

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Miscellaneous Application No.70084 of 2024

(On behalf of appellant)

IN

Service Tax Appeal No.70079 of 2016

(Arising out of Order-in-Original No.AGR-EXCUS-000-COM-003-2015-16
dated 31.07.2015 of the Commissioner Central Excise and Service Tax Agra)

M/s Deeksha Infratech Pvt. Ltd.,
(Suraksha Vihar Colony, Gwalior Road, Agra)
VERSUS

.....Appellant

Commissioner of Central Excise &

Service Tax, Agra

(Commissionerate, Agra)

....Respondent

APPEARANCE:

Shri S.B. Shukla, Advocate for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

MISCELLANEOUS ORDER NO.70175/2024 IN

FINAL ORDER NO.70313/2024

DATE OF HEARING : 21 February, 2024
DATE OF PRONOUNCEMENT : 05 June, 2024

SANJIV SRIVASTAVA:

This appeal is directed against order in original No.AGR-EXCUS-000-COM-003-2015-16 dated 31.07.2015 of the Commissioner Central Excise and Service Tax Agra. By the impugned order following has been held:

"ORDER

- 1. The declaration filed by the appellant under Section 106 of Service Tax Voluntary Compliance Encouragement Scheme, 2013 for an amount of 13,93,208/- (Rupees Thirteen Lakhs*

Ninety Three Thousand Two Hundred Eight only) as "Total Tax Dues" is rejected under the provisions of Section 111 of the Finance Act, 2013 (17 of 2013).

- 2. The amount (Gross) of 27,78,83,688/- (Rupees Twenty Seven Crores Seventy Eight Lakhs Eighty Three Thousand Six Hundred Eighty Eight only) received by the appellant during the Financial Years 2010-11 to 2013-14, in lieu of providing the 'Works Contract Services', is treated as the value of taxable services provided by the appellant and Service Tax amounting to 1,33,19,359/- (Rupees One Crore Thirty Three Lakhs Nineteen Thousand Three Hundred Fifty Nine only) [1,29,31,417/- of Service Tax + 2,58,628/- of Education Cess + 1,29,314/- of Secondary & Higher Education Cess] is confirmed against the appellant under the proviso to Section 73(1) of the Finance Act, 1994. The amount of Service Tax of 10,07,752/- [721000/- + 286752/-] (Rupees Ten Lakhs Seven Thousand Seven Hundred Fifty Two only) already deposited by the appellant is appropriated against service tax payable.*
- 3. The amount (Gross) of 2,41,95,869/- (Rupees Two Crores Forty One Lakh Ninety Five Thousand Eight Hundred Sixty Nine only) paid by the appellant in lieu of receiving the Works Contract services from individual/ Hindu undivided family/ proprietary firm/ partnership firms during the period from 01-07-2012 to 31.03.2014 is treated as the value of taxable services received under 'Works Contract Services' under Reverse Charge Mechanism and Service Tax at appropriate rates amounting to 6,04,251/- (Rupees Six Lakhs Four Thousand Two Hundred Fifty One only) [5,86,651/- of Service Tax + 11,733/- of Education + 5,867/- of Secondary & Higher Education Cess] is confirmed against the appellant under the provisions of Section 73(1) read with Section 68(2) of the Finance Act, 1994. The amount of 24,720/-] (Rupees Twenty Four Thousand Seven*

Hundred Twenty only) already deposited by the appellant against this Service Tax liability, the same is appropriated.

- 4. The amount (Gross) of 6,81,291/- (Rupees Six Lakhs Eighty One Thousand Two Hundred Eighty One only) paid by the appellant towards Freight & Cartage during the Financial Years 2010-11 to 2013-14 is treated as value of taxable services received by them under the category of 'Goods Transport Agency' and Service Tax amounting to 20,220/- (Rupees Twenty Thousand Two Hundred Twenty only) [19,636/- of Service Tax + 393/- of Education Cess + 196/- of Secondary & Higher Education Cess] is confirmed against the appellant under the provisions of Section 73(1) read with Section 68(2) of the Finance Act, 1994.*
- 5. Interest at the appropriate rate for the relevant period till the payment of the Service Tax is demanded under the provisions of Section 75 of the Finance Act, 1994.*
- 6. I also impose the penalty of 1,39,43,830.00 upon the appellant under the provisions of Section 78 of the Finance Act, 1994.*
- 7. I also impose a penalty of 10,000.00 upon the appellant under Section 77(1)(b) of the Finance Act, 1994.*
- 8. I do not impose any penalty under Section 77(1)(c) of the Finance Act, 1994.*
- 9. I also impose a penalty of 10,000.00 upon the appellant under Section 77(2) of the Finance Act, 1994."*

2.1 Appellant is engaged in providing the taxable 'Works Contract Services' and are registered with the department for providing taxable services under that category. They vide letter dated 23-12-2013 intimated that they had inadvertently failed to deposit Service Tax for the period from October 2010 to December 2012 by the due date and that they are now paying the same under 'Service Tax Voluntary Compliance Encouragement Scheme 2013' (here-in-after referred to as VCES).

2.2 The appellant enclosed the prescribed Form VCES-1 along with the Calculation Sheet of Tax Dues. An amount of 13,93,208/- (Rupees Thirteen Lakhs Ninety Three Thousand Two Hundred Eight only) was declared as Total Tax Dues" by the appellant. Thereafter vide their letter dated 16-01-2014, they informed that they have discharged the liability of 7,21,000/- vide Challan CIN NO 035000231 12201300412 dated 31-12-2013 under Section 107(3) of the VCES, which is more than 50% of their tax dues. The appellant has not yet discharged their remaining tax dues

2.3 During the month of February 2014, the Central Excise & Service Tax Division, Agra received financial data from third party sources with the directions to unearth the Service Tax evasion by verifying/ matching the data such received.

2.4 Thus, revenue was of view that the declaration filed by the appellant in Form VCES-1 was substantially false and accordingly the same is liable to be rejected in terms of Section 111 (1) of the VCES and Service Tax at applicable rates is liable to be demanded from the appellant.

2.5 A Show Cause Notice dated 22.12.2014 was issued to the appellant asking them to show cause as to why:

- (i) *The Declaration under the VCES for an amount of 13,93,208/-(Rupees Thirteen Lakhs Ninety Three Thousand Two Hundred Eight only) as "Total Tax Dues" should not be treated as substantially false declaration and why the same should not to be rejected in terms of Section 111 of the VCES*
- (ii) *An amount (Gross) of 27,78,83,688/- (Rupees Twenty Seven Crores Seventy Eight Lakhs Eighty Three Thousand Six Hundred Eighty Eight only)received by the appellant during the Financial Years 2010-11, 2011-12 2012-13 and 2013-14, in lieu of providing the Works Contract Services' should not be treated as the value of taxable services provided by them and accordingly why Service Tax*

at appropriate rates amounting to 1.33.19,359/- (Rupees One Crore Thirty Three Lakhs Nineteen Thousand Three Hundred Fifty Nine only) [1,29,31,417/-of Service Tax 2,58,628/- of Education Cess + 1,29,314/-of Secondary & Higher Education Cess] should not be demanded and recovered from them under the proviso to Section 73(1) of the Act. Since an amount of 10,07.752/- [7,21,000/- (Deposited under VCES) + 2,86,752/- (Service Tax paid for the period Jan.2013 to March, 2013)] (Rupees Ten Lakhs Seven Thousand Seven Hundred Fifty Two only) has already been deposited by the appellant against this Service Tax liability, why the same should not be appropriated.

- (iii) *An amount (Gross) of 2,41,95,869/- (Rupees Two Crores Forty One Lakh Ninety Five Thousand Eight Hundred Sixty Nine only) paid by them in lieu of receiving the Works Contract services from individual/Hindu undivided family/proprietary firm/partnership firms during the period from 01-07-2012 to 31.03.2014 should not be treated as the value of taxable services received by them under the category of 'Works Contract Services' falling under Reverse Charge Mechanism and accordingly why Service Tax at appropriate rates amounting to 6,04,251/- (Rupees Six Lakhs Four Thousand Two Hundred Fifty One only) [5,86,651/- of Service Tax + 11,733/ of Education + 5,867/- of Secondary & Higher Education Cess] should not be demanded and recovered from them under the provisions of Section 73(1) of the Act read with Section 68(2) of the Act *ibid*. Since an amount of 24,720/-] (Rupees Twenty Four Thousand Seven Hundred Twenty only)has already been deposited by the appellant against this Service Tax liability, why the same should not be appropriated*

- (iv) *An amount (Gross) of 6,81,291- (Rupees Six Lakhs Eighty One Thousand Two Hundred Ninety One only) paid by them towards Freight & Cartage during the Financial Years 2010-11, 2011-12, 2012-13 and 2013- 14 should not be treated as the differential value of taxable services received by them under the category of 'Goods Transport Agency' falling under Reverse Charge Mechanism and accordingly why Service Tax at appropriate rates amounting to 20,220/- (Rupees Twenty Thousand Two Hundred Twenty only) [19,631/- of Service Tax + 393/- of Education Cess + 196/- of Secondary & Higher Education Cess) should not be demanded and recovered from them under the provisions of Section 73(1) of the Act read with Section 68(2) of the Act* *ibid*
- (v) *Interest at the appropriate rate for the relevant period on the amount of 1,36,12,138/- [(1,33,19,359/- + 6.04,251/- + 20,220/- 1,39,43,830/-(-) 3,31,692/- (Rs2,86,752/- + 24,720/- 20,220/-)] till the payment of the service tax should not be demanded and recovered from them under the provisions of Section 75 of the Act.*
- (vi) *Penalty should not be imposed upon them for the liability of Service Tax of 1,36,12,138/- under Section 78 of the Act* *ibid* *for suppression of facts and the value of taxable service, willful mis-statements and for contravention of various provisions of the Act and the Rules made there under with intent to evade payment of Service Tax.*
- (vii) *Penalty should not be imposed upon them under Section 77(1) (b) of the Act* *ibid* *for contravention of various provisions of the Act and the Rules made there under as discussed supra*
- (viii) *Penalty should not be imposed upon them under Section 77(1) (c) of the Act* *ibid* *for contravention of*

various provisions of the Act and the Rules made there under as discussed supra

- (ix) *Penalty should not be imposed upon them under Section 77(1) (d) of the Act ibid for contravention of various provisions of the Act and the Rules made there under as discussed supra.*
- (x) *Penalty should not be imposed upon them under Section 77(1) (e) of the Act ibid for contravention of various provisions of the Act and the Rules made there under as discussed supra.*
- (xi) *Penalty should not be imposed upon them under Section 77(2) of the Act for contravention of various provisions of the Act ibid and the Rules made there under as discussed supra.*

2.6 The show cause notice has been adjudicated as per the impugned order referred in para 1 above.

2.7 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri S B Shukla Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Though following grounds have been stated in the appeal filed by the appellant

- Though appellant have deposited the entire amount of service tax interest under section 75 should not have been confirmed.
- Show cause notice under Section 73 (1) could have been issued within one year from the relevant date and as per proviso to the said section within five years from the relevant date in case of fraud collusion or willful mis-statement or suppression of facts or contravention of any provisions of the act or rules with intent to evade payment of service tax.
- Date of show cause notice is 23.12.2014 issued demanding service tax for the period 01.04.200 to 31.03.2010. As

there was no suppression etc., show cause could not have been issued invoking extended period.

