravention of provisions of Section 68, 69 & 70 of Chapter V of the Finance Act, 1994 read with relevant provisions of Rules 6, 4 & 7 of the Service Tax Rules, 1994 and as a result of which I hold them rightly liable for penalty under Section 77 of the Finance Act, 1994.*

24 In the show cause notice, there is a proposal to impose penalty under Section 78 of the Act. I find that M/s Oriental being registered with Service Tax department, was very well aware of fact that the services provided by them were taxable in nature and that they were under an obligation to discharge their Service Tax liability properly. They failed to declare the correct taxable value received by them and also failed to pay Service Tax thereon in the manner and time limit prescribed and also failed to file the correct periodical ST-3 returns which appeared to be a deliberate act on their part, committed with intent to evade payment of Service Tax It was only when investigation was conducted that the said facts came to the notice of the Department Thus, it appeared that M/s Oriental have deliberately suppressed the material facts from the department with intent to evade payment of Service Tax during the period 01.10.2009 to 30.09.2013 in respect of services rendered by them. Thus, extended period of limitation as envisaged in proviso to Section 73(1) of the Finance Act, 1994 has been rightly invoked in this case for recovery of Service Tax. All these acts of contravention of the provisions of Section 68, 69 & 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994, as discussed have been committed by the *assessee by way of suppression & willful mis-statement of facts and thereby they have rendered themselves liable for penalty under Section 78 of the Finance Act, 1994, 1 therefore, hold M/s Oriental liable for penalty under Section 78 of the Finance Act, 1994, I find that charge of willful suppression and mis-statement of facts with regard to the liability and discharge of service tax liability by M/s Oriental is conclusively established in the SCN and in view of which I hold them liable also for penalty under Section 78 of the Finance Act, 1994."*

4.3 From the above it is evident that case against the appellant is in respect of evasion of service tax in respect of taxable services namely, cleaning services, cargo handling services and repair and maintenance services provided by them during the period 1st October 2009 to 30th September 2013, by resorting to suppression, mis-statement etc., with intent to evade payment of duty.

4.4 The major ground of challenge to the demand made is on account of limitation. Appellant have contended by referring to Section 111 of the Finance Act, 2013 that they have filed their VCES declaration of 24.12.2013 the show cause notice in the present case was delivered/ received by them on 27.12.2014, hence time barred. For ease of reference we reproduce the relevant section of Finance Act, 2013.

111. Failure to make true declaration.

(i) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.

(ii) No action shall be taken under sub-section (i) after the expiry of one year from the date of declaration.

(iii) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the

> *case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.*

From the perusal of the above section, it is evident that this section do not open with a non-obstante clause, barring the application of the provisions of Section 73 of the Finance Act, 1994 in terms of which a demand of service tax short paid or non paid by resorting suppression, mis-statement, fraud, collusion or contravention of rules with intent to evade payment of taxes could have been made within five years from the relevant date. This section provides for making demand in respect of service tax, short tax paid or short declared in this declaration within one year from the date of declaration. For making this demand within one year, it would not be necessary to establish the suppression, mis-statement, fraud, collusion or contravention of rules with intent to evade payment of taxes. Thus in case where a demand even in respect of a declaration filed under VCES is made for period for which the declaration is made the show cause notice without invoking extended period of limitation could have been issued within period of one year from the date of declaration.

However, the provisions of Section 73 of the Finance Act, 1994 independently empower the Department to issue a show cause notice for recovery of service tax not paid or short paid. Under Section 73(1), the normal period of limitation is eighteen months from the relevant date, but where non-payment or short payment of service tax is by reason of fraud, collusion, wilful misstatement, suppression of facts, or contravention of provisions with intent to evade payment of service tax, the proviso to Section 73(1) permits issuance of notice within five years from the relevant date. At this juncture we find it necessary to look into the relevant provisions of Section 73 as they existed then:

> ***Section 73. Recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded.***

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

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

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "eighteen months", the words "five years" had been substituted.

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

(2) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously

refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:

Provided that the Central Excise Officer may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of eighteen months referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation (1) — For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub- section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer, but for this sub- section.

Explanation (2)—For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made there under shall be imposed in respect of payment of service-tax under this sub-section and interest thereon.

(4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short- paid or erroneously refunded by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax.

From the above provision it is evident that on any person who has short paid the service tax, for any reason other fraud, collusion, willful mis-statement, suppression of fact or contravention of the provisions of the Act or Rule made thereunder could have been served notice within a period of eighteen months from the relevant date. By the proviso to section 73 (1) in case of fraud, collusion, willful mis-statement, suppression of fact or contravention of the provisions of the Act or Rule made thereunder, notice could have been served upto five years from the relevant date. It is worth observing that in case person who has short paid the service tax on whom notice could have been served upto eighteen months, could on his own come forward and declare his correct service tax liability and pay the due service tax along with interest in terms of sub-section (3). On receipt of this information the jurisdictional officer can accept the declaration if he find its true and correct or in case of any discrepancy he could issue the notice to the extent of discrepancy within period of eighteen months from the date of receipt of this information. This facility is not available in case where the tax has been short paid on account of fraud, collusion, willful mis-statement, suppression of fact or contravention of the provisions of the Act or Rule made thereunder. We find striking similarity in the provisions as outlined in Section 111 of the Finance Act, 2013 and subsection (3) of the Section 73, except for the period of prescribed for issuance of notice to the extent of discrepancies. The above discussions points that in case where the short payment of tax is on account of fraud, collusion, willful mis-statement, suppression of fact or contravention of the provisions of the Act or Rule made thereunder, the notice could have been served upon the appellant within period of five year from the relevant date without any reference to the provisions of Section 111 of the Finance Act, 2013.

