

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

REGIONAL BENCH - COURT No.II

Service Tax Appeal No.70449 of 2018

(Arising out of Order-In-Original No.LKO/EXCUS/00/COM/ST/062/2017-18 dated 28/02/2018 of the Commissioner of CGST & Central Excise, Lucknow)

M/s Shalimar Corp Ltd.,

.....Appellant

(11th Floor, Shalimar Titanium Building,
Vibhuti Khand, Gomti Nagar, Lucknow-226010)

VERSUS

Commissioner of Central Excise &

CGST, Lucknow

....Respondent

(7-A, Ashok Marg, Lucknow)

APPEARANCE:

Shri Dharmendra Srivastava, Chartered Accountant &
Shri Suhail, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER NO.70744/2025

DATE OF HEARING : 16 July, 2025
DATE OF PRONOUNCEMENT : 16 October, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-In-Original No. LKO/EXCUS/000/COM/ST/062/2017-18 dated 28.02.2018 of the Commissioner, CGST & Central Excise, Lucknow. By the impugned order following has been held:

ORDER

(i) *I confirm the demand of Service Tax to the extent of Rs. 6,99,16,017/- (Rs. Six Crore Ninety Nine Lakh Sixteen Thousand and Seventeen only) against the party i.e. M/s Shalimar Corp Ltd., 11th Floor, Shalimar Titanium, Vibhuti*

khand, Gomti Nagar Lucknow under Section 73(2) of the Finance Act1994

- (ii) I drop the remaining demand of Service Tax of Rs. 34,56,648/- (Rs. Thirty Four Lakh Fifty Six Thousand Six Hundred and Forty Eight Only) on account of cum- tax benefit as discussed above*
- (iii) Applicable amount of Interest on Rs. 6,99,16,017/- under the provisions of Section 75 of the Finance Act, 1994 shall also be recovered from the Party.*
- (iv) I impose a penalty of Rs. 6,99,16,017/- (Rs. Six Crore Ninety Nine Lakh Sixteen Thousand and Seventeen only) upon the party under Section 78 ot the-Finance Act, 1994.”*

2.1 The Appellant is registered under Section 69 of the Finance Act 1994 (hereinafter referred to as 'the Act') read with Rule 4 of Service Tax Rules, 1994 vide Registration No. AADCS9234LST001 and is engaged in providing services, covered under the category of Works Contract Service'.

2.2 An intelligence was gathered that the party has rendered 'Works Contract service to M/s Lucknow Development Authority (LDA), related to construction of Jai Prakash Narain International Centre at Vipin Khand, Gomti Nagar Lucknow (hereinafter called as 'JPNIC') but had not paid due service tax on the taxable value received from LDA in lieu of the said construction by wrongly claiming exemption from payment of service tax under notification no. 25/2012-ST dated 20.06.2012, as amended. JPNIC do not qualify as a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession and therefore, exemption under clause 12(a) of notification No 25/2012-ST as amended is not available to the construction of JPNIC.

2.3 On the basis of investigations undertaken it was found that the appellant had short paid the service tax as detailed in table below:

Period	Amount as per General Ledger (Work Completed)	Taxable Value for original work (40% of Amount)	Service Tax (inclusive Cess)	
			Rate	Payable

2013-14	528270070	211308028	12.36	26117672
2014-15	955804863	382321945	12.36	47254992
Total	1484074933	593629973		73372665

2.4 It was further observed during the investigation that

- Appellant contravened the provisions of Section 68 of the Act read with Rule 6 of the Rules. The service tax, short paid, amounting to Rs. 7,33,72,665/- (Rupees Seven Crore Thirty Three Lac Seventy Two Thousand Six Hundred Sixty Five Only) on the taxable value of the said Works Contract Services is recoverable from them under proviso to Section 73(1) of the Act as the party are self assessing the service tax liability and have shown incorrect value of taxable services in their ST-3 returns and failed to deposit the correct service tax.
- They wrongly availed exemption from payment of service tax under notification no. 25/2012-ST dated 20.06.2012, as amended or such amounts received from LDA against Works Contract service provided in respect of PNIC. Thus it is evident that the party have wilfully suppressed this material information from the Department with intent to evade payment of service tax, as the party have submitted the correct value of taxable services in respect of JPNIC only after visit of the Central Excise officers to their premises and being required through summons dated 04.01.2017 for submission of such relevant documents and information, therefore, proviso to Section 73(1) of the Act for invoking extended periods of time is applicable.
- Appellant is also liable for payment of interest on the aforementioned amount of service tax under the provision of the Section 75 of the Act
- Appellant by their above act & omissions have contravened the provisions of Rule 6 of the Rules

and Section 68 of the Act by evading the payment of Service Tax amounting to Rs. 7,33,72,665/- (Rupees Seven Crore Thirty Three Lac Seventy Two Thousand Six Hundred Sixty Five Only) including Education Cess and Secondary & Higher Education Cess and thus rendered themselves liable for penal action under Section 78 of the Act for the reason of suppressing the material fact and willful misstatement i.e not showing the correct value of taxable services in their ST-3 returns, with intent to evade the payment of Service Tax.