- Third party details could not have been the basis for show cause notice.
- Without any cogent reasons it has been held that both the firms are run by same persons in the different name and style and in connivance with each other.
- Circular No 108/02/2009-ST is vague and inconsistent.
- Adjudicating authority has confused himself while understanding the "revenue from operations' and value of taxable services".
- Work contract services and construction of residential complex services are different services and adjudicating authority has intermingled both the services while making this demand.
- Penalty under section 78 is imposable only when service tax has not been paid for the reason fraud collusion or willful mis-statement or suppression of facts or contravention of any provisions of the act or rules with intent to evade payment of service tax. Reliance is placed on the decisions in case of
 - Hindustan Steel Ltd. [AIR 1970 SC 253];
 - Kellner Pharmaceuticals Ltd., [1985 (20) ELT 80]
- Issue involved in the case is interpretation of complex legal provisions there imposition of penalty not warranted as has been held in case of,-
 - Ispat Industries Ltd. [2006 (199) ELT 509 (T-Mum)]
 - Secretary Townhall Committee [2007 (8) STR 170 (T-Bang)]
 - Sikar Ex serviceman Welfare Coop Society Ltd. [2006 (4) STR 213 (T-Del)]
 - Haldia Petrochemicals Ltd. [2006 (197) ELT 97 (T-Del)]
 - Siyaram Silk Mills Ltd. [2006 (195) ELT 284 (T-Mum)]
 - Fibre Foil Ltd. [2005 (190) ELT 352 (T-Mum)]

- ITEL Industries Pvt Ltd. [2004 (163) ELT 219 (T-Bang)]
- Hon'ble Allahabad High Court has in case of H M Singh [2014 (9) TMI 218 Allahabad High Court] has held that penalty should not be levied when the tax has been paid prior to adjudication.
- No suppression as the case is based on the records of the appellant

Arguing for the appellant learned Counsel did not press any of the grounds so stated and submitted that:-

- Here is no provision under the VCES scheme whereby the VCES declaration filed by the appellant in form VCES-I could have been rejected.

3.3 Arguing for the revenue learned authorized representative reiterates the findings recorded in the impugned order.

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

4.2 Impugned order records the findings as follows:

"The main issues to be decided in this case are-

- 1. Whether the declaration under the VCES for an amount of 13,93,208/- as "Total Tax Dues" is to be treated as substantially false declaration and the same is to be rejected under the provisions of Section 111 of the Finance Act, 2013.*
- 2. Whether the amount (Gross) of 27,78,83,688/- received by the appellant during the Financial Years 2010-11, 2011-12, 2012-13 and 2013-14, in lieu of providing the 'Works Contract Services', is to be treated as the value of taxable services and Service Tax at appropriate rates amounting to 1,33,19,359/- is to be demanded and recovered under the proviso to Section 73(1) of the Finance Act, 1994 and amount of 10,07,752/- already deposited is to be appropriated.*

3. *Whether the amount (Gross) of 2,41,95,869/- in lieu of receiving the Works Contract services during the period from 01-07-2012.to 31.03.2014 is to be treated as the value of taxable services under Reverse Charge Mechanism and Service Tax at appropriate rates amounting to Rs. 6,04,25 is to be demanded and recovered under the provisions of Section 73 (1) of Finance Act, 1994 read Section 68(2) of the Act ibid and the amount of Rs 24,720/- already deposited by the appellant against service tax liability is to be appropriated.*
4. *Whether the amount (Gross) of 6,81,291/- paid towards Freight & Cartage during the Financial Years 2010-11, 2011-12, 2012-13 and 2013-14 is to be treated as value of taxable services received under the category of "Goods Transport Agency" under reverse charge mechanism and Service tax at appropriate rate amounting to Rs 20,220/-is to be demanded and recovered under the provisions of Section 73(1) of the Act read with Section 68(2) of the Act ibid.*
5. *Whether the interest at appropriate rate for the relevant period till the payment of the Service Tax be demanded and recovered under the provisions of Section 75 of the Act.*
6. *Whether penalty is to be imposed under the provisions of Section 78 of the Finance Act, 1994 for suppression of facts and the value of taxable service, wilful mis-statements and for contravention of various provisions of the Act and the Rules made there under with intent to evade payment of Service Tax.*
7. *Whether penalty is to be imposed under Section 77(1)(b) of the Act ibid for failure to maintain or retain books of account.*
8. *Whether penalty is to be imposed under Section 77(1)(c) of the Act ibid for failure to furnish information called for by the office*

9. Whether penalty is to be imposed under Section 77(2) of the Act ibid for failure to furnish ST-3 Returns.

On the first issue, it is to be decided as to whether the declaration filed by the appellant merit rejection under the provisions of Section 111 of the Finance Act, 2013; whether true and correct disclosure was made; whether the material facts was suppressed and whether the same was substantially false. It is on record that the appellant filed a disclosure under Service Tax Voluntary Compliance & Encouragement Scheme, 2013 as enforced vide Finance Act, 2013 vide application dated 23.12.2013 disclosing therein service tax amounting to 13,93,208.00 for the period from October, 2010 to December, 2012 on the services "Construction of Residential Complex` and Work Contract services. On this point the appellant in the defence filed vide letter dated 12.05.2015 submitted that the amount received during the period October 2010 to December 2012 from the service recipient was escaped from payment of service tax and not paid up to on 01-03-2013 which required declaring in the VCES Scheme under VCES-1. Service Tax liability for the period from October 2010 to March 2012 01-03-2008 as per the rate composition of service scheme tax by is 4% virtue of of Basic notification Service Tax no. 1S . as 07/2008-ST below:- dated 01-03-2008 w.e.f.

S. NO	Date of Payment	Amount Received from Service Recipient up to 30-06-2012	Basic Service Tax @ 4% vide notification no. 07/2008-ST dated 01-03-2008 w.e.f. 01-03-2008	Edu Cess @ 2%	S&H Edu Cess @1%	Total Service Tax
1	October-10	1,575,306.00	63,012.00	1,260.00	168.00	85.00
2	November-10	210,000.00	8,400.00	1,208.00	4,000.00	6,721.00
3	December-10	106,000.00	4,240.00	630.00	84.00	42.00
4	February-11	1,510,000.00	60,400.00	604.00	2,000.00	3,360.00
5	November-11	5,000,000.00	200,000.00	64,902.00	8,652.00	4,367.00
		8,401,306.00	336,052.00	62,212.00	206,000.00	346,133.00

Service Tax liability for the period from April 2012 to June 2012 as per as per composition scheme by virtue of notification no, : 10/2012-ST dated 17-03-2012 w.e.f. 01-04-2012 the rate of service tax is 4.80% of Basic S ervice Tax is as below:-

S. NO	Date of Payment	Amount Received from Service Recipient up to 30-06-2012	Basic Service Tax @ 4.8% vide notification no. 10/2012-ST dated 17-03-2012 w.e.f. 01-04-2012	Edu Cess @ 2%	S&H Edu Cess @1%	Total Service Tax
	April-12	1,500,000.00	72,000.00	1440.00	720.00	74,160.00
	May-12	1,000,000.00	48,000.00	960	480.00	49,440.00
	June-12	1,500,000.00	72,000.00	1440.00	720.00	74,160.00
		4,000,000.00	1,92,000.00	3840.00	1,920.00	197,760.00

Service Tax liability for the period from July 2012 to December 2012 as per compounded scheme the service tax is calculated @ 40% amount of works contract with the appropriate rate of service tax i.e. 12.36% by virtue of notification no. : 24/2012-ST dated 06-06-2012 w.e.f. 01-07-2012, is as below:-

S. N O	Date of Payment	Amount Received from Service Recipient after 01.07.2012	Taxable value of amount received from service recipient @ 40%	Basic Service Tax @ 12%	Edu Cess @ 2%	S&H Edu Cess @1%	Total Service Tax
1	July-12	2,278,694.00	911,478.00	109,377.00	2,188.00	1,094.00	112,659.00
2	August-12	2,000,000.00	800,000.00	96,000.00	1,920.00	960.00	98,880.00
3	September -12	3,900,000.00	1,560,000.00	187,200.00	3,744.00	1872.00	192,816.00
4	December -12	9,000,000.00	3,600,000.00	432,000.00	8,640.00	4,320.00	444,960.00
		17,178,694.00	6,871,478.00	824,577.00	16,492.00	8,246.00	849,315.00

Through above calculations the total service tax liability comes to 13,93,208.00 for the period from October 2010 to December'2012 and accordingly the noticee had discharged said liability through Internet Banking System in two equal installment, first installment amounting to 7,21,000.00 vide challan no.: 00412 dated 31-12-2013 BSR Code: 0350002 and second installment amounting to 7,32,708.00 vide challan No. 50199 dt. 29.12.2013 including interest thereon i.e. well within the time frame of the VCES SCHEME.

From perusal of the party's contention on this point, it is noticed that the party while submitting the detailed reasons justifying the correctness of the declaration, overlooked the provisions of Finance Act, 1994, misinterpreted the provisions and applied the same as per their own convenience in connivance with their sister concern. I have thoroughly gone the records placed in file, and it is noticed that the party is engaged in the providing the Construction as well as Work Contract Services. Before discussing the merits of disclosure made by the party under

VCES, it would be worthwhile to discuss the nature of business being undertaken by the party. From the records it has been found that the party is engaged in developing the site under a composite name and style and having sister concerns which are also engaged in executing the projects promoted/ launched/ undertaken by M/s Deeksha Housing Pvt. Ltd., Agra.

Records show that the party has undertaken construction activities on projects named "Deeksha KCR Town" and "Deeksha Dwarika" These projects are being developed and promoted by their sister company M/s Deeksha Housing Private Limited. Also, from the copies of their Works Contract Agreements with individuals, it is gathered that all these agreements relates to construction of houses within a residential complex named 'Deeksha KCR Town' situated at Mauza Bamroli Ahir, Gwalior Road, Agra.

Further the Brochure of 'Deeksha KCR Town', it is apparent that it is a residential project comprising Villas, Duplex, Simplex and G+2 houses. The project is approved by the Agra Development Authority (ADA) and has more than twelve residential units. Further, the said residential project has Fully Developed Garden, Exotic Landscaping, Fountain, party Lawn, Kids Play Zone, Jogging Track, Swimming Pool, Club House, Health Club, Shopping Complex, School, Temple, Badminton Court, Basketball Court, Indoor Games, Billiards, Table Tennis and Secured Gate Entry, to be commonly used by all the residents. Hence the same is a composite township termed as residential complex having covered boundary.