At this juncture, it is relevant to note that in the present case, the show cause notice has been issued specifically alleging suppression of facts and fraud with intent to evade payment of service tax. Further, in adjudication, the competent authority has also recorded findings that the demand is sustainable on account of such suppression and fraud. Once such ingredients are alleged in the notice and are also established in adjudication, the notice necessarily falls within the scope of the proviso to Section 73(1), and the extended period of limitation of five years becomes applicable.

In such circumstances, the limitation prescribed under Section 111(2) of the Finance Act, 2013 would not operate as a bar, since the demand is not required to be confined to action under Section 111 alone. Section 111 merely provides a mechanism for issuing notice in respect of a false VCES declaration within one year without invoking the extended period. It does not restrict the Department from proceeding under Section 73(1) proviso where the case is founded upon fraud, suppression or wilful misstatement and the same stands established.

Accordingly, we do not find merit in the submissions made by the appellant that the notice is time-barred merely because it was issued beyond one year from the date of VCES declaration. The show cause notice having been issued alleging fraud and suppression and such allegations having been confirmed in adjudication, the demand is sustainable within the extended period under the proviso to Section 73(1) of the Finance Act, 1994. We also find that appellant has in his arguments/ appeals not challenged the invocation of extended period of limitation for making this demand as per proviso to section 73 (1).

4.5 Now coming to the issues involved on merits of the demand. The demand has been made against the appellant in respect of three services namely – cleaning services, repair and maintenance services and cargo handling services. Demand made for the period 01.07.2012 in respect of cleaning services and repair and maintenance services has been dropped by the adjudicating authority allowing the benefit of exemption under Notification No 25/2012-ST (Sl No 25 (a)).

4.6 For the period prior to 01.07.2012, we find that issue whether the cleaning services provided to Railways or similarly placed organizations have been considered by this tribunal in case of Mukesh Kalway [2017 (3) G.S.T.L. 183 (Tri. - Del.)] and following has been held:

> *"5. The appellant are contesting their service tax under 'cleaning activity'. Statutory provisions relevant are as below:*
>
> *"Finance Act, 1994*
>
> *Section 65. Definitions. – in this Chapter, unless the context otherwise requires, -*
>
> *(105) "taxable service" means any service provided or to be provided, -*
>
> *(zzzd) to any person, by any other person, in relation to cleaning activity;*
>
> *…………*
>
> *(24b) "cleaning activity" means cleaning, including specialized cleaning services such as disinfecting, exterminating or sterilizing of objects or premises, of-*
>
> *(i) Commercial or industrial buildings and premises thereof; or*
>
> *(ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof, but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying."*
>
> *6. Though demand deals with large number of activities undertaken by the appellant, the present appeal is only with reference of following activities.*

Description	Total Tax Demanded
Airport Authority of India	144850
Various contracts with Railways	8046925
Cleaning of Office of GM - Ordinance Factory, Khamaria	1159418
New Circuit House	130331
Cleaning Service to Hitkarni College and Hospital	301870
Services to Delhi Public School and Jain International School	249993
Total	10033387

We note that the appellants contested the findings in the impugned order on the ground that the original authority considered the nature of organization and not nature of building or premises to decide tax liability. However, we find that the appellant themselves based their arguments emphasizing more on the nature of railway, airport authority and ordnance factory. We note that the tax liability is with reference to the building or premises as mentioned above. However, to decide the nature of building, whether commercial / industrial, it is necessarily, the nature and the functions of the occupant is examined. On the arguments of the appellant that the airport authority and railways are public utilities and cannot be considered as commercial building or premises thereof, we find no legal support to conclude that all public utilities should be straightaway considered as non-commercial organization. There is no legal or logical basis for such a summary conclusion. Neither do we find any bar for a public utility organization to be run on commercial basis. Admittedly, the term 'commercial' has not been defined in the Finance Act, 1994 or the rules made thereunder. Hence, appellant relied on certain dictionary meanings to submit that railways are not run purely on profit motive. They are basically public utility for the benefit of people and recovery of charges for use of such public utility will not make the railways as a commercial entity. We find that the appellants are engaged in mechanical cleaning of *diesel locomotives in the loco sheds, railway station complex and premises of general manager's office. The appellants relied on certain decisions of the Hon'ble Supreme Court to emphasize that railway is not a commercial venture. In Dr. P. Nalla Thampi Thera v. UOI (1984) AIR SC 74, the Hon'ble Supreme Court was examining the facts as existing in 1983, it was mentioned that railways are a public utility service run on a monopoly basis. Since, it is a public utility, there is no justification to run it merely as a commercial venture with a view to make profit. The Hon'ble Supreme Court was examining the prayer of the appellant for provision of certain services as part of bounden duty of the Government. In Andhra Pradesh State Road Transport Corporation - (1986) 52 CTR (S.C.) 75 case the Hon'ble Supreme Court examining the facts, as per the relevant time in 1986, held that the road transport corporation is a general public utility and the dominant purpose is not to earn profit and accordingly, the activities can be considered as charitable purpose. The Hon'ble Supreme Court was examining the provisions of Income Tax Act, and RTC Act to decide the issue. As noted, these decisions are dealing with a set of facts and background and will not help the appellant to contest the service tax liability for the services provided to railways. We are not dealing with service tax liability of cleaning service provided by railways. We are dealing with the case of appellant, who is a private party rendering taxable service to railways. Further, admittedly the functions and economic circumstances of the railways as a whole evolved over a period and the facts as relevant to the current date has to be examined.*