2.5 A Show Cause Notice dated 07.06.17 was issued to the appellant asking them to show cause, as to why:-

- (i) *Service Tax amounting to Rs. 7,33,72,665/- (Rupees Seven Crore Thirty Three Lac Seventy Two Thousand Six Hundred Sixty Five Only) should not be demanded and recovered from them under proviso to Section 73 (1) of the Finance Act, 1994;*
- (ii) *Interest at appropriate rate should not be charged and recovered from them under Section 75 of Finance Act 1994 for non-payment of service tax, as mentioned in (i) above, by due dates;*
- (iii) *Penalty should not be imposed upon the party under Section 78 of the Act for their various acts of omission and commission, as mentioned in the preceding paragraphs.*

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

2.7 Aggrieved appellant has filed this appeal.

3.1 We have heard Shri Dharmendra Srivastava, Chartered Accountant for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Learned Chartered Accountant submitted that:

- The concerned service of construction of 'Museum Block' and 'Convention Centre & Sports Block' of JPNIC provided by the appellant is exempt under Clause 12 (a) of Exemption Notification No 25/2012-ST dated 20.06.2012.
- The appellant has provided the services to Lucknow Development Authority (LDA) which is government authority. In case of the appellant [ST Appeal No 70572 of 2020] Ghaziabad Development Authority has been held to be Government Authority by following the decision of Hon'ble Apex Court in case of Shapporji Pallonji & Company Pvt Ltd. [2023 (79) GSTL 145 (SC)]
- The 'Museum Block' and 'Convention Centre & Sports Block' of JPNIC was predominantly for use other than for commerce, industry or any other business or profession.
- Extended period of limitation could not have been invoked for making this demand, as appellant has not mis-stated or suppressed facts in any manner and all the transactions are duly recorded in the book of accounts thereby showing complete transparency on the part of appellant. The issue in the present case are in relation to interpretation of complex legal provision rather than intent to evade payment of tax. Reliance is placed on the decision in the case of
 - Easland Combines Coimbatore [2003 (3) SCC 410]
 - Uniworth Textiles Ltd. [2013 (9) SCC 753]
- No interest or penalty is payable in the afcts of the present case.

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

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

4.2 Impugned order records the findings as follow:

"I found that the following issues are to be considered by me:--

- (i) Whether services provided by the party are taxable or exemption given under clause 12(a) of Notification No. 25/2012-ST dated 20,06,2012 is available to them?*
- (ii) Whether party is entitled to the Cum tax benefit while computing tax liability?*
- (iii) Whether extended period is invocable*
- (iv) Whether party is liable to pay interest as per provisions of Sec 75 and Penalty as per provisions of Section of 78 of the Finance Act 1994?*

On the 1st issue I found that-

Party has provided Works Contract Service to Ms LDA in respect of Construction of Jai Prakash Narain International Centre. Party has claimed that Jai Prakash Narain International Centre is predominantly for use other than commerce, industry, or any other business or profession and LDA is a Governmental authority,. Therefore Services provided by them to LDA is exempt from Service Tax by virtue of entry No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012.

I found that exemption under entry No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012 is available only when following two condition are satisfied

- (a) *The specified services must be provided to Government or Local authority, or Governmental authority.*
- (b) *The specified services must be in respect of civil structure predominantly for use other than commerce, industry, or any other business or profession.*

On the first condition party in their defense has stated that-

Clause (s) of Para - 2 of Mega Exemption Notification 25/2012 dated 20.06.2012 defines 'Governmental Authority' as follows:-

(s) "Governmental authority" means an authority or a board or any other body;

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by Government, with 90 percent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

Lucknow Development Authority is constituted/ formed under Uttar Pradesh Urban Planning & Development Act, 1973, therefore, under the purview of Service Tax law, Lucknow Development Authority (L.D.A.) is a 'Governmental Authority' in terms of sub-clause (i) of Clause (s) of Para -- 2 of Mega Exemption Notification 25/2012 dated 20.06.2012. Party has further stated that in the Show Cause Notice it is alleged that LDA is a non-governmental authority as it has been constituted as a Body Corporate but any entity formed or constituted under an Act of State Legislature cannot be termed as Body Corporate. An institution can be, "Body Corporate" in terms

of section 2(7) of the Companies Act, 1956 as substituted by section 2(11) of The Companies Act, 2013, by virtue of its incorporation/ registration under the provisions of Companies Act, 1956/2013, and not merely by way of terming it as Body Corporate. In fact, Lucknow Development Authority (L.D.A.) is a 'Governmental Authority by virtue of its constitution and as per the provisions of service tax law.