Further, complex", commissioning, Thus, vide the as it defined is or exemption evident under installation from that of Section of the the the levy original 65(91 'Deeksha a) of of works KCR the Service Act. Town' Tax, Similar falls in to a is within respect the the case of of definition construction, Deeksha of unit, has "residential Dwarika'. erection, granted indiyiduals, exemption township/residential is for entry not construction applicabl No.14(b) complex. of in "single Since case of all Notification

residential the single No. Works residential pertaining 25/2012-ST Contract unit dated which single Agreements is a 20-06-2012. residential part of of the a However, party composite been with this are assured liable the to levy clients of to Service provide Tax. It is the also well held that developed units"the are while township parts of a with launching/propagating residential all basic the complex, amenities projects the same they and infrastructure, but in order to evade payment of service tax applicable thereon they have adopted the modus operandi of selling of residential units situated in the projects to the clients and subsequently entered into agreement with the individual allottees for the construction of the same. By adopting such modus operandi the party have not included the amount charged from the customers towards construction of residential units within the project in gross value and tried to avail of the exemption as provided under Notification No.25/2012 dated 20.06.2012 which was not at all admissible to them. However, prior to advent of this notification the matter was governed under the Circular No.108/02/2009-ST dated 29.01.2009 in which it has been clarified by the Board that:

'The matter has been examined by the Board. Generally", the initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of "agreement to sell". Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property The property remains under the ownership of the seller (in the instant case, the promoters/builders/ developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of "self-service" and consequently would not attract service tax. Further, if the ultimate owner

enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction" the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of "residential complex". However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.'

In view of the above clarification given by the Board, the party's contention that they have constructed single residential units is not applicable in this case as the copy of agreements entered into by the party with the clients show that all the agreements for construction of single units have been made in a dedicated township launched by the principle assuring all civil amenities and facilities as such the agreements entered into by the party for construction does not come under the purview of the exemption as the same is not held to be made for construction of 'single unit' with the individual. Thus I am of the view that value of construction is to be included for determination of 'Gross Value' for levy of Service Tax which the party has not done and irregularly tried to avail the exemption which was not at all admissible to them and consequently tried to evade the service tax leviable thereon. Considering all these facts on record, it has been noticed that the party while disclosing the service tax payable under VCES, suppressed the material facts in order to evade payment of correct service tax liability.

The records, also show that the party under provisions of the Finance Act, 1994 was liable to the pay service on the freight under the GTA Service as alleged in the show cause notice quoting the statutory provisions that the part was liable to pay service tax from the year 2010-11 to 2013-14, but the party while submitting the defence reply to the show cause notice have accepted the service tax liability on the GTA service only

from the 01.07.2012 and not given any reasoning for not paying the service tax on GTA service from the year 2010-11 to 30.06.2012. This fact of levy of service tax on GTA services received by the party has been suppressed while disclosing the service tax liability under VCES. Thus, it is held that the party first suppressed the value of taxable services in the garb of availing the exemption on construction of Single Residential unit and secondly by not disclosing the liability of service tax on GTA.

The impugned show cause notice also alleges that the party being a registered Private Limited Company falls under the purview of the definition of a 'body corporate' and thus liable to pay service tax on work contract received by them from the service providers in execution of taxable services, under reverse charge mechanism under Notification No.30/2012-ST dated 01.07.2012. While, deliberating on the issue of ascertaining whether the party disclosed true and correct service tax liability under VCES, it has been noticed that the party while disclosing voluntarily the amount of unpaid service tax under the said scheme once again suppressed the material fact of payment of service tax under reverse charge mechanism on the work contract services received by them.

To sum up, as narrated hereinabove, firstly the party has not disclosed true and correct service tax liability on the work contract/ construction services provided by them, secondly they suppressed the liability of service tax on GTA service and thirdly they have suppressed the liability of service tax on the work contract services received by them under reverse charge mechanism. As such I am of the firm view that the pleadings put forth by the party with regard to submission of true and correct disclosure under VCES doesn't worth consideration and the submission made by the party in this regard are worthless and cannot given any cognizance. Thus, I hold that the party with the intent to evade payment of service tax on the taxable services provided/ received by them have made substantially

false declaration under VCES which merit rejection under the provisions of Section 111 of the Finance Act, 2013.

On the second issue, it is on record that while discussing the merits of party's VCES application the applicability of service tax on Construction/ Work Contract services has been discussed at length and it has been categorically discussed at length that the party's plea that the services of construction of Individual houses were not within the ambit of service tax thus not disclosed under VCES, have been examined with the provisions of Finance Act, 1994 and Rules made thereunder. It has been categorically discussed that under the provisions of law the party was not entitled for exemption availed by the party under the guise of construction of Individual houses. From the records placed in file it is noticed that the party is engaged in execution of the projects promoted/ launched and developed by their sister concern M/s Deeksha Housing Private Limited. The Financial documents show that M/s Deeksha Infratech Pvt. Ltd., is a Company registered under Companies Act, 1956 and as per Memorandum and Articles of Association the two Directors namely; Shri Surendra Kumar Singh, S/o Shri Nank Chand, Shri Brajesh Kumar, S/O Shri Nanak Chand, both resident of Surkashu Vihar Colony, Gwalior Road, Agra have been disclosed. The records also show that M/s Deeksha Housing Pvt. Ltd. also have two Directors namely; Shri Surendra Kumar Singh and Shri Chandra Shekher. Thus, it is established that M/s Deeksha Infratech Pvt. Ltd., and M/s Deeksha Housing Pvt Ltd., are having the common directors and Shri Surendra Kumar Singh is Managing Director in M/s Deeksha Housing Pvt. Ltd., and Director in M/s Deeksha Infratech Pvt. Ltd.

Further, the records also show that the agreement dated 15.02.2013 have been entered into between M/s Deeksha Housing Pvt. Ltd., through its Managing Director, Shri Surendra Kumar Singh and M/s Deeksha Infratech Pvt. Ltd. for structural work and development of the residential project "Deeksha Dwarika" on which Sri Surendra Kumar Singh signed in the

capacity of Managing Director and Shri Brijesh Kumar Singh as Director, in which all the construction and site development work has been awarded to M/s Deeksha Infratech as per the specification, design and architectural support as assigned by the first party. The agreement show that only execution of project has been awarded to the second party.

Similarly the copy of agreements entered into between the two parties in respect of their project 'Deeksha KCR Town' also show that in their integrated township project M/s Deeksha Housing Pvt. Ltd., has given contract of construction of houses to M/s Deeksha Infratech Pvt Ltd., and in the same project M/s Deeksha Infratech Pvt Ltd., have entered into with the contract to construct houses with individual allottees. From perusal of the contract it is evident that no plots to the individual persons have been sold by M/s Deeksha Housing Pvt. Ltd., rather they have allotted the plots to the individual persons and on completion of construction of on the same by M/s Deeksha Infratech Pvt. Ltd., the transfer of property took place. Thus it is on record that no transfer of property took place in the case of construction of Individual Houses at the time of construction of residential units as such the exemption claimed by the party in the garb of construction of residential units for individual is not available under the provisions of law.

Again the emphasis is laid on the Circular No.108/02/2009-ST dated 29.01.2009 in which it has been clarified by the Board that:

"The matter has been examined by the Board. Generally, the initial agreement between the promoters / builders /developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the

ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax."

From the records, it is evident that the party provided the services of contractor, designer or a similar service thus they are held to be liable to pay service tax in terms of provisions of Finance Act, 1994 and also as per Circular quoted hereinabove. They have also provided the services of Developed Garden, Exotic Landscaping, Fountain, party Lawn, Kids Play Zone, Jogging Track, Swimming Pool, Club House, Health Club, Shopping Complex, School, Temple, Badminton Court, Basketball Court, Indoor Games, Billiards, Table Tennis and Secured Gate Entry, to be commonly used by all the residents. Hence the same is a composite township termed as residential complex having covered boundary. It is also held that both the firms are run by the same persons in different name and style and in connivance with each other they have resorted to this novel modus operandi to evade payment of service tax in the guise of "construction of single residential units'. It is documentarily proved that all the activity of construction have been done on the integrated project by the said party and in order to evade payment of service tax they have entered into contract with the individual/ allottees in the same project

whereas most the house were sold on construction by the promoter/ developer himself which were also got constructed by M/s Deeksha Infratech Pvt. Ltd., under contract agreement.

Thus, I hold that the party with an intent to evade payment of service on the taxable services provided/ received by them have disclosed substantially false declaration under VCES as the scrutiny of the financial records of the party it is evident that there is substantial variation in the 'Revenue from Operations' as reflected in the Balance Sheets of the party and the 'Value of Taxable services as per the "calculation sheet" attached with Form VCES-1' filed by the party. Thus, the declaration filed by the party in Form VCES-1 is indeed substantially false and the same is liable to be rejected in terms of Section 111 (1) of the Finance Act, 2013 and Service Tax at applicable rates is liable to be confirmed/ demanded from the party under the provisions of the Finance Act, 1994. Against the taxable services of 'Works Contract Services' provided by the party during the Financial Years 2010- 11, 2011-12 and 2012-13 (upto June 2012), the resultant Service Tax liability of the party is derived in terms of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, as amended. Thereafter, from 01-07-2012 to 31-03-2014, the Service Tax liability of the party has to be determined in terms of Rule 2A (ii) of the "Service Tax (Determination of Value) Rules, 2006".

During the Financial Year 2012-13, Service Tax has been calculated on forty per cent of the total amount received by the party from the companies as well as individual, as the said Works Contracts were for execution of original works. Also, the period from April 2012 to June 2012 has not been separated as the effective rate of Service Tax during the period was the same as it was in the rest of the Financial Year. From the above it appears that during the Financial Years 2010-11, 2011-12, 2012-13 and 2013-14, the party had not paid Service Tax on gross amount of 27,78,83,688/- (Rupees Twenty Seven Crores Seventy Eight Lakhs Eighty Three Thousand Six Hundred Eighty

Eight only), in lieu of providing the taxable services under the category of 'Works Contract Service' and had thereby not-paid Service Tax amounting to 1,33,19,359/- (Rupees One Crore Thirty Three Lakhs Nineteen Thousand Three Hundred Fifty Nine only) including 1,29,31,417/- of Service Tax, 2,58,628/- of Education Cess and 1,29,314/- of Secondary & Higher Education Cess. Since the party had already deposited the amount of Rs 10,07,752/- [721000/- + 286752/-] (Rupees Ten Lakhs Seven Thousand Seven Hundred Fifty Two only), against this liability, the same is held to be liable for appropriation

Now, coming to the third issue as to whether the amount (Gross) of 2,41,95,869/- in lieu of receiving the Works Contract services during the period from 01-07-2012 to 31.03.2014 is to be treated as the value of taxable services under Reverse Charge Mechanism and Service Tax at appropriate rates amounting to 6,04,251/- is to be demanded and recovered under the provisions of Section 73(1) of the Finance Act, 1994 read with Section 68(2) of the Finance Act, 1994 and the amount of 24,720/- already deposited by the party against Service Tax liability is to be appropriated. On this issue, as per provisions of the Finance Act, 1994, Service Tax is normally payable by person providing the service, who actually collect the tax and pays to government. However, in some cases it is administratively more convenient to collect Service Tax, either fully or partially, from the service recipient. As per provisions contained under Section 68(1) of the Finance Act, 1994 in respect of the notified services, the Service Tax is to be paid by the service provider. However, under the provisions of Notification No.30/2012-ST dated 20-06-2012 effective from 01-07-2012, specified the persons liable to pay Service Tax and the extent to which the liability is payable by the service provider/service receiver. In case of Works Contract services provided or agreed to be provided by any individual, Hindu undivided family or proprietary firm or partnership firms, whether registered or not, including association persons located

in the taxable territory to a business entity registered as body corporate located in the taxable territory, 50% Service Tax is payable by the service provider and the remaining 50% liability of Service Tax has to be borne by the person receiving the service. Since the party is a business entity registered as 'body corporate' located in the taxable territory is liable to pay 50% Service Tax on the value of service portion in execution of works contract by any individual, Hindu undivided family or proprietary firm or partnership firms, whether registered or not, including association of persons located in the taxable territory. From the records submitted by the party, it is held that during the Financial Years 2012-13 and 2013-14, the party has received the taxable Works 'Contract Services' from three persons namely (i) M/s Garg Infratech, (ii) M/s Gowri Associates and (iii) M/s Karun Infratech Pvt. Ltd. Since M/s Garg Infratech and M/s Gowri Associates appears to be falling under the category of Individual/ HUF/ Proprietary firm/ Partnership firm, the party is liable to equally share the Service Tax liability on Works Contract entered into with these firms under the provisions of Notification No.30/2012-ST dated 20.06.2012.