7. Public utilities are those business undertakings which provide necessary day to day service to the society like dealing in water/ electricity supply, transport etc. Since larger investments are required in providing large scale public utility service, some amount of monopolistic *situation emerges in some of the cases. Necessary regulations/protections are also evolved by the Government for orderly and uninterpreted public utility service by the organizations providing the same. The term public utility itself has not been statutorily defined. In terms of Section 2(N)(VI) of Industrial Disputes Act, 1947, many industries listed in the first schedule may be declared to be public utility service by the Government. A perusal of the Schedule will show large number of activities are listed which can be declared as public utility service. These are banking, coal, cement, mining, shipping, airport authority, etc. The point to be noted is that being a public utility by itself does not provide any immunity from service tax levy. It is apparent that the railways or airport authority are being subjected to service tax under various categories like transport of passengers, freight, advertising, etc. Similarly electricity distribution/transmission is a vital public utility which is subjected to service tax. However, exemptions are selectively provided for some of the organizations involved in providing such service.*

8. We note that to hold railways or airport authority as non commercial organizations only on the ground that they are public utility organizations has no legal basis. Incidentally, it may be noted that the freight revenue of railways is more than double of the activity of passenger revenue. It only shows that substantial railways activity is in commercial freight transport. Even, with reference to the status of the railway stations, we note that the same cannot be considered as non-commercial building or premises. The commercial nature of the railway stations and its premises is very apparent. To illustrate we note that the railways had advertised to redevelop 400 stations where the entire cost of redevelopment is to be met by leveraging commercial development of land and airspace in and around the stations (PIB press note dated 22-7-2016).

Having examined the scope of activities of railways and the premises of railway stations we are of the opinion that the activities carried out by the appellant relating to mechanical cleaning of station, rail wagon, railway office is covered by the taxable entry - 'cleaning activity'. It may not be out of place to mention here that in respect of tax entry 'Commercial or Industrial Construction service', services provided to railways are specifically excluded though the tax entry is with reference to commercial industrial construction service.

9. Regarding tax liability on cleaning activities undertaken by the appellant in the premises of ordnance factory, we note that the definition covers industrial building and premises thereof. Ordnance factory premises are covered by industrial building. Even otherwise clause (ii) of the definition clearly mentions factory as one of the premises covered for tax liability. The factory in the present case is not in relation to agriculture, horticulture, animal husbandry or for dairying. As such in the absence of any exclusion from the statutory definition, we find the appellants are liable to service tax on this account."

4.7 This decision has been followed by Ahmedabad Bench in case of Prabhakar Enterprises [(2024) 21 Centax 546 (Tri.-Ahmd)] observing as follows:

***"7.** In all these cases the Tribunal has held that service tax is payable in respect of cleaning services provided to railways. In view of above, we do not find any merit in the order of the Commissioner dropping the demand in respect of cleaning services provided to railways and the order to that extent is set aside and appeal of Revenue to that extent is allowed."*

4.8 In case of Dynamic Enterprises [2019 (22) G.S.T.L. 230 (Tri. - Del.)] Delhi Bench observed as follows:

4. We discuss the service tax demand on various heads below :-

First we look the demand of service tax made in regard to Mechanised washing and cleaning of mail/express and passenger trains etc. Ld. Advocate submitted that the above services are not liable to service tax under the category of cleaning services as defined under Section 65(105)(zzzd) read with Section 65(24b) of the Finance Act, 1994 in view of the decision of the Tribunal in the case of M/s. R.K Refreshment and Enterprises Pvt. Ltd. and Another decided by the Tribunal vide Final Order Nos. 50298-50299/2018, dated 22-1-2018 = 2018 (14) G.S.T.L. 281 (Tribunal). Opposing the above condition, Ld. AR submits that the activity involved not only covers the cleaning of railway wagon but also cleaning of various Railway premises along with the railway track. He submits that the Railway have been held as covered under the category of 'Commercial' and the cleaning of railway premises have been held to be liable to payment of service tax by the Tribunal in the case of Mukesh Kalway v. CCE, Bhopal - 2017 (3) G.S.T.L. 183 (Tri.-Del.).