I found that LDA is constituted vide a notification issued in exercise of the powers under Section 4 of the Uttar Pradesh Urban Planning & Development Act, 1973 but it has been constituted as a Body Corporate and its constitution is not in lieu of municipality to carry out functions entrusted to a municipality under article 243W of the Constitution, Term "Body Corporate" is defined under section 65(14) of Finance Act, 1994, as under:-

(14) "Body corporate" has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956 (1 of 1956).

Section 2(7) of the Companies Act, 1956 as substituted by section 2(11) of The Companies Act, 2013, defines the term 'Body Corporate' as follows:-

(11) 'body corporate' or 'corporation' includes a company incorporated outside India, but does not include

- (i) a co-operative society registered under an law relating to co-operative societies; and*
- (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;*

I found that above definition of the term "'Body corporate' is an inclusive definition and has exclusion clause too. It

includes the company incorporated outside India but does not include a Co-operative society and any other body corporate, which the Central Government may, by notification, specify in this behalf, In this regard I found that LDA is neither a Co-operative society nor Central Government has notified it as otherwise. Therefore, I do not find any force in the contentions of party in this regard and LDA cannot be treated as Governmental Authority under the provisions of Service Tax law.

On the second condition the party in their defense has stated that-

"The affairs of JPNIC shall be looked after by a society (known as JPNIC Society), which shall be formed and registered under the Societies Registration Act, 1860, having a Board of Trustees. It is needless to mention that the object of Societies Registration Act, 1860, as stated in the preamble is to make provision for improving the legal conditions of Societies established for promotion of literature science, fine arts, for diffusion of useful knowledge or for charitable purposes. Hence, the registration of JPNIC as a society would not have been proposed, where the main object of construction of the Centre was profit making or to carry out business."

I found that the object of Societies Registration Act, 1860, may be improving the legal conditions of Societies established for promotion of literature, science, fine arts, for diffusion of useful knowledge or for charitable purposes but it does not mean that societies could not indulge in any commercial activity. I do not found any legal bar on a society in indulging in business or commerce. It is proposed that the affairs of JPNIC shall be looked after by a society (known as JPNIC Society), also does not mean that JPNIC could not indulge in any commercial activity.

I also found that proposed JPNIC Society is to be formed to look after the work of operator selected for functioning of JPNIC. The operator has to share either 18% of the actual revenues earned or assured minimum guarantee (as quoted by him in tender), whichever is higher. Further Para 5.4.4 of Tender document for selection of operator stipulates Pricing Policy which says the pricing will be purely non- commercial for only its members and guest. It means that user charges for the facilities available in JPNIC will be on commercial basis for general public. I also found that Weddings and wedding receptions are allowed at JPNIC premises & Revenue generation will be from (a) renting of Guest Rooms Conference/Training/Meeting rooms Multi-purpose Hall, Exhibition spaces, Art Galleries etc (b) Restaurant, Food Court, Cafeteria and other Banqueting facilities and (c) hiring of certain facilities from outside based upon requirements. JPNICS and operator will comply and pay the respective direct and indirect taxes which are applicable to both during the period of agreement between the JPNICS' and the 'Operator', including income tax, service tax TDS and VAT etc. Out of total area of JPNIC, around 55139 Sq Mt has been used for convention and sports centre (CSC) and guest rooms and only 3355 Sq Mt has been used for museum. It clearly shows that the facilities available in JPNIC, barring Museum, will be used for commerce or business and the revenue generated out of this will be liable to taxes under different Laws including Service Tax.