The party's ledger accounts of their sub-contractor also shows that M/s Gowri Associates was awarded works contract for installation of electrical fittings. Accordingly, in terms of Rule 2A "Service Tax (determination of Value) Rules, 2006", Service tax shall be payable on sixty percent of the total amount charged for the works contract thus the service liable to be paid by the party under reverse charge mechanism on receiving services from individual/Hindu undivided firm/ proprietary firm/ partnership firms has been detailed and properly quantified through the impugned show cause notice. The party vide their defence have also accepted the levability of Service Tax under Reverse Charge Mechanism and have not disputed the same. And agreeing to the contention of the department they have deposited the Service Tax for the period October,2012.

From the records it is clear that during the period from 01-07-2012 to 31-03-2014, the party paid an amount of 2,41,95,869/- (Rupees Two Crores Forty One Lakh Ninety Five Thousand Eight Hundred Sixty Nine only) in lieu of receiving the Works Contract services from individual/Hindu undivided family/proprietary firm/partnership firms and has thereby not paid Service Tax amounting to 6,04,251/-(Rupees Six Lakhs Four Thousand Two Hundred Fifty One only) including 5,86,651/- of Service Tax, 11,733/- of Education Cess and 5,867/- of Secondary & Higher Education Cess., is held to be liable to be confirmed and recovered from the party under the provisions of Section 73(1) and Section 68(2) the Finance Act, 1994 read with Notification No.30/2012-ST dated 20.06.2012, and already deposited amount of Service Tax of 24,720/- Rupees Twenty Four Thousand Seven Hundred Twenty only), against this liability, is held to be liable for appropriation towards service tax payable.

On the forth issue of levy of Service Tax on the GTA Services received by the appellant during the year 2010-11 to 2013-14 it has been alleged in the impugned show cause notice that the party was liable to pay service tax amounting to Rs. 20,220.00 but they have not paid the same rather they have not disclosed the same while disclosing the Tax Dues under VCES. The party while submitting the detailed reply in the matter have alleged that the service tax liability was to be discharged by the seller in the case of GTA services that is why the noticee has not calculated service tax liability in the books of accounts accordingly for the period prior to 01-07-2012. Through this show cause notice the noticee came to understand that after 01-07-2012 on GTA services the service tax is liable to pay by the goods recipient i.e. Noticee. The year wise details for the period 01-07-2012 to 31-03-2014 the liability of Service Tax on GTA worked out to be on the amount of 4,04,394.00 only. The appellant have accepted the liability on GTA service only after the 01.07.2012 whereas the impugned show cause notice

alleges the levy of service tax on GTA service from the year 2010-11 to 2013-14. To deliberate upon the issue it would be proper to discuss the provisions contained in the Finance Act, 1994.

The "Goods Transport Agency" were brought into the Service Tax net with effect from 1-1-2005. Clause (50b) of Section 65 of the Act defines "'Goods Transport Agency' as under:-

(50b) 'goods transport agency'" means any person who provides service relation to transport of goods by road and issues consignment note, by whatever name called;

Further the Notification No.35/2004 Service Tax dated 3-12-2004 prescribes that the person making payment towards freight would be liable to pay the Service Tax, in case the consignor or the consignee of the goods transported falls in the category of "specified persons". Sub-Clause (v) of Rule 2(1)(d) of the Service Tax Rules, 1994, as amended reads as under:-

(d) 'person liable for paying the service tax' means-

- (i) [Not reproduced]*
- (ii) [Not reproduced]*
- (iii) [Not reproduced]*
- (iv) [Not reproduced]*
- (v) in relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is,-*
 - a. any factory registered under or governed by the Factories Act, 1948 (63 of 1948);*
 - b. any company formed or registered under the Companies Act, 1956 (1 of 1956);*
 - c. any corporation established by or under any law;*
 - d. any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;*

- e. *any co-operative society established by or under any law;*
- f. *any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder; or*
- g. *any body corporate established, or a partnership firm registered, by or under any law;*

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

Also, in terms of Notification No. 13/2008 - ST dated 01-03-2008, unconditional exemption from Service Tax was provided on 75% of the gross amount charged by the 'goods transport agency' for providing the service.

Clause (p) of Section 66D of the Finance Act, 1994 specifies service of transportation of goods by road, airways and waterways as non-taxable services. However the said clause specifically excludes services provided by GTA. Further, Notification No.25/2012-ST dated 20-06-2012 grants exemption to certain services provided by or to a GTA, as under:

21. Services provided by a goods transport agency, by way of transport in a goods carriage of,-

- a) agricultural produce;*
- b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;*
- c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;*
- d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;*
- e) chemical fertilizer and oilcakes;*

- f) newspaper or magazines registered with the Registrar of Newspapers;
- g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- h) defence or military equipments,
- i) cotton, ginned or baled;

None of the aforesaid exemptions are applicable in case of the appellant. Further, as per Serial S No.7 of Notification No.26/2012-ST dated 20-06-2012, the Service Tax is payable for service provided by GTA on 25% of gross amount charged. Also, by virtue of Notification No. 30/2012-ST dated 20-06-2012, in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, 100% Service Tax has to be paid by the person receiving the service. As per the Explanation-I in the said Notification, the person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service. Rule 2(1)(d)(B) of the Service Tax Rules, 1994 vide Notification No.36/2012-ST dated 20-06-2012, specify the person who are required to pay Service Tax on the services provided by the GTA. The person specified is the person who makes payment to the GTA. The relevant portion of the said Rule is reproduced hereunder:

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

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

(A)

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

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

- II. *any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;*
- III. *any co-operative society established by or under any law;*
- IV. *any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;*
- V. *anybody corporate established, by or under any law; or*
- VI. *any partnership firm whether registered or not under any law including association of persons;*

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

Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

Thus, it is held that the appellant is liable to pay Service Tax on 25% of the amount of freight paid during years 2010-11, 2011-12, 2012-13 and 2013-14, the appellant had paid an amount of 6,81,291/- (Rupees Six Lakhs Eighty One Thousand Two Hundred Eighty One only) towards freight and not paid Service Tax amounting to 20,220/- (Rupees Twenty Thousand Two Hundred Twenty only) including Rs 19,631 of Service tax, Rs 393 of Education Cess and Rs 196 of Secondary and Higher Education Cess in lieu of receiving the taxable service of "goods Transport Agency". In view of the facts on record, I am not inclined to accept the pleading of the appty that they were not liable to pay service tax on GTA service for the period prior to 01.07.2012 and I hold that party is liable to pay service tax on GTA service during the whole period as alleged in the impugned show cause notice and the service tax amounting to Rs 22,220 is held liable to

be confirmed and recovered from the party under the provisions of Section 73 (1) of the Finance Act, 1994.

The fifth issue will be taken up for discussion after discussing the case on merits and applicability of Section 73 and 78 of the Finance Act, 1994.

On the sixth issue to be discussed, in view of the facts discussed and narrated while discussing the merits above 4 issues, it is proved beyond doubt that appellant willfully failed to disclose wholly or truly all material facts first while disclosing the amount of service tax remained unpaid for the period from October to 2010 December, 2012 under the provisions of Section 106 of the Finance Act, 2013 (VCES Scheme) and subsequently suppressed the value of taxable services in the garb of availing the exemption in respect of construction of "single residential unit" and thus contravened the provisions of the Finance Act, 1994 and the Rules made thereunder with intent to evade payment of Service Tax. The party has deliberately suppressed the fact from the department that during the Financial Years 2010-11, 2011-12, 2012-13 and 2013-14, they were engaged in providing the taxable services of 'Works Contract'. The party was registered under Service Tax and was providing taxable services but despite this fact, the appellant neither deposited any Service Tax due thereon nor submitted any ST-3 Returns. Even, when an opportunity was given to the defaulters of Service Tax dues under the VCES scheme as enforced vide Chapter VI of the Finance Act, 2013, for waiver of interest and penalties for truthful declaration of 'tax dues', the appellant tried to suppress the value of taxable services provided by them and submitted a substantially false declaration and thus contravened the provisions of Section 106 of the Finance Act, 2013 and rendered themselves for action under the provisions of Section 111 of the Finance Act, 2013. Had the enquiry by the department under specific written information was not initiated against the appellant,

this apparent evasion of Service Tax by the appellant might not have been unearthed.

Thus, it is held sternly that the appellant M/s Deeksha Infratech Private Limited, Suraksha Vihar Colony, Gwalior Road, Agra with intent to evade payment of Service Tax, willfully suppressed the facts from the department and contravened various provisions of the Finance Act, 1994 and Rules made there under and filed the substantially false declaration under Service Tax Voluntary Compliance Encouragement Scheme, 2013. In view of the discussions in the foregoing para the appellant's declaration under the VCES is held liable to be rejected under the provisions of Section 111 of the Finance Act, 2013 and according to inbuilt provisions of Section 111 of the Finance Act, 2013 all the provisions of Section 73 of that Act, the 1994 are applicable in this case and thus I hold that the extended period for recovery of service tax under proviso to section 73 (1) of the finance Act, 1994 has been rightly invoked in the impugned notice. The service Tax amounting to Rs 1,39,43,830/- [Rs. 1,33,19,359/- + Rs 6,04,251/- + Rs 20,220/-] (Rupees One Crore Thirty Nine Lakhs Forty Three Thousand Eight Hundred aThirty only) is held to be not paid by the party under Section 73 of the Finance Act, 1994 and for various contravention of the provisions of Finance Act, 1994 the party is held liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

On the fifth issue of interest, I notice that it is an inbuilt provision that in the event of failure to timely payment of the tax amount into the credit of the Government exchequer; the same has to be paid along with the interest. This view is confirmed by Hon'ble CESTAT, Chennai in the case of INMA International Security Academy (P) Ltd. vs CCE [2005 STR 31/2005 (180) ELT 107] wherein it has been held that "The question, now, is whether the party should be called upon to pay interest on the service tax amount in terms of Section 75

of the Finance Act, 1994. It is inbuilt provision of the Finance Act, 1994 that delayed payment of dues normally carry interest. Hence I find that the law is settled with regard to recovery of interest on the amount of service tax not paid. Therefore, the party is required to pay the interest at the applicable rate under the provision of Section 75 of the Finance Act, 1994 on the amount of Service tax which they have failed to pay on the due date.