We have considered the submissions made by both the sides in respect of mechanised washing and cleaning of mail/express, passenger trains etc. In the decision of the Tribunal in the case of M/s. R.K. Refreshment and Enterprises Pvt. Ltd. and Another the view taken is that the Tribunal observed that Railway coaches are in the nature of rolling stock of railways and cannot be covered within the definition of cleaning services - either as objects or premises of commercial or industrial building. We find that in the decision of Mukesh Kalway (supra) the Tribunal has discussed the taxability of cleaning activity of railway premises. After perusing both the decisions, we are of the view that service tax levy of cleaning service cannot be levied on cleaning of railway wagons and coaches, as has been held by the Tribunal in the case of M/s. R.K. Refreshment and Enterprises Pvt. Ltd. and Another. However, in respect of railway buildings, premises, the *same will be covered under the category of cleaning of commercial or industrial buildings and premises thereof and hence liable to payment of service tax under the Cleaning Service. Since the adjudicating authority has clubbed both the categories and raised demand of service tax amounting to Rs. 72,51,533/-: under Cleaning Service, we direct the original authority to bifurcate the demand and confirm the same only to the extent of the cleaning activity of railway premises.*

4.9 In view of the above decisions we do not find much merits in the challenge made by the appellant to the demand made in respect of cleaning services provided by them.

4.10 In respect of repair and maintenance services, we find that Hyderabad Bench has in case of KVR Rail Infra Projects Pvt. Ltd [2019 (27) G.S.T.L. 549 (Tri. - Hyd.)] observed as follows:

16. *The arguments put forth by the appellant with regard to Consulting Engineer Service and Maintenance or Repair Service is that these services are in relation to construction of railway sidings and therefore the appellants were under the impression that these services are not subject to levy of service tax. On perusal of the definition of Consulting Engineer Service and Maintenance or Repair Service, we do not find any exclusion for services rendered in respect of railways. The confirmation of demand under these two heads are therefore legal and proper. We uphold the demands under these two services.*

4.11 In case of Central Railway [2013 (31) S.T.R. 158 (Tri. - Mumbai)] Bombay Bench observed as follows:

5.1 *Under Section 65(64) as per*

"Management, maintenance or repair" means any service provided by :

(i) any person under a contract or an agreement; or

(ii) a manufacturer or any person authorised by him, in relation to, -

(a) management of properties, whether immovable or not;

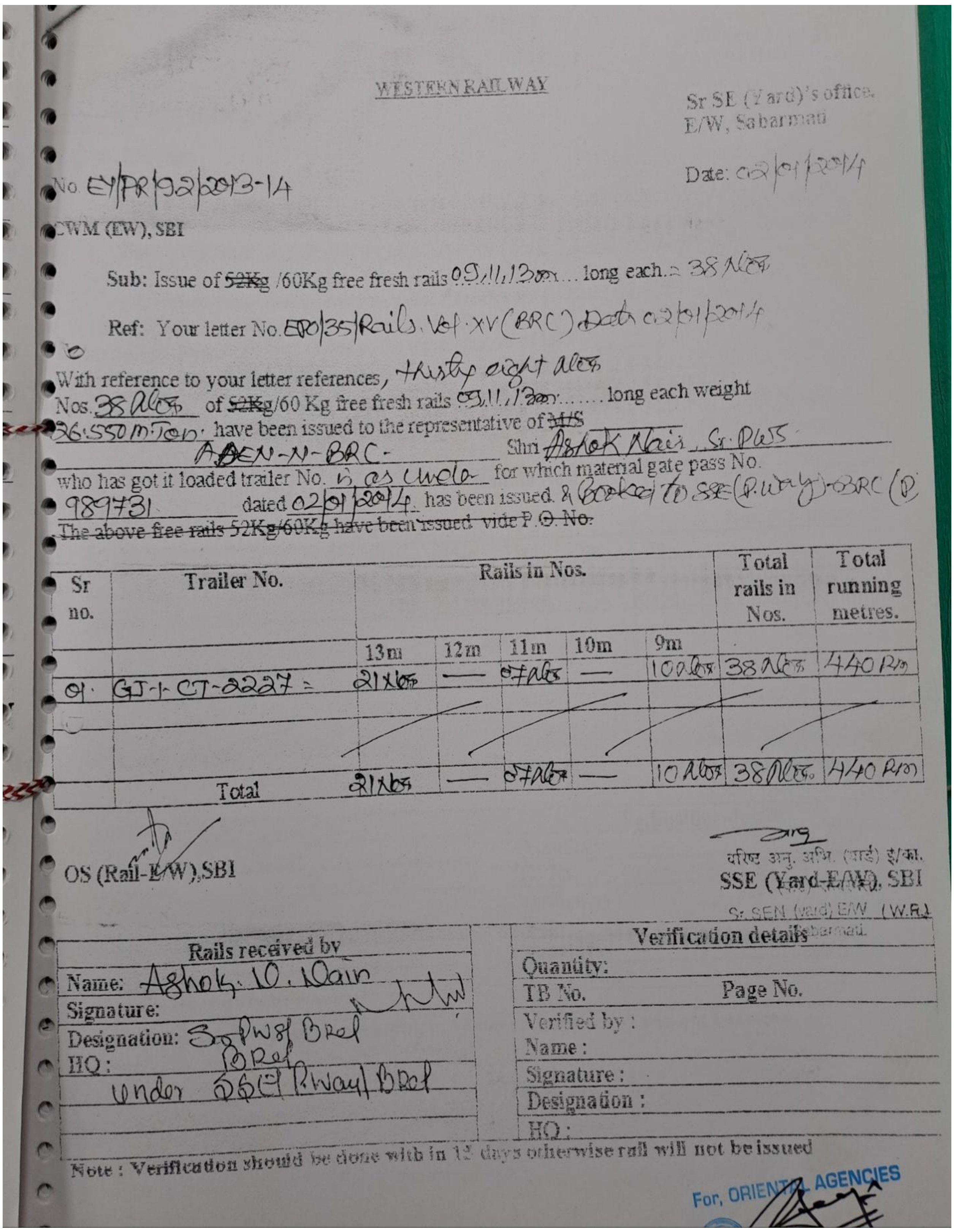
(b) maintenance of repair of properties, whether immovable or not; or