From the above it is evident that the civil structure of JPNIC is a structure to be used predominantly for business or profession by the JPNIC Society with the help of selected operator as it will generate revenue by operating the JPNIC in a professional manner by renting of its guest rooms, Conference/training/Meeting rooms, Multi-Purpose Hall, Exhibition spaces. Art Galleries etc. and from sale of

goods/ services in Restaurant, Food Court Cafeteria and other Banqueting facilities. The revenue so generated from members/ non member guests will be shared between the two parties i.e. the JPNICS/LDA, the owner of JPNIC, and the operator. The word business can be defined as "An organization or economic system where goods and services are exchanged for one another or for money". Every business requires some form of investment and enough customers to whom its output can be sold on a consistent basis in order to make a profit. Businesses can be privately owned, not- for-profit or state-owned.

In view of above I come to conclusion that none of two conditions essential for eligibility for exemption available under entry No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012 is satisfied therefore, services provided by the party in respect of construction of Jai Prakash Narain International Centre to the Lucknow Development Authority are taxable under Service Tax as per provisions of the Finance Act 1994.

On the 2nd issue that whether party is entitled to the Cum tax benefit while computing tax liability, I found that demand of Service tax has been raised on the gross amount received by the party as per General Ledger of JPNIC maintained by the party. From the records available it is evident that the service tax has not been separately collected by the party from LDA. I also found that Notification No. 6/2015-ST dated 01.03.2015 omitted the above stated entry Number 12(a) from the Notification 25/2012-ST dated 20.06.2012 resulting in non availability of above said exemption w.e.f 01.04.2015. Consequent to this amendment in Notification No. 25/2012-ST dated 20.06.2012 party started to pay due Service Tax on services provided to LDA without charging it from LDA. From this fact it is evident that Tender value includes amount of applicable Service Tax. Section 67 of the

Finance Act 1994 deals with provisions of valuation of taxable services for charging service tax on the services provided or to be provided. Sub section (2) of Section 67 of the Finance Act 1994 states as under:-

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

The party in their defense reply has claimed cum tax benefit while calculating the service tax liability and has referred number of judicial pronouncements on this issue. I found that Service tax is an indirect tax. Tax borne by consumer of services is collected by the assesses and is remitted to the government. Total receipts for rendering services to be treated as inclusive of Service tax due to be paid by ultimate customer unless Service Tax is paid separately by customer as per provisions of Section 67 of the Finance Act 1994. Therefore, I am of the view that party is entitled to cum tax benefit while calculating the service tax liability. Accordingly service tax liability of the party is being recalculated as under:-

Period	Amount as per General Ledger (Work Completed)	Taxable Value for original work (40% of Amount)	Service Tax (inclusive Cess)	
			Rate	Payable
2013-14	528270070	211308028	12.36	24887247
2014-15	955804863	382321945	12.36	45028770
Total	1484074933	593629973		69916017

On the 3rd Issue that whether extended period is invokable or not, I found that party has contested the invocation of extended period on the following grounds that-

- (i) they have never suppressed any facts relating to nonpayment of service tax from the Department.*

- (ii) *they have recorded all financial transactions in books of accounts as per accounting principles.*
- (iii) *they have bonafide impression that service tax was not payable by them*
- (iv) *They never had any intention to evade payment of service tax*

In this regard I found that as per provisions of Section 70 of the Finance Act 1994 every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency, as may be prescribed. Rule 7 of Service Tax Rules 1994 prescribes half yearly return in form ST-3. Return ST-3 contains details of service provider, details of different services provided and received, exemptions claimed, gross amount received, taxable amount, service tax payable, service tax paid, Cenvat availed and utilized etc. I found that ST-3 return is the only document which is required to be submitted regularly to the departments. Any other record or document is not required to be submitted unless demanded by the proper officer. I am of the firm opinion that if any information required to be declared in ST-3 return is not declared it amounts to the suppression. I found that amount received from the LDA against the services provided by the party in respect of construction of JPNIC has not been shown in the ST-3 returns resulting in declaration of incorrect value of taxable services in their ST-3 returns. Motive behind this suppression may not be other than intent to evade payment of service tax.

I also found that Notification No.6/2015-ST dated 01.03.2015 omitted the above stated entry Number 12(a) from the Notification 25/2012-ST dated 20.06.2012 resulting in non availability of above said exemption w.e.f 01.04.2015. Consequent to this amendment in Notification

No. 25/2012-ST dated 20.06.2012 party started to pay due Service Tax on services provided to LDA without charging it from LDA. From this fact it is evident that Tender value includes amount of applicable Service Tax and party is claiming exemption under entry No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012 with the intent to cover the misdeed of nonpayment of due Service tax on the services provided to LDA. My this view got the force from the fact that the party neither claimed said exemption nor disclosed the value of services provided to LDA by declaring the same in ST-3 returns. Had the department not initiated the enquiry in the matter of non - payment of Service tax by the party on the services provided to LDA would not be unearthed.