On the seventh issue regarding imposition of penalty under Section 77(1) (b), it is noticed that as alleged in the impugned notice, it is held that the appellant failed to maintain proper records as required under the provisions of Finance Act, 1994 and rules made there under and the appellant is held to liable for imposition of penalty of Rs. 10,000.00 under Section 77(1) (b) of the Finance Act, 1994.

On the eighth issue of imposition of penalty under Section 77(1)(c) of the Finance Act, 1994, it has been noticed that allegation leveled against the appellant through the impugned notice for imposition of penalty under this Section have no force as the appellant have submitted the requisitioned documents for verification and replied the communications received from the department. As such, I have no reason to impose the penalty under this Section.

On this ninth issue of imposition of penalty under Section 77 (2) of the Finance Act, 1994, I am of the opinion that the penalty under this Section has been rightly proposed in the impugned show cause notice as the detailed discussions in the foregoing paras amply establish that the appellant contravened the various provisions of the Finance Act, 1994 and the Rules made thereunder. Accordingly, I hold that the penalty prescribed of Rs. 10,000.00 under this Section is imposable upon the appellant.

Lastly, I have also considered the request of the appellant to take up this case sympathetically and positively on grounds as the service tax amount was already paid for the period of

show cause notice. I find that the case has strong legal grounds, and the appellant willfully suppressed the material facts with intent to evade payment of Service Tax in this case. Hence, this plea stands rejected."

4.3 The preliminary objection raised by the appellant/appellant counsel is in respect of this proceeding whereby the declaration filed by the appellant in form VCES-I under the VCES, 2013 has been rejected. It is the submission of the appellant/ appellant counsel that there is no provision whereby their declaration could have been rejected. To examine the correctness of the above provision we reproduce the provisions of the Section 111 of The Finance Act, 2013 in terms of which these proceedings have been initiated:

"111. Failure to make true declaration. - (1) *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.*

(2) *No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.*

(3) *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 subsection (1) of the above section empowers the Commissioner of Central Excise to issue notice in respect of the declaration made under the VCES, if he has reasons to believe that the declaration made is substantially false and asking him to pay the tax dues not paid or short paid. Further the notice in terms of sub-section could have been issued within a period of one year

from the date of declaration. Further "tax dues" are defined in terms of Section 105 (e) as following:

"(e) "tax dues" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013."

From the perusal of the above definition it is evident that the period covered in the said scheme is from 01.07.2007 to 31.12.2012 and the appellant is required to make true declaration in respect of his tax liability for the entire period covered by the scheme. In respect of any incorrect declaration or incomplete declaration made the notice has to be issued within one year from the date of declaration. Thus the demand of service tax could have been made for the entire period from 01.07.2007 to 31.03.2012 in respect of incorrect declaration within one year from the date of the declaration.

Subsection (3) provides that once the show cause notice has been issued in terms of the sub section (1) then the same will be deemed to be issued under Section 73 of the Finance Act, 1994 and all the provisions of the Chapter V of Finance Act, 1994 apply. Thus the show cause notice will have to be determined as the same has been issued under Section 73 of the Finance Act, 1994. We do not find any ambiguity in the above provisions. The fact that the proceedings initiated by the jurisdiction Commissioner under the said provisions have culminated impugned order cannot be said to be illegal or improper. Hence the preliminary objection raised by the appellant/ appellant counsel cannot be upheld.

4.4 Similar view has been expressed by the Mumbai Bench in the case of Siddhi Property Developers Pvt. Ltd. [**2018-TIOL-3533-CESTAT-MUM**] observing as follows:

"4. We have heard Shri Vasant Bhat, learned Chartered Accountant arguing on behalf of the appellant. Learned C.A. submitted that no doubt that there was certain short payment of service tax during the relevant period. To take care of such payment, the Government has announced VCES scheme for the purpose of giving an opportunity to such tax payers who would intend to make good the same and discharge the tax liability along with interest without any penal action against them. For the purpose of the same, he relied upon para 183 of the speech of Hon'ble Finance Minister while presenting the Budget of 2013, which is reproduced below:-

"183. While there are nearly 17,00,000 registered assesses under service tax, only about 7,00,000 file returns. Many have simply stopped filing returns. We cannot go after each of them. I have to motivate them to file returns and pay the tax dues. Hence, I propose to introduce a one-time scheme called 'Voluntary Compliance Encouragement Scheme'. A defaulter may avail of the scheme on condition that he files a truthful declaration of service tax dues since 1.10.2007 and makes the payment in one or two instalments before prescribed dates. In such a case, interest, penalty and other consequences will be waived. I hope to entice a large number of assesses to return to the tax fold. I also hope to collect a reasonable sum of money."

4.1 Learned C.A. also relied upon the letter dated 8.8.2013 of Special Secretary & Member, CBEC, which is reproduced below:-

"The Service Tax Voluntary Compliance Encouragement Scheme (VCES) has been announced in this year's budget. It has come into effect from 10.5.2013. The objective of this Scheme is to encourage disclosure of tax dues and compliance of service tax law by the persons who have not paid service tax dues for the period from Oc. 2007 to Dec. 2012, either on account of ignorance of law or otherwise. VCES is the opportunity for such persons to pay the "tax dues" and come

clean. On payment of "tax dues" relating to the period under VCES, there will be a complete waiver of interest, penalty and other consequences."

4.2 In the present case, they have come forward and made the declaration under the provisions of the scheme and have also been issued a certificate by the Competent Authority towards the discharge of the tax liability.

4.3 Arguing further, learned C.A. stated that VCES is a complete scheme and provided for a self-contained mechanism for making the demand. Section 111 of the Finance Act, 2013 clearly provided that in all cases where declaration under VCES is made, a notice should have been issued for any short payment under Section 111 of the Finance Act, 2013. Since no notice has been issued under Section 111 but the present notice has been issued under Section 73, the same cannot be said to be initiation of a legal proceedings against them for recovery of tax dues.

5. Arguing on behalf of Revenue, learned AR submitted that Section 73 is the provision for demand of service tax short paid or not paid for any reason. Hence the Commissioner was right in initiating the proceedings against the appellant under Section 73 of the Finance Act, 1994. Section 111 of the Finance Act, 2013 does not bar initiation of the said proceedings, but in terms of Section 111(3), a notice issued under Section 111 is deemed to be issued under Section 73.

6. Learned counsel for the appellant did not press any other ground taken by him in the appeal during the course of hearing. Hence the issue is being decided vis-a-vis the notice issued under Section 73 in this case. Section 111 of the Finance Act, 2013 is reproduced below:-

....."

In terms of Section 111(3), it is a fact that any notice issued under the provisions of this section is deemed notice under Section 73 of the Finance Act, 1994. If that be so, this section

does not bar initiation of the proceedings under Section 73 of the Finance Act vis-à-vis the service tax short paid or not paid. The show cause notice issued under Section 73 cannot be faulted on this account.

7. Further, it may be seen that the investigations in the present case have been started on 8.1.2013 whereas the VCES scheme has come into operation only from 10.5.2013. Thus, when the proceedings have already been initiated before the VCES scheme, the show cause notice for short payment would have been issued only in terms of Section 73 of the Finance Act, 1994.

8. CBEC has issued Frequently Asked Questions On Service Tax Voluntary Compliance Encouragement Scheme (VCES), 2013. Question No.12 of the document is as follows:-

"Q12. A person has made part payment of his 'tax dues' on any issue before the scheme was notified and makes the declaration under VCES for the remaining part of the tax dues. Will he be entitled to the benefit of nonpayment of interest/penalty on the tax dues paid by him outside the VCES, i.e., (amount paid prior to VCES)?

No. The immunity from interest and penalty is only for "tax dues" declared under VCES. If any "tax dues" have been paid prior to the enactment of the scheme, any liability of interest or penalty thereon shall be adjudicated as per the provisions of Chapter V of the Finance Act, 1994 and paid accordingly."

In view of the above reply also, the recovery was to be initiated in terms of Chapter V of the Finance Act, 1994 and adjudged accordingly.

9. From the construct of Section 106 to Section 111 of Finance Act, 2013, it is clear that when a declaration is made under the provisions of VCES, 2013, and where the service tax liability declared under VCES cannot be disputed by the department, either with reference to value or with reference to applicable tax rate, entitlement for abatement etc., and the

declaration passes the text laid down under Section 106 & Section 111 of Finance Act, 2013 by being not substantially false; the declaration made need to be accepted and immunity granted. However, if the department intends to raise any additional demand, they can issue show cause notice for such additional demand in terms of Section 73 of Finance Act, 1994. Similar view has been expressed by Hon'ble Madras High Court in case of V.R. Mohanraj vs. Commissioner of Service Tax I (W.P. No.34481 of 2015, order dated 20.4.2016).

10. In view of above, there is no merit in the submissions made by learned C.A. and hence cannot be accepted.

11. Since the learned counsel for the appellant has not pressed any other grounds in appeal, they are not further considered. The appeal is rejected."

4.5 As we have noted earlier that the appellant counsel did not press any other ground taken while filing this appeal, this appeal can be dismissed just for this reason, that the point pressed has been rejected as stated in above paragraphs. However we record our finding on the grounds taken in the appeal.

4.6 There seem to be not much challenge in the appeal on the ground of merits. The challenge to impugned order is basically on the grounds of limitation, demand of interest and penalties.

4.7 During course of investigation appellant vide their letter dated 08-12-2014 while submitting the requisite documents, stated that they are also engaged in construction of residential houses for individuals (their own residential use), which is out of purview of Service Tax.