(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle".

5.2 *As per Section 65(105)(zzg) taxable service rendered to any person by any person in relation to management, maintenance or repair is leviable to Service Tax. Prior to 1-5-2006, the taxable service was defined as any service rendered to a customer by any person in relation to management, maintenance or repair. In the instant case, the appellant has entered into contracts with various private Railway sidings owners for the maintenance and repairs of Railway sidings and therefore, the activity undertaken by the appellant would come within the purview of management, maintenance or repair service and hence, they are rightly liable to pay Service Tax. …..*

4.12 Appellant has in their submissions also not disputed their liability to pay service tax in respect of these services but have contested these demand only by referring to their VCES Declaration and as the show cause notice which has been received beyond one year from the date of declaration as time barred in terms of Section 111 of the Finance Act, 2013. In any case we have rejected such argument in para 4.4 supra.

4.13 Now we are concerned with demand made under the category of cargo handling services. Appellant contest this demand stating that the services provided by them sought to be taxable under this category are Good Transport Agency Services in respect of which the tax liability will be on recipient of service under reverse charge mechanism. Before we go into detailed examination of the claim made it is essential to note that from the definition of Good Transport Agent services it is evident that this category applies only to those service providers who issue a consignment note covering the transportation of goods. We also observe from the annexure to the show cause notice that this demand is made not the activity of transportation of goods but the activities under taken by the appellant as 'loading/ unloading carting etc. Appellants have along with the appeal memo provided certain documents on basis of which they have claimed that these services are Good Transport Services. On sample basis we reproduce some of these documents below:



WESTERN RAILWAY

Sr SE (Yard)'s office.
E/W, Sabarmati

No. EY/PR/92/2013-14

Date: 02/01/2014

CWM (EW), SBI

Sub: Issue of ~~52Kg~~ /60Kg free fresh rails 09,11,13m... long each. = 38 Nos

Ref: Your letter No. EPO/35/Rails. Vol. XV (BRC) Date 02/01/2014

With reference to your letter references, thirty eight Nos
Nos. 38 Nos of ~~52Kg~~/60 Kg free fresh rails 09,11,13m...... long each weight 36.550 M.Ton. have been issued to the representative of ~~M/S~~ ADEN-N-BRC- Shri Ashok Nair, Sr. PWS
who has got it loaded trailer No. is as under for which material gate pass No. 989731 dated 02/01/2014 has been issued. & Booked to SSE (P.Way)-BRC (P.
~~The above free rails 52Kg/60Kg have been issued vide P.O. No.~~

Sr no.	Trailer No.	Rails in Nos.					Total rails in Nos.	Total running metres.
		13m	12m	11m	10m	9m		
01.	GJ-1-CT-2227 =	21 Nos	—	07 Nos	—	10 Nos	38 Nos	440 Rm
	Total	21 Nos	—	07 Nos	—	10 Nos	38 Nos.	440 Rm

OS (Rail-E/W), SBI

वरिष्ठ अनु. अभि. (यार्ड) इ/का.
SSE (Yard-E/W), SBI
Sr. SEN (Yard) E/W (W.R.) Sabarmati

Rails received by	Verification details
Name: Ashok. N. Nair	Quantity:
Signature:	TB No. Page No.
Designation: Sr PWS BRC	Verified by :
HQ: BRC	Name :
under SSE/P.Way/BRC	Signature :
	Designation :
	HQ :

Note : Verification should be done with in 12 days otherwise rail will not be issued

For, ORIENTAL AGENCIES

SBI. To (Su-Nagar Hapa- switch) (162)

पश्चिम रेलवे
Western Railway

Office of
SSE (P.Way) Depot SBI
Dated - 10/12 2013

No.SS/PWD.12.01...