In the light of above I came to conclusion that contentions of the party put forth are lame excuses and party has willfully suppressed material information from the department with intent to evade payment due service tax, therefore invocation of extended period as per proviso to Section 73(1) of the Act is legal and proper.

Now I came to last issue that whether party is liable to pay interest under section 75 and liable to penalty under section 78. Since in view of above discussions I have already come to conclusion that party has willfully suppressed the taxable value with intent to evade payment of due Service Tax, therefore, I found that interest is recoverable from the party under Section 75 of the Act & party is also liable to penalty under Section 78 of the Act for failure to pay service tax."

4.3 From the facts as narrated by the impugned order, we find that JPNIC is a project funded by Govt. of Uttar Pradesh and LDA was given the task to execute the said work as an intermediary and the project was to be owned by Society formed in the name of JPNIC Society. JPNIC Society was made responsible for

running the said JPNIC on professional basis. We refer and reproduce excerpts from the Section 5 of the Tender document for selection of operator, the facts about the facilities offered, its operation, the manner in which revenue is earned using facilities of JPNIC and the revenue distribution among different parties

Section 5.1 ABOUT JAI PRAKASH NARAIN INTERNATIONAL CENTRE (JPNIC)

Government of Uttar Pradesh has constructed a Jai Prakash Narain International Centre (JPNIC) located at Vipin Khand, Gomti Nagar, Lucknow. Jai Prakash Narayan International Convention and Sports Centre is designed as a signature building for the city of nawabs, Lucknow. The Jai Prakash Narayan International Centre at Lucknow comprises of a multiple number of facilities ranging from an aquatic center, a sports center, a business center, a museum and a hotel along with sufficient parking space. The centre is livided into four blocks as follows:

- A. Convention Centre & Sports Block: comprising of an international standard tennis court with stadium, badminton court with stadium, multipurpose court with stand and various type of conferencing and seminar facilities.*
- B. Guest House Block: comprising of squash court, snooker and table tennis facilities, guest rooms including VIP guest rooms and a dormitory, spa, gym, kitchen and restaurants*
- C. Aquatic Block: comprising of a swimming pool of international standards with a stand and a diving pool of international standard with diving platforms*
- D. Museum Block: comprising of a museum, an open-air theatre, reading room and a book library. This center is enclosed by Dr. Ram Manohar Lohiya Park on one side and urban*

development on the other. The design of the building therefore., aesthetically and functionally fits appropriately into the contrasting contexts of urbanity and nature.

5 2 FACILITIES OFFERED

5.2.1 Guest Rooms & VIP Rooms: The JPNIC has 103 guest rooms and 8 VIP rooms for accommodating the Individual Members, Institutional Members and member guests of the JPNIC.

5.2.2 Dormitory: The JPNIC has 6 dormitories totaling to 72 beds for accommodating students coming for sports events and persons accompanying members and their guests,

5.2.3 Restaurant: The JPNIC has 1 Guest Room Restaurant with an area of 214 sqm. and 1 Roof-top Restaurant with an area of 312 sqm., capacity serving both meals i.e. vegetarian and non-vegetarian menu.

5.2.4 Cafeteria: The JPNIC has 2 cafeterias: one on the fourth floor and one on the ground floor respectively.

5.2.5 Banqueting: The JPNIC has designed one large mother kitchen, one service kitchen, two smaller kitchens each with a restaurant and pantries at all floors well-connected through service-lifts meeting the overall requirements of the JPNIC.

5.2.6 Convention Hal: There is one convention hall with auditorium type sitting with a capacity of approximately 2000 pax with an area of 2486sqm. This convention hall will be equipped with all audio-visual facilities and can be used as an auditorium to host big seminars/ conferences or any other cultural events. The facility has collapsible partitions of approx. 700 pax each.

5.2. 7 Multi-Purpose Court: There is one multi-purpose Court with an area of 588 sqm. This multi-purpose court will be equipped with all audio-visual facilities and can be used as an auditorium to host big seminars/ conferences or any other cultural events.

5.2.8 Conference Hall: There is one big conference hall with classroom. type sitting with a capacity of approximately 1000 pax with an area of 1497sqm. This conference hall will be equipped with all audio-visual facilities and can be used to host seminars/ conferences or any other cultural events.

5.2.9 Convention lobby/ Exhibition Space: There is a big convention lobby with a capacity of approximately 1100 pax with an area of 1183 sqm. This convention lobby can be used to host a big exhibition or as banqueting facility for programmes taking place in the convention centre.