4.8 From the Balance Sheets of the appellant, it was found that there were disparities between the 'Revenue from Operations' as reflected in the Balance Sheets and the 'Value of Taxable services as per the calculation sheet attached with Form VCES-1', as under:

Financial Year	Revenue from Operations as per Balance Sheets	Gross Receipts declared under VCES	Difference
2010-11	90,26,255.00	34,01,306.00	56,24,949.00
2011-12	4,18,48,790.00	50,00,000.00	3,68,48,790.00
2012-13	7,86,93,610.00	2,86,78,694.00	5,00,14,916.00
Total	12,95,68,655.00	3,70,80,000.00	9,24,88,655.00

4.9 Again vide letter dated 10-12-2014 appellant submitted that,-

"Their company is engaged in construction of residential houses for individuals for their personal use which is out of purview of Service Tax and other Works Contracts from companies which is within the purview of Service Tax. The year wise turnover from both of the activities is as follows:

Financial Year	Turnover of construction of residential houses from Individuals for their personal use as per Balance Sheet	Turnover of Works Contract from companies as per Balance Sheet	Total Turnover
2010-11	70,46,255.00	19,80,000.00	90,26,255.00
2011-12	3,56,48,790.00	62,00,000.00	4,18,48,790.00
2012-13	4,97,93,610.00	2,89,00,000.00	7,86,93,610.00
Total	9,24,88,655.00	3,70,80,000.00	12,95,68,655.00

They have filed VCES-1 showing the receipts which are taxable under Service Tax. The reconciliation of amount received and amount due of their taxable service is as follows:

Financial Year	Opening Balance	Amount Due towards Works Contract from companies	Amount Received (Declared under VCES)	Closing Balance
2010-11	Nil	34,01,306.00	19,80,000.00	14,21,306.00
2011-12	14,21,306.00	62,00,000.00	50,00,000.00	2,21,306.00
2012-13	2,21,306.00	2,89,00,000.00	2,86,78,694.00	Nil
Total		3,70,80,000.00	3,70,80,000.00	

Thus from the above clarification it is clear that there is no disparity between Gross Receipts declared under VCES-I and turnover reflected in their Balance Sheet. They have deposited Rs. 7,21,000/- on 31.12.2013 vide CIN-035000231 12201300412 against their Service Tax liability of 13,93,208/- declared under VCES-I. Against their Service Tax liability for the period from 01.01.2013 to 31.03.2013, they have deposited an amount of 2,86,752/- on 27.09.2013 vide CIN-03500022709201300242."

4.10 The appellant vide another letter dated 10-12-2014, submitted copies of their ledger accounts pertaining to the Financial Years 2012-13 and 2013-14 in respect of "Legal Expenses" "Director's Remuneration", "Labour Expenses" and

"Construction Expenses" and submitted detailed clarifications regarding inapplicability of Service Tax on the Legal Expenses, Director's Remuneration and Labour expenses, as reflected in their Balance Sheets. They submitted as under:-

- *"Legal Expenses"*
- *"Director's Remuneration"*
- *"Labour Expenses"*
- *During the Financial Year 2012-13, they have incurred "Construction expenses", amounting to Rs. 17.00 Lacs. Out of these, 10.00 Lacs were paid to a Sub-Contractor M/s Garg Infratech and 7.00 Lacs were paid to another Sub-Contractor M/s Karun Infratech Pvt. Ltd.*
- *In respect of 10.00 Lacs paid to M/s Garg Infratech, they have deposited 24,720/- as service Tax under reverse charge and for 7.00 Lacs paid to M/s Karun Infratech Pvt. Ltd., there is no liability under reverse charge as it has been paid to the company.*
- *Similarly, during the Financial Year 2013-14, they have incurred 3,25,85,869/- as "construction expenses", out of which 227.00 Lacs have been paid to Sub-Contractor M/s Garg Infratech, 4.96 Lacs were paid to Sub-Contractor M/s Gowri Associates and Rs.93.90 Lacs has been paid to M/s Karun Infratech Pvt. Ltd. on which there is no liability under reverse charge as it has been paid to the company. The Service Tax liability of 5,91,789.00 under reverse charge, in respect of M/s Garg Infratech & M/s Gowri Associates, is reflected in their Balance Sheet as on 31.03.2014.*

4.11 From the perusal of Contracts/ Agreements entered into by the appellant, it is evident that VAT/ Sales Tax was leviable on the transfer of property in goods involved in the execution of the said Contracts/ agreements and hence services provided by the appellant are appropriately classifiable as 'Works Contract Service', which became taxable from 01.06.2007 vide Notification No. 23/2007- S.T. dated 22.05.2007. Sub-clause

(zzzza) of clause (105) and clause (91a) of Section 65 of the Finance Act, 1994, as amended (hereinafter referred to as "the Act) defines the "taxable service" of 'Works Contract Service' and 'Residential Complex'.

4.12 After the advent of Negative Regime with effect from 01-07-2012, Section 65 B (54) defines 'Works Contract' as under:

'Works Contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property'

4.13 From the perusal of copies of Balance Sheets of the appellant, it appeared that the appellant has bifurcated their "Revenue from Operations" as under:

- i. Contracts completed (Work Contract from companies)
- ii. Contracts completed (From individuals for construction of their houses for their own residence)

From the copies of their Works Contract Agreements with companies, it is evident that appellant has undertaken construction activities on projects named "Deeksha KCR Town" and "Deeksha Dwarika". These projects are being developed and promoted by their sister company M/s Deeksha Housing Private Limited. Also, from the copies of their Works Contract Agreements with individuals, it is gathered that all these agreements relates to construction of houses within a residential complex named "Deeksha KCR Town" at Mauza Bamroli Ahir, Gwalior Road, Agra.

From the perusal of Brochure of "Deeksha KCR Town", it is apparent that it is a residential project comprising Villas, Duplex, Simplex and G+2 houses. The project is approved by the Agra Development Authority (ADA) and has more than

twelve residential units. Further, the said residential project has Fully Developed Garden, Exotic Landscaping, Fountain, party lawn, Kids Play Zone, Jogging Track, Swimming Pool, Club House, Health Club, Shopping Complex, School, Temple, Badminton Court, Basketball Court, Indoor Games, Billiards, Table Tennis and Secured Gate Entry. Thus it is evident that the "Deeksha KCR Town" falls within the definition of "residential complex", as defined under Section 65(91a) of the Act.

4.14 Entry No.14(b) of the Notification No. 25/2012-ST dated 20-06-2014 reads as follows:

"14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(b) a single residential unit otherwise than as a part of a residential complex;"

From the perusal of the above entry it is evident that this entry exempt the services of construction, erection, commissioning or installation of original works pertaining to a single residential which is not the part of a residential complex. The services provided by the appellant are in respect of villas which are part of residential complex as discussed above. Further as there is transfer of property also the same do not qualify to be service of construction, erection, commissioning or installation of original works as have been held by the Hon'ble Apex Court in case of L & T [2016 (1) SCC 170] they are work contracts. All the "Works Contract Agreements" of the appellant with individuals, for construction of "single residential units" are part of a residential complex, the same is liable to levy of Service Tax.

4.15 In the impugned order after examining the constitution of the appellant and their sister concern namely M/s Deeksha Housing Pvt. Ltd. held that they are managed and owned by the same persons and hence bifurcation of the activity of the sale of unit in two parts one by way of allotment of plot in the residential complex and second by way of entering into

construction contract cannot be said to be independent activities. They are part of same sale of residential unit in the residential complex. Appellant have contested the same stating that *"Without any cogent reasons it has been held that both the firms are run by same persons in the different name and style and in connivance with each other"*. However we find that Hon'ble Supreme Court has in case of Calcutta Chromotype [1998 (99) E.L.T. 202 (S.C.)] Hon'ble Supreme Court observed as follows:

"12. *The principle that a company under the Companies Act, 1956 is a separate entity and, therefore, where the manufacturer and the buyer are two separate companies, they cannot, than anything more, be 'related persons' within the meaning of clause (c) of sub-section (4) of Section 4 of the Act is not of universal application. Law has traveled quite a bit after decision of the House of Lords in the case of Salomon v. Salomon [1897 AC 22]. This is how this Court noticed in Tata Engineering and Locomotive Company Ltd. v. State of Bihar & Ors. [(1964) 6 SCR 885] :*

"The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purposes; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the corporation. This position has been well-established ever since the decision in the of Salomon v. Salomon & Co. [(1897) A.C. 22 H.L.] was pronounced in 1897; and indeed, it has always been the well recognised principle of common law. However, in the course of time, the doctrine that

the corporation or a company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more."

13. *In Life Insurance Corporation of India v. Escorts Ltd. & Ors. [(1986) 1 SCC 264], this Court again considered this question and said :*

"While it is firmly established ever since Salomon v. A. Salomon & Co. Ltd. [(1897) AC 22 HL] was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances. Pennington in his Company Law (4th Ed.) states :

Four inroads have been made by the law on the principle of separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The Government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to

minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to the many standard text books on Corporation Tax, Income Tax, Capital Gains Tax and Capital Transfer Tax.

The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the Courts implying in certain cases that a company is an agent or trustee for its members.

In Palmer's Company Law (23rd Ed.), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in Gower's Company Law (4th Ed.), a chapter is devoted to 'lifting the veil' and the various occasions when that may be done are discussed. In Tata Engineering and Locomotive Co. Ltd. [(1964) 6 SCR 885], the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19. In CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819], the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114], resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute

itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficial statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."

14. *In M/s. McDowell and Company Ltd. v. Commercial Tax Officer [(1985) 3 SCC 230 = (1985) 154 ITR 148], this Court examined the concept of tax avoidance or rather the legitimacy of the art of dodging tax without breaking the law. This Court stressed upon the need to make a departure from the Westminster principle based upon the observations of Lord Tomlin in the case of IRC v. Duke of Westminster [(1936) AC 1] that every assessee is entitled to arrange his affairs as to not attract taxes. The Court said that tax planning may be legitimate provided it is within the framework of law. Colourable devices, however, cannot be part of tax planning. Dubious methods resorting to artifice or subterfuge to avoid payment of taxes on what really is income can today no longer be applauded and legitimised as a splendid work by a wise man but has to be condemned and punished with severest of penalties. If we examine the thrust of all the decisions, there is no bar on the authorities to lift the veil of a company, whether a manufacturer or a buyer, to see it was not wearing that mask of not being treated as related person when, in fact, both, the manufacturer and the buyer, are in fact the same persons. Under sub-section (1) of Section 4 of the Act, value of the excisable goods shall not be deemed to be normal price thereof, i.e., the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for*

delivery at the time and place of removal, if the buyer is a related person and price is not the sole consideration for sale. As to who is a related person, we have to see its definition of Section 4(4)(c) of the Act. It is not only that both, the manufacturer and the buyer, are associated with each other for which corporate veil may be lifted to see who is behind it but also that they should have interest, directly or indirectly, in the business of each other. But once it is found that persons behind the manufacturer and the buyer are same, it is apparent that buyer is associated with the manufacturer, i.e., the assessee and then regard being had to the common course of natural events, human conduct and public and private business it can be presumed that they have interest, directly or indirectly, in the business of each other (refer Section 114 of the Evidence Act). It is, however, difficult to lay down any broad principle to hold as to when corporate veil should be lifted or if on doing that, could it be said that the assessee and the buyer are related persons. That will depend upon the facts and circumstances of each case and it will have to be seen who is calling the shots in both the assessee and the buyer. When it is the same person the authorities can certainly fall back on the third proviso to clause (a) of Section 4(1) of the Act, to arrive at the value of the excisable goods. It cannot be that when the same person incorporates two companies of which one is the manufacturer of excisable goods and other is the buyer of those goods, the two companies being separate legal entities, the Excise authorities are barred from probing anything further to find out who is the person behind these two companies. It is difficult to accept such a narrow interpretation. True that shareholdings in a company can change but that is the very purpose to lift the veil to find out if the two companies are associated with each other. Law is specific that when duty of excise is chargeable on the goods with reference to its value than the normal price on which the goods are sold shall be deemed to be the value provided (1) the buyer is not a related person and (2) the

price is the sole consideration. It is a deeming provision and the two conditions have to be satisfied for the case is to fall under clause (a) of Section 4(1) keeping in view as to who is the related person within the meaning of clause (c) of Section 4(4) of the Act. Again if the price is not the sole consideration, then again clause (a) of Section 4(1) will not be applicable to arrive at the value of the excisable goods for the purpose of levy of duty of excise."