GATE PASS

To,
Whom so ever it may concerned.

Subject – Transportation of P.Way material from SBI Depot under SSE (P.Way) Depot SBI To SUNR, THAN, RJT, HXP, VNB2 under SSE (P.Way) Depot RJT

Reference- DRM(Engg / Store) ADI Letter No-S/570/6/P.Way Material .Dated ... —
RO No 421/13/14..... Dated 12.8.2013
881/314 29.11.2013

SUNR THAN RJT HXP VNBL

Certify that Truck No. .... GJ01CT 2227 is loaded with following materials. Quantity mentioned against each item as under-

Sr No	Description of Material	Quantity	Unit	STATION
1	Derailing Switch 52 kg. T5836	04 (2L+2R) door	Set	SUNR
2	Derailing (witch 52 kg T5836	04 (3R+1L) door	Set	THAN
3	Derailing (witch 52kg T5836	04 (2L+2R) door	Set	RJT
4	Derailing (witch 52kg T5836	04 (2L+2R) door	Set	HXP
5	Derailing switch 52kg T5836	02 (1L+1R) door	Set.	VNB2
6				
7				
8				
9				
10				

18 SETS (36 door Rail + 18 Tongue Rail)

This material is transported from SBI Depot under SSE (P.Way)Depot SBI to SUNR, THAN, RJT HXP VNB2..... on MTO under SSE (P.Way) Depot RJT Vide Demand Slip No. (629189, 629190, 629191, 629192, 629193) Dated. 10.12.2013.
The name of Driver is ....SANKAR SINGH L. CHITAN.......
His driving license No. is GJ01 20080139348. issued by RTO Ahmedabad.... and valid upto 04.11.2015. The name of supervisor is Govind Bhai.... under SSE Sr DEN. HXP (P.Way) HXP......from RJT.....Division.

Signature of Driver - संग्रामसिंह

Signature of supervisor

Signature of Representative of RPF

वरिष्ठ सेक्शन इंजीनियर (रे.प.) डिपो
Senior Section Engineer (P.Way) Depot
W. Rly. Sabarmati
SSE (P.Way) Depot SBI

C/- ADEN(Track) ADI for kind information

For, ORIENTAL AGENCIES
PROPRIETOR

Subject to PARDI Jurisdiction
II Shree Balvi Mataji II

Mob : 9426778778

Shree Madhav Road Carrier

FLEET OWNERS & TRANSPORT CONTRACTORS
RAJ COMPLEX, OPP. DELHI DARBAR HOTEL, N.H. No. 8,
G.I.D.C., VAPI - 396 195.

PAN No. AADPQ5310N
DATE : 20/5/18

DAILY SERVICE : GUJARAT • MAHARASHTRA • KARNATAKA • ADHRA PRADESH & ALL OVER INDIA • ONLY FOR TRUCK AND TEMPO

NOTICE
The consignment covered by this set of special Lorry receipt From shall be stored at the distination under the control of the Transport Operator & shall be delivered to or to the order of the consignee Bank whose name is mentioned in the Lorry Receipt It will under no circumstance be delivered to any one without the written authority from the Consignee Bank or its order endorsed on the Consignee Copy or on separate letter of Authority.

INSURANCE
The customer has stated that :
He has not insured the consignment OR
He has insured the consignment
Company
Policy No. O.R. Date
Amount Risk

CAUTION
This Consignment will not be detained delivered re-routed or re-booked without Consignee Bank's written permission will be delivered at the destination.

MRC / No. 2316

Consignor's Name & Address M/S. Patil Rail Infrastructure (P) Ltd. Udvada.

Lorry No. GJ. 02Z. 5548

Consignee Name & Address : M/S. Section Engineer (P.way) B.R.C Division.

From : Udvada.

To : Baroda.

NO. OF PACKAGES	DESCRIPTION (SAID TO CONTAIN)	WEIGHT	RATE	FREIGHT TO PAY		FREIGHT TO BE BILLED	
40 Nos	PSC Line 8.5 710W Sleeper	FTL	FIX	7,620 =		To Pay	
	Kms. 074	St. Charges		25	00	25	00
	Date 20/5/18	Handling Ch.					
	OWNER'S RISK	Risk Charges					
		A. O. C.				To	
		TOTAL		7,620 =		pay	

ENDORSEMENT
It is interest to use the CONSIGNEE COPY of this set for the purpose of borrowing from the Consignee Bank

Service Tax Payable by
Consignor
Consignee
Transporter

not responsible for Leakage, Breakage & Damage etc.

Delivery at : Door

DRIVER COPY

For Shree Madhav Road Carrier
Booking Officer

(166)

For, ORIENTAL AGENCIES
PROPRIETOR

No.D/6/RJT/14-15 Date. 04/02/2015

From : SSE/PW/D/RJT

To : SSE/PW/D/DRL

Sub : Supply of P.way material/H.S.Diesel oil.