5.2.10 Seminar Hall: The JPNIC has two seminar halls with an area of 552 sqm. to serve the multiple needs of the LOA officials, members, etc. with latest conferencing and audio-video facilities. The seminar hall has flexible partitions to accommodate even 100 pax as per the requirements.

5.2.11 Health Club: The JPNIC has a number of health and sports facilities which have been clubbed under the health club facilities as follows a) Tennis Court of 1371sqm capacity b) Squash Court of 396 sqm capacity c) Swimming Pool & Diving Pool of 2852 sqm capacity d) Children's pool of 372sqm capacity e) Gym of 213sqm capacity f) Spa of 293sqm capacity g) Yoga Hall of 87sqm capacity

5.2.12 Museum: The JPNIC has a museum of 460sqm

5.2.13 Library & Reading Lounge: The JPNIC has one library& reading lounge of 170 sqm in the museum block with a sitting capacity of approximately 85 pax

5.2.14 Cultural Programmes/ Events: The JPNIC will create its own programme profile in order to make the centre a one of the cultural hubs in the city.

5.2.15 Furnishing of JPNIC: The furnishing of the JPNIC will be done by LDA in consultation with the selected operator.

5.3 UTILITIES

5.3.1 Lifts and Escalators: The JPNIC has 16 lifts (including service lifts) and 10 escalators for rapid mass vertical transportation

5.3.2 Parking: The JPNIC has a multi-level car parking to park approximately 600 cars at any given point of time. The parking facility will be free for its members.

5.3.3 Air Conditioning: The JPNIC has fully centralized air-conditioning with the following AC plants in place: a) 800 TR capacity AC plants (3 nos.) b) 220 TR capacity AC plants (3 nos. c) 200 TR capacity AC plants (2 nos.) d) 125 TR capacity AC plants (2 nos.)

5.3.4 Electricity/ KV Sub-Stations: The JPNIC has 7152 KV of electricity supply to meet all its-requirements

5.3.5 Power back-up: The JPNIC has 4 nos. of generators with 1500 KVA capacity each and 2 nos. of generators with 1000 KVA capacity each to provide 100% power backup facility to the Centre.

5.3.6 CCTV Surveillance: The JPNIC has a non-intrusive security system in place.

5.3.7 Fire Fighting Equipments: There will be a fully addressable fire detection/ fire suppression system in place.

5.3.8 Server Rooms: There will be fully integrated Wi-Fi connectivity in the JPNIC with well networked server rooms at each floor.

5-3-9 Water Treatment Plant: The JPNIC has a waste water treatment plant in place with a specification of 176 KLD.

5.3.10 Sewage Treatment Plant (STP). The JPNIC has a STP in place with a specification of 200KLD.

5.4 SCOPE OF WORK

The scope of work for operating Jai Prakash Narain International Centre (JPNIC) is as follows:

The JPNIC Society: LDA will form a society under the Societies' Registration Act, 1860 wherein the JPNIC Society will be formed to look after the affairs of JPNIC. This society will oversee the affairs of the selected operator and will be responsible for smooth and efficient functioning of the centre. The society will consist of both elected and nominated members from UP Government, eminent persons from sports & culture, corporate representatives, etc., The selected operator will do all the correspondence with the JPNIC Society. The operations of the JPNIC will be managed by a multi-level hierarchy comprising of the following:

- ***Board of Trustees***
- ***Governing Body***
- ***Managing Committee***

5.4.2 THE REVENUE MODEL

- a) Operator will share revenue with JPNIC. This sharing arrangement will be on the top line with minimum guarantee to be supported with a Bank Guarantee.***
- b) The operator will pay to JPNIC Society, the proportionate monthly amount of AMG as quoted by him. The final settlement of revenues (if actual revenues earned during the year are more than the AMG) will be done on financial year basis by 31st March of every year.***
- c) Payment to be made on monthly basis for the following services (payments must be made within 45 days of the end of particular month).***
 - Rentals: This will include rentals for Guest Rooms, Conference/Training/ Meeting rooms, Multi-Purpose Hall, Exhibition spaces, Art Galleries, etc***
 - Food & Beverages (F&B): This will include the Restaurants Food-Court, cafeteria and other banqueting facilities***
 - Miscellaneous Operating Departments: This will include hiring of certain facilities from outside based upon the member requirements.***

5.4.4 PRICING POLICY

- a) The prices of the rooms will have to be kept at club level*
- b) The affairs of the JPNIC will be managed by a society*
- c) The pricing policy will be purely non-commercial for only its members and guests*
- d) The price at the JPNIC for conference banquet facilities should be competitive giving clear price*

advantage to the members There shall be differential pricing for usage by members & member guests. The members will be given a price advantage of 30% for usage of various facilities in JPNIC.