Thus we do not find any merits in the submissions made by the appellant in their appeal challenging the said finding.

4.16 As there is substantial variation in the figures reflected in the balance sheet under the head 'Revenue from Operations' and the 'Value of Taxable services" per the "calculation sheet" attached with Form VCES-1' filed by the appellant, the declaration filed by the appellant in Form VCES-1 was rejected and the proceedings initiated terms of Section 111 (1) of the Finance Act, 2013 and Service Tax at applicable rates was demanded from the appellant.

4.17 The Service Tax liability of the appellant for the Financial Years 2010-11,2011-12 and 2012-13 (upto June 2012), has been calculated in terms of the *Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007* as amended, and from 01-07-2012 to 31-03-2014, the Service Tax liability of the appellant has to be determined in terms of Rule 2A (ii) of the *'Service Tax (Determination of Value) Rules, 2006'* as per the table below:

Financial Year	Works Contract Revenue as per Balance Sheets	Value of Taxable Service	Rate of Service Tax	Services Tax	Education Cess @ 2%	Secondary and Higher Cess @ 1%	Total
2010-11	90,26,255.00	90,26,255.00	4.00	3,61,050.20	7,221.00	3,610.50	3,71,881.71
2011-12	4,18,48,790.00	4,18,48,790.00	4.00	16,73,951.60	33,479.03	16,739.52	17,24,170.15
2012-13	7,86,93,61 0.00	3,14,77,444.00	12.00	37,77,293.28	75,545.87	37,772.93	38,90,6 12.08
2013-14	14,83,15,033.00	5,93,26,013.20	12.00	71,19,121.58	1,42,382.43	71,191.22	73,32,695.23
Total	27,78,83,688.00	14,16,78,502.20		1,29,31,416.66	2,58,628.33	1,29,314.17	1,33,19,359.16

4.18 Thus Service Tax amounting to 1,33,19,359/- (Rupees One Crore Thirty Three Lakhs Nineteen Thousand Three Hundred Fifty Nine only) [Service Tax Rs. 1,29,31,417/- + Education Cess Rs. 2,58,628/- Secondary & Higher Education Cess 1,29,314/-] has been confirmed by the impugned order. The

amount of Rs. 10,07,752/- [Rs. 721000/-+ Rs. 286752/-] (Rupees Ten Lakhs Seven Thousand Seven Hundred Fifty Two only), has rightly been appropriated.

4.19 Notification No.30/2012-ST dated 20-06-2012 was issued w.e.f 01-07-2012 in terms of Section 68 (2) , specifying the persons who are liable to pay Service Tax and the extent to which the liability is payable by the service provider. The relevant entry of the said notification read as follows:

"I. The taxable services,-

(v) provided or agreed to be provided by way of or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

S No	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
9	In respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%”

4.20 Since the appellant is a business entity registered as body corporate located in the taxable territory, they are liable to pay 50% Service Tax on the value of service portion in execution of Works Contract by any individual, Hindu Undivided Family or Proprietary firm or Partnership firms, whether registered or not, including Association of Persons located in the taxable territory. During the Financial Years 2012-13 and 2013-14, the appellant has received the taxable Works Contract Services from three persons namely (i) M/s Garg Infratech, (ii) M/s Gowri Associates and (iii) M/s Karun Infratech Pvt. Ltd. Impugned order records unchallenged that M/s Garg Infratech and M/s Gowri Associates fall under the category of Individual/ HUF/ Proprietary firm/Partnership firm, the appellant is liable "to equally share the Service Tax liability on Works Contract entered into with these firms.

4.21 Appellant was liable to pay Service Tax on 25% of the amount of freight paid by them, both prior to and after 01-07-2012. On the basis of "Freight & Cartage" figures in the Balance Sheets, the Service Tax liability of the appellant during the Financial Years 2010-11, 2011-12, 2012-13 and 2013-14. Accepting their liability appellant had paid an amount of 6,81,291/- (Rupees Six Lakhs Eighty One Thousand Two Hundred Ninety One only) towards freight. Service Tax amounting to 20,220/- (including cess) short paid under reverse charge mechanism in respect of this taxable service has been confirmed by the adjudicating authority.

4.22 Appellant thus have contravened various provisions of the Finance Act, 1994 and the Rules made there under. They have willfully failed to disclose wholly and truly all the material facts to the department with intent to evade payment of Service Tax. By not reflecting truly the gross receipts in their returns appellant have deliberately and willfully suppressed the required information from the jurisdictional authorities. If the enquiry under 'Unearthing of Service Tax evasion-matching of financial data from third appellant sources', was not initiated against the appellant, this evasion of Service Tax by the appellant could not have been unearthed. Therefore the appellant intent to evade payment of Service Tax, has willfully suppressed the facts from the department and had contravened various provisions of the Act, the Rules made there under and the VCES. Thus extended period for recovery of Service Tax under the proviso to Section 73(1) of the Finance Act, 1994 has been rightly invoked to confirm this demand. Appellant has relied upon certain case laws to argue against the invocation of extended period of limitation. However it is settled position in law that invocation of extended period is a mixed question of law and fact and appellant has just quoted the decisions without even showing how these decision is applicable to in the facts of present case. We find no plausible explanation comes out for having bifurcated the transaction to show that the services which

were leviable to service tax under the category of work contract services were the services of construction of individual residential units. We have discussed in detail the discrepancies in the statutory documents and the Balance Sheet etc. We find that the extended period has been properly invoked in the present case. In case of TATA Steel Ltd. [2016 (41) S.T.R. 689 (Tri. - Mumbai)], Mumbai bench held as follows:

"48. The invocation of the extended period of limitation is a mixed question of facts and law and is mainly based upon the facts of individual cases. During the relevant period the appellant had not taken registration under the Banking and Financial Services and hence they did not file the ST-3 returns. In the absence of registration and the non-filing of the return, the material fact about the receipt of the above mentioned services was completely suppressed from the department. It is noted that, in the present case, the demand being confirmed is for the period 1-4-2006 to 31-3-2007. Even in this period, a demand of ` 69,132/- is for the period 1-4-2006 to 30-9-2006 and the remaining demand is for the period 1-10-2006 to 31-3-2007. I find from the chronological sequence of events submitted by the appellant along with the appeal that, department, as early as 12-7-2007 asked the details of overseas payments towards external commercial borrowings for three years. Certain details were furnished by the appellant on 22-8-2007. Thereafter, on 27-8-2007 department informed the appellant, that they are liable to pay Service Tax under Banking and Financial Services as recipient of the service. The appellants, however, did not follow the directions of the department. In the meantime, similar issue relating to convertible alternative reference securities and letter of credit also came up for which the appellant made payments on 12-10-2007 and on 4-1-2008. Since the appellant did not pay the service tax on the MLA and Agent Bank's service under consideration, the department issued summons to Shri Praveen Sood, an officer of the appellant. The department

again asked the appellant for furnishing the details on 21-7-2008 and from the chronology of events it is evident that the appellant submitted all the required details vide their letter dated 5-11-2008. Thereafter on 1-4-2009, the demand notice was issued. It would thus be seen that the department had informed the appellant as early as on 27-8-2007 about the duty liability and asked them to pay the service tax and the delay in the issuance of the show cause notice was only because of the information required for issuance of the show cause notice was submitted by the appellant vide their letter dated 5-11-2008 received in the department on 14-11-2008. Further, it is observed that the appellant did not take any registration for the said service and no returns were filed for the relevant period and in the absence of the information either from the return or submission from the appellant it is practically not possible for the department to issue show cause notice. In view of the above factual matrix it is not possible to accept the contention that the appellant had a bona fide doubt. In my view, even if they had a bona fide doubt, they should have provided the precise information in July, 2007 itself so that the show cause notice could have been issued within the normal period of limitation. I also find that the Member (Judicial) has observed that the information was available in the balance sheet, etc. In my considered view, the information should be provided to the concerned jurisdictional assessing authority. The balance sheet may be providing some details but these generally do not provide the precise details to enable the department to issue demand notice. In any case the balance sheet may be a public document but the question is whether the balance sheet or information was given to the assessing authorities. In the present case, the appellants did not provide the information in July, 2007. They did not pay the tax as per the direction of the letter dated 27-8-2007. Under the circumstances, I am of the view that the relevant information was suppressed from the department and extended period of limitation has been correctly invoked.”

4.23 In case of Ideal Security [2011 (23) S.T.R. 66 (Tri. - Del.)], Delhi bench held as follows:

"7. When we look into para 7 of the appellate order, we are able to confirm that there was difference in two sets of documents that were relied upon by the appellant. One such document was ST-3 return and the second one is its own balance sheet and profit and loss account. The authority recorded that the appellant failed to explain the difference. Therefore, the disclosure being found to be faulty, adjudication was completed on the basis of figures appearing in its financial statements. The authority did not give any concession on the statutory dues. It comes out from Para 8 & 9 of the appellate order at page 10.

8. So far as the contention of the appellant in respect of time bar issue and also adjudication under Section 73 is concerned, the appellate authority dealt with the issue in para 10 and he found that one of the element like suppression, which is essential ingredient in Section 73 is present. Therefore, he held that the proceeding was well within time. When he found all these aspects, he made the appellant liable to pay penalty also. He did not give any concession in respect of penalty.

9. We do agree with the Id. Appellate Authority in the matter of the discrepancy noticed by him in respect of the considerations received and appearing in different manner in two different statutory documents. While the ST 3 return was statutory document under Finance Act, 1994, the balance-sheet and profit and loss account were statutory documents under Companies Act, 1956. Therefore, when the public documents bring the discrepancy, the onus of proof was on the assessee to come out with clean hand to prove its stand. When we did not find any merit on the part of appellant, we agree with Id. appellate authority that invoking Section 73 is appropriate."