Ref : Letter No. S/S70/Depot/DRL/02 Date 20/12/

This is to certify that following materials are Railway materials which are issued from SSE/PW/D/RJT to SSE/PW/D/DRL for Railway work on MT... Material is loaded in Truck/Tractor/Trailer/Auto Rickshaw No. GJ 27V 82 S...

Description of material	Qty
1) Dressling Swich 52 Kg	10 Sets
2)	
3)	
4)	

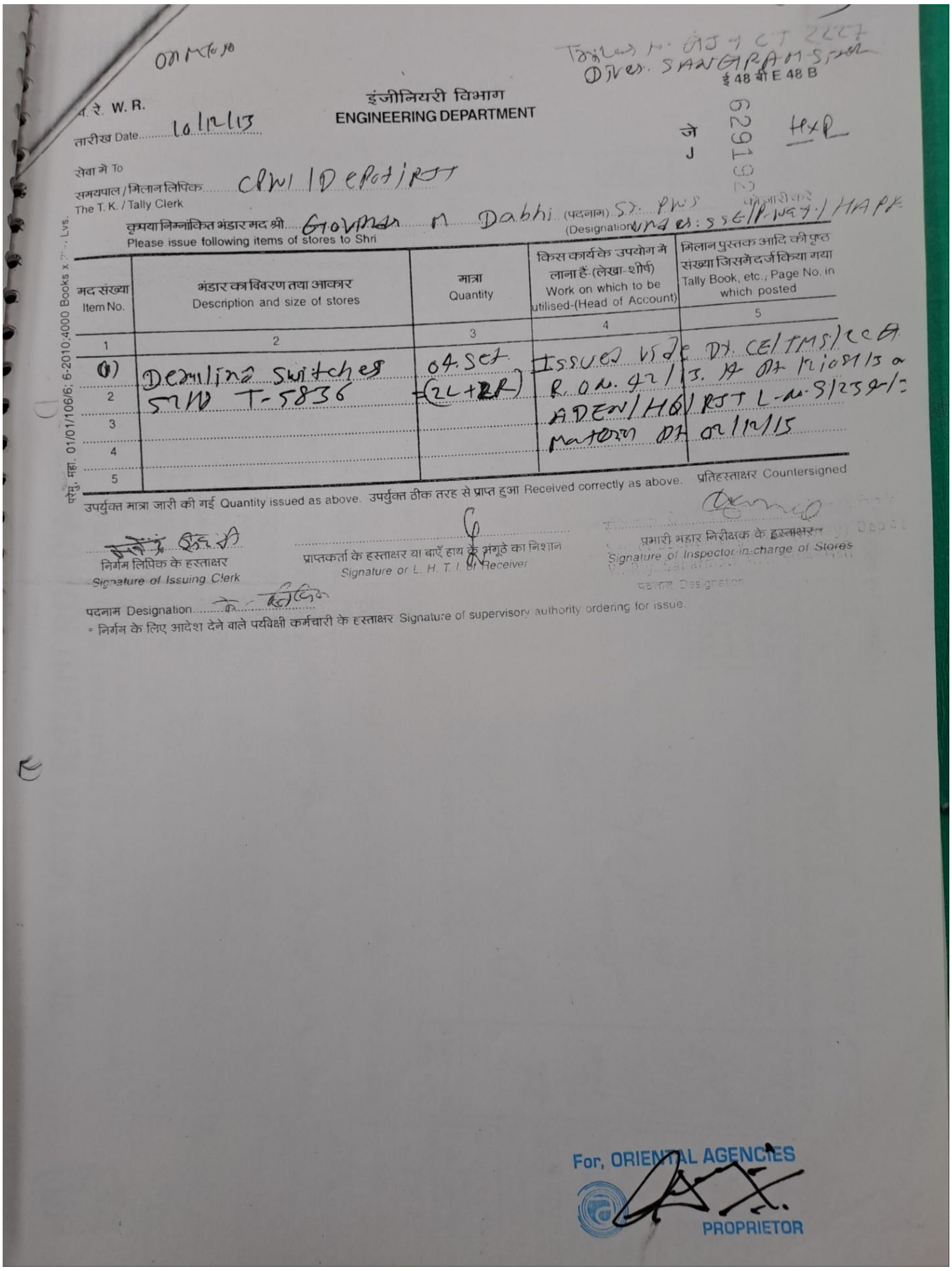
This is for your information & necessary action please.

Copy to IPF (POST) RJT

Sign of receiver

For, ORIENTAL AGENCIES
PROPRIETOR

SSE/PW/D/RJT
Sr. S. Engg. (D) P.W.
W. R. Rajkot



प. रे. W. R.