5.4.5 PROJECTED BUSINESS VOLUME

a) JPNIC expects to have individual members (with individual spouses and dependents) corporate members and temporary members.

*(*Note: Temporary Members are members other than individual and corporate members with individual spouses and dependents and member guests. They will be charged a temporary membership fee for use of various facilities)*

b) The sports, convention, banqueting and dining facilities will have a provision for use by approximately 4000 persons daily on the basis of 50% occupancy rate for two - three shift use depending on season.

c) Occupancy at guest room is expected to be 80% round the year

d) Cultural and other activities planned in the convention centre, exhibition halls and other halls will generate business in the restaurants

e) There will be separate membership for health club (for non-members/temporary members) and the revenues earned from this will be shared in the same arrangement as for other facilities between the selected operator and the JPNIC Society. Whereas, the health club facility will be free for registered members with JPNICS,

f) The Operator can also go for outdoor catering.

(Note: The membership fee will go to the JPNIC society. It will be a revenue stream for the JPNIC Society and not the Operator)

5.4.8 LICENSES & TAXES *The acquisition of licenses and payment of taxes will be follows:*

a) Licenses: All the licenses will be acquired in the name of the JPNIC Society like UPPCC (pollution control) license, Phonographic Performance license, Fire NOC, MCL license, and the like except Excise license for running a bar and Health License which will be acquired by the operator. The operator will help the JPNIC Society in acquiring the above mentioned licenses for smooth running of the JPN/C. The cost of obtaining the licenses will be borne by JPNICS only or charged to JPNICS by the operator in case of help.

b) JPNICS and the operator will comply and pay the respective direct and indirect taxes which are applicable to both during the period of this agreement including income tax service tax, TDS, VAT, etc.

5.4.11 USAGE PATTERN

JPNIC will encourage members to use the facilities and allow the Operator to organize the programmes, cultural events, play etc., when the facilities are not booked by member. The operator will have full responsibility for operations of the JPNIC without interference from anybody.

(Note: The bookings for all the facilities will be made on first cum first serve basis.)."

4.4 From the terms of the above document it is evident that LDA will form a society under the Societies Registration Act, 1860 wherein the JPNIC Society (JPNICS) will look after the affairs of JPNIC. JPNICS will hand over the JPNIC, convention & sports centre guestrooms JPN museum, convention hall, Kitchen,

dining, all the conference rooms, seminar halls etc., to a selected operator on lease for a period of 15 years. The operator will be responsible for managing accommodation of rooms, use of convention halls, guest rooms, seminar halls etc. JPNICS will encourage members to use the facilities and allow the Operator to organize programmes, cultural events, plays etc when the facilities are not booked by member. Weddings and wedding receptions are allowed at JPNIC premises. The operator will share either 18% of the actual revenues earned during the year (on top line) or assured minimum guarantee (as quoted by him), whichever is higher. Revenue generation will be from

- (a) renting of Guest Rooms, Conference/Training/Meeting rooms Multi-purpose Hall, Exhibition spaces, Art Galleries etc
- (b) Restaurant, Food Court, Cafeteria and other Banqueting facilities and
- (c) hiring of certain facilities from outside based upon the member requirements.

JPNIC will be having individual members, corporate members and temporary members. The membership fee will go to the JPNICS. JPNICS and operator will comply and pay the respective direct and indirect taxes which are applicable to both during the period of agreement between the 'JPNICS' and the 'Operator', including income tax, service tax, TDS and VAT etc.. From the facts as in the tender document it is quite evident that the facilities being created at the JPNIC are meant for revenue generation which will be accounted for with the JPNICS. Thus we are very clear in our mind that the facilities being created are meant for trade and commercial usage. Commissioner has after analysis of the facts and documents available has concluded that the JPNIC was meant for trade and commerce and hence the exemption under Notification No 25/2012-ST dated 20.06.2012 will not be available to the appellant.

4.5 We further note that Hon'ble Allahabad High Court has in case of Greater Noida Industrial Development Authority [2015 (40) S.T.R. 95 (All.)] held as follows:

"The plea of the appellant that it is performing statutory duties and is a creation of a statute and therefore cannot be subjected to Service Tax does not appeal to us. Suffice is to mention that the Finance Act, 1994 makes no distinction between a statutory body i.e. a juristic person and an individual.

31. *As far as the circular dated 23rd August, 2007 issued by the Government of India, which has been so heavily relied upon by the appellant is concerned, we may record that under Clause 032.01, it has been provided that the Prasar Bharati Corporation (Doordarshan and All India Radio), which has been constituted under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 is liable to pay Service Tax for broadcasting services.*

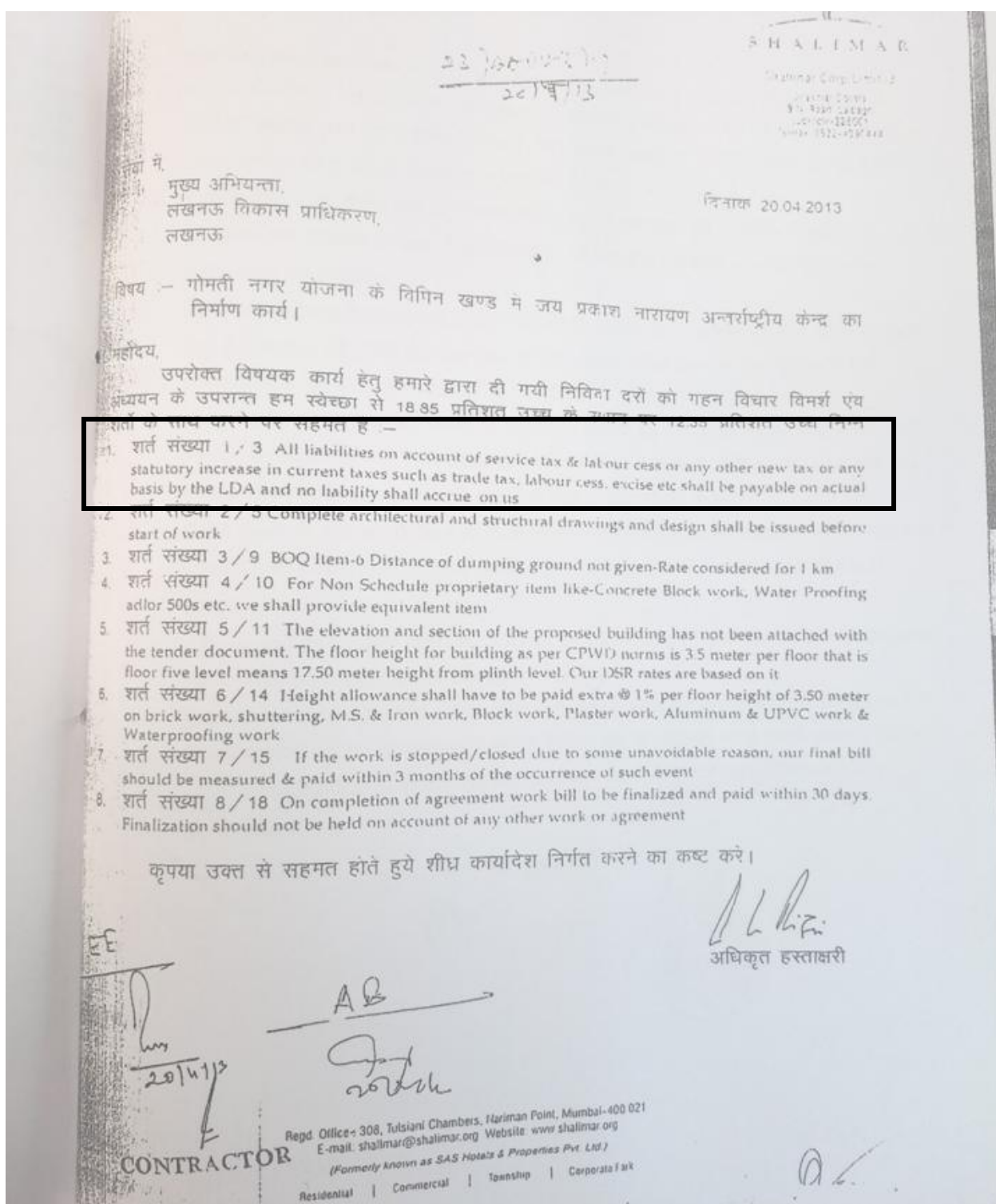
32. *Similarly under Clause 999.01 with regard to the sovereign/public duties/functions, it has been clarified that activities assigned to and performed by the sovereign/public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and are deposited into the Government account. Such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. Therefore, such activities assigned to be performed by a sovereign/public authority under the provisions of any law, do not constitute taxable services. Any amount/fee collected in such cases are not to be treated as consideration