4.24 In the case of Mehta & Co [2011 (264) E.L.T. 481 (S.C.)], Hon'ble Apex Court has held as follows:

"22. *Consequently, we propose to look into the first issue in the light of the background facts as stated hereinbefore. The specific case of the appellant is that the respondent having manufactured the excisable goods covered under different chapter headings, removed them without payment of proper duty of excise and that from the aforesaid action it is explicit that there was an intention on the part of the respondent to evade payment of duty particularly when the contract clause between the respondent and M/s. Adyar Gate Hotel Ltd. clearly mentioned that the contractors quoted rate would also include excise duty.*

23. *Although, the respondent has pleaded that it was done out of ignorance, but in our considered opinion there appears to be an intention to evade excise duty and contravention of the provisions of the Act. Therefore, proviso of Section 11A(i) of the Act would get attracted to the facts and circumstances of the present case.*

24. *The cause of action, i.e., date of knowledge could be attributed to the appellant in the year 1997 when in compliance of the memo issued by the appellant and also the summons issued, the hotel furnished its reply setting out the details of the work done by the appellant amounting to Rs. 991.66 lakhs and at that stage only the department came to know that the work order was to carry out the job for furniture also. A bare perusal of the records shows that the aforesaid reply was sent by the respondent on receipt of a letter issued by the Commissioner of Central Excise on 27-2-1997. If the period of limitation of five years is computed from the aforesaid date, the show cause notice having been issued on 15-5-2000, the demand made was clearly within the period of limitation as prescribed, which is five years."*

4.25 In the case of ICICI Econet Internet & Technology Fund [2021 (51) G.S.T.L. 36 (Tri. - Bang.)], Bangalore bench has observed as follows:

46. We find that the appellants have argued that this is a matter of interpretation and all the information being in public domain, suppression of any material fact with intent to evade payment of duty cannot be alleged. The appellants have relied upon this Bench's decision in the case of Gateway Hotels, 2020 (37) G.S.T.L. 210 (Tri. - Bang.). We find that in that case, the fact was that the appellants have been filing the returns regularly and there was a confusion regarding the correct position of law during the relevant time. The facts of the case are different. **It cannot be argued that suppression cannot be alleged as the information is in the public domain. Information being in the public domain is not of any consequence. The information should be in the knowledge or made available to the authorities concerned who need to take a certain decision depending on such information. It is not the case of the appellants that they have been paying applicable service tax on getting registered and have been submitting regular returns to service tax authorities. It is not the case of the appellants that the material information available in the form of various contracts/agreements and balance sheets/ledgers have been submitted to the Department suo motu by the appellants. It is only after investigation has been initiated, the necessary documents were submitted. Thus, the information available in the public domain is of no avail.** We find that Learned Adjudicating Authority has rightly relied upon in the case of CCE, Calicut v. Steel Industries Kerala Ltd., 2005 (188) E.L.T. 33 (Tri. - Bang.) wherein it is held at Para 3 as under :

3. We find that in the case of Maruti Udyog Ltd. v. CCE, New Delhi, 2001 (134) E.L.T. 269, the Tribunal has upheld the invocation of the extended period of limitation when the assessee did not declare waste and scrap of iron and steel and aluminium and availing of credit therein either in their

classification list or modvat declaration or in the statutory records. The Tribunal held that the theory of universal knowledge cannot be attributed to the department in the absence of any declaration.

4.26 In case of Air India Ltd. [2017 (3) G.S.T.L. 374 (Tri. – Del)], Delhi Bench has held as follows:

"12. *Next, we consider the ground of limitation raised by AIL. The contention of AIL is that no allegation of suppression can be fastened against them since the activities of AIL were within the knowledge of the department during the relevant period. Specifically the appellant had cited a letter dated 7-3-2006 written to the Joint Director of Service Tax to inform the various heads under which it was raising bills on AASL. Further, it has been contended that AIL had not paid service tax under the bona fide belief that it is not payable since AIL had not received payment from AASL.*

In the annual report 2003-04, it is mentioned "Non-charging of service tax on certain services". This implies that even where service tax has been collected the same was not deposited pending registration. It has also been recorded by the statutory auditors that service tax was payable on the services rendered by AIL to AASL. However, on the pretext that consideration has not been received (despite realization of the same from sale of tickets conducted on behalf of AASL), AIL has not discharged the service tax liability. In the light of the observations of the statutory auditors, We are not convinced with the argument taken by appellants that service tax was not paid on the basis of bona fide belief that service tax was not payable. Consequently, we are concluding that Revenue is entitled to invoke the extended period of limitation in this case."

In view of the above we do not find any merits in the submissions made by the appellant on the grounds of limitation.

4.27 Interest at appropriate rates is also liable to be recovered from the appellant under the provisions of Section 75 of the Act for the Service Tax not paid by them. Hon'ble Supreme Court has in case of Rajasthan Spinning and Weaving Mills [2009 (238) ELT 3 (SC)] observed as follows:

"14. Sub-section 1A of Section 11A provides that in case the person in default to whom the notice is given under the proviso to sub-section 1 makes payment of duty in full or in part as may be accepted by him, together with interest under Section 11AB and penalty equal to 25% of the accepted amount of duty within thirty days of the date of receipt of notice then the proceeding against him would be deemed to be conclusive (without prejudice to the provisions of Sections 9, 9A and 9AA) as provided in the proviso to sub-section 2 of Section 11A. Sub-section 1A and the proviso to sub-section 2 were inserted with effect from July 13, 2006 and, therefore, have no application to the periods relevant to the two appeals.

15. Sub-section 2B of Section 11A provides that in case the person in default makes payment of the escaped amount of duty before the service of notice then the Revenue will not give him the notice under sub-section 1. This, perhaps, is the basis of the common though erroneous view that no penalty would be leviable if the escaped amount of duty is paid before the service of notice. It, however, overlooks the two explanations qualifying the main provision. Explanation 1 makes it clear that the payment would, nevertheless, be subject to imposition of interest under Section 11AB. Explanation 2 makes it further clear that in case the escape of duty is intentional and by reason of deception the main provision of sub section 2B will have no application."

4.28 Hon'ble Bombay High court has in case of P V Vikhe Patil SSK [2007 (215) ELT 23 (Bom)]. stated as follows:

"10. So far as interest u/s. 11AB is concerned, on reference to text of Section 11AB, it is evident that there is no discretion regarding the rate of interest. Language of Section 11AB(1) is

clear. The interest has to be at the rate not below 10% and not exceeding 36% p.a. The actual rate of interest applicable from time to time by fluctuations between 10% to 36% is as determined by the Central Government by notification in the Official Gazette from time to time. There would be discretion, if at all the same is incorporated in such notification in the gazette by which rates of interest chargeable u/s. 11AB are declared.

The second aspect would be whether there is any discretion not to charge the interest u/s. 11AB at all and we are afraid, language of Section 11AB is unambiguous. The person, who is liable to pay duty short levied/short paid/non-levied/unpaid etc., is liable to pay interest at the rate as may be determined by the Central Government 47 Service Tax Appeal No.55429 of 2013 from time to time. This is evident from the opening part of sub-section (1) of Section 11, which runs thus :

"Where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person, who is liable to pay duty as determined under subsection (2) or has paid the duty under sub-section (2B) of Section 11A, shall in addition to the duty be liable to pay interest at such rate"

The terminal part in the quotation above, which is couched with the words "shall" and "be liable" clearly indicates that there is no option. As discussed earlier, this is a civil liability of the assessee, who has retained the amount of public exchequer with himself and which ought to have gone in the pockets of the Central Government much earlier. Upon reading Section 11AB together with Sections 11A and 11AA, we are of firm view that interest on the duty evaded is payable and the same is compulsory and even though the evasion of duty is not mala fide or intentional."

Similar views have been expressed in the following decisions:

- a) Kanhai Ram Thakedar [2005 (185) ELT 3 (SC)]

- b) TCP Limited [2006 (1) STR 134 (T-Ahd)]
- c) Pepsi Cola Marketing Co [2007 (8) STR 246 (T-Ahd)]
- d) Ballarpur Industries Limited [2007 (5) STR 197 (T-Mum)]

4.29 For their acts of omission and commission discussed supra, the appellant has rendered itself liable to penal actions under Section 78 of the Act for wilful suppression of facts with intent to evade payment of Service Tax. As we find that appellant has willfully suppressed/ mis-stated the facts with intent to evade payment of service tax due the penalty under this section becomes mandatorily imposable as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning and Weaving Mills [2009 (238) ELT 3 (SC)] observing as follows:

"18. *One cannot fail to notice that both the proviso to sub-section 1 of Section 11A and Section 11AC use the same expressions : "...by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,...". In other words the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty. It, therefore, follows that if the notice under Section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under Section 11A(2) there is a legally tenable finding to that effect then the provision of Section 11AC would also get attracted. The converse of this, equally true, is that in the absence of such an allegation in the notice the period for which the escaped duty may be reclaimed would be confined to one year and in the absence of such a finding in the order passed under Section 11A(2) there would be no application of the penalty provision in Section 11AC of the Act. On behalf of the assesseees it was also submitted that Sections 11A and 11AC not only operate in different fields but the two provisions are also separated by time. The penalty provision of Section 11AC*

would come into play only after an order is passed under Section 11A(2) with the finding that the escaped duty was the result of deception by the assessee by adopting a means as indicated in Section 11AC.

19. *From the aforesaid discussion it is clear that penalty under Section 11AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section."*

4.30 Since, the appellant has failed to maintain or retain books of accounts properly, failed to issue invoices in accordance with the provisions of law, failed to furnish the information called by the officers, failed to pay tax electronically through internet banking and failed to furnish ST-3 returns as discussed supra, therefore, rendered themselves liable for penal action under Section 77(1)(b), and 77(2) of the Finance Act, 1994 respectively. Penalties under these sections are civil obligations and are to be imposed for failure to comply with the stated provisions of statute. In case of Gujarat Travancore Agency [1989 (42) E.L.T. 350 (S.C.)] Hon'ble Supreme Court has held as follows:

"4. *Learned Counsel for the assessee has addressed an exhaustive argument before us on the question whether a penalty imposed under Section 271(1)(a) of the Act involves the element of mens rea and in support of his submission that it does he has placed before us several cases decided by this Court and the High Courts in order to demonstrate that the proceedings by way of penalty under Section 271(1)(a) of the Act are quasi criminal in nature and that, therefore, the element of mens rea is a mandatory requirement before a penalty can be imposed under Section 271(1)(a). We are relieved of the necessity of referring to all those decisions. Indeed, many of them were considered by the High Court and are referred to in*

the judgment under appeal. It is sufficient for us to refer to Section 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276C which provides that if a person wilfully fails to furnish in due time the return of income required under Section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what it intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of Section 276C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by Statute proceeds on the assumption that society suffers injury by and the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under Section 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of Revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in

Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision. We are supported by the statement in Corpus Juris Secundum Volume 85, page 580, Paragraph 1023 :

"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

4.31 Relying on this decisions Hon'ble Allahabad High Court has in case of Usha Martin Construction Steel Ltd [2014 (306) E.L.T. 270 (All.)] observed as follows:

"13. In Gujarat Travancore Agency v. Commissioner of Income Tax, 1989 (42) E.L.T. 350 (S.C.) the Supreme Court held that in the absence of any indication in the language of statute of the need to establish mens rea, the default in completing with the statute is sufficient for levy of penalty, which is a civil obligation and coercive remedy for loss of revenue. No doubt an element of coercion is present in the penalty, the terms in which penalty falls to be measured under Section 271(1)(a) of the Income-tax Act is significant."

4.32 Thus we do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Pronounced in open court on-05 June, 2024)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)