इंजीनियरी विभाग
ENGINEERING DEPARTMENT

ई 48 बी E 48 B

जे J 629193

तारीख Date 10/12/15

सेवा में To
समयपाल / मिलान लिपिक
The T. K. / Tally Clerk

कृपया निम्नांकित भंडार मद श्री Govindbhai M Dabhi (पदनाम) (Designation)
Please issue following items of stores to Shri

मद संख्या Item No.	भंडार का विवरण तथा आकार Description and size of stores	मात्रा Quantity	किस कार्य के उपयोग में लाना है-(लेखा-शीर्ष) Work on which to be utilised-(Head of Account)	मिलान पुस्तक आदि की पृष्ठ संख्या जिसमें दर्ज किया गया Tally Book, etc., Page No. in which posted
1	2	3	4	5
(1)	Derailing Switches	04 Set		
2	STMD T-5836	(2L+2R)		
3				
4				
5				

उपर्युक्त मात्रा जारी की गई Quantity issued as above. उपर्युक्त ठीक तरह से प्राप्त हुआ Received correctly as above. प्रतिहस्ताक्षर Countersigned

निर्गम लिपिक के हस्ताक्षर
Signature of Issuing Clerk

प्राप्तकर्ता के हस्ताक्षर या बाएँ हाथ के अंगूठे का निशान
Signature or L. H. T. I. of Receiver

प्रभारी भंडार निरीक्षक के हस्ताक्षर
Signature of Inspector-in-charge of Stores

पदनाम Designation

पदनाम Designation
* निर्गम के लिए आदेश देने वाले पर्यवेक्षी कर्मचारी के हस्ताक्षर Signature of supervisory authority ordering for issue.

For, ORIENTAL AGENCIES
PROPRIETOR

From perusal of the above documents we observe that none of these documents have been issued by the appellant in course of provision of the services of carting, unloading and loading of cargo provided to Western Railways. In fact most the documents are issued by railways for issue of material. The G R's are issued for the transportation of the goods by the concerned transport service provider indicating clearly that the service tax is payable by the consignee. The G R also have not been issued by the appellant and the claim of appellant that the services provided by them are GTA Services cannot be substantiated on the strength of these documents which in any case have not been issued by them. The reliance placed by the appellant on the decision in case of Shreenathji Casting [Final Order No 11469-11470/2024 dated 01.07.2024 in Service tax Appeal No 11077 of 2015 and 10567 of 2019] is totally misplaced for the reason that bench in para 4, has specifically examined and reproduced the actual documents which were issued by ShreeNathji Carting for transportation of the goods. As these documents were treated as consignment notes, the bench concluded relying on certain case laws that the services provided by Shreenathji Carting were GTA Services. As we do not find any such document being placed on record at any time we do not find any merits in the submissions made by the appellant and hold that the services provided by the appellant were appropriately classifiable under the category of cargo handling services as held by the impugned order.

4.14 We do not find any details of services such as work contract services etc., being discussed in the impugned order. Demand of about Rs.1,89,604/- has been confirmed against certain services by grouping them under the category of "Other Services" we do not find any merits in the approach of revenue. No demand could have been made and confirmed against the appellant without specifying the services against which the demand is made. We are inclined to set aside this demand.

4.15 Errors in computation of the service tax demanded is visibly discernable. Jurisdictional authorities have vide letter dated 04.09.2025 given the details of payment of Service Tax under VCES scheme as follows:

S No	Challan No	Date	Amount' Rs
1	00616	30.12.2013	35759
2	00528	30.12.2013	59808
3	01239	30.12.2013	1351825

4	13943	06.12.2014	66145
5	14130	06.12.2014	71604
6	13370	08.12.2014	769486
7	01678	08.12.2014	616781
	Total		29,71,408

Against the above said amount paid by the appellant the impugned order allows apportionment of Rs.18,00,393/-. The quantification of the demand should be made after taking into account all the amounts paid by the appellant, against their liability to pay service tax. For quantification of the demand in proper manner the matter needs to be remanded back to the original authority.

4.16 We observe that penalty has been imposed upon the appellant under Section 78 the said penalty is mandatorily to be imposed in view of the Hon'ble Supreme Court decision in case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)]. However by the amendment made by Finance Act, 2011 in case of recorded transactions the penalty could not have been more than the 50% of the amount of service tax short paid. Thus, the penalty under this section, in respect of transactions which were undertaken after this provision became effective the penalty needs to be re-quantified as equivalent to 50% of the service demanded. This aspect needs to be looked into in the remand proceedings.

4.17 We also observe that penalty of Rs 10,000/- has been impose upon the appellant for their failure to get their ST-2 amended to incorporate "work contract services" and "design services" therein. We do not find any discussion in respect of these services in the impugned order. As appellant was duly registered with the department we do not find any merits in this penalty imposed upon the appellant.

4.18 Thus we are inclined to modify the impugned order as indicated in paras 4.14, 4.15, 4.16 & 4.17 and remand the matter to Original Authority for re-quantification of demand and the penalty imposed under Section 78.

5.1 Appeal is partly allowed and the matter remanded back to original authority de novo determination as indicated in para 4.18 above.

5.2 As the matter is in respect of demand for period 01.10.2009 to 30.09.2013, we direct the original authority to determine the matter in remand proceedings within three months of the receipt of this order.

(Order pronounced in open court on-10.07.2026)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

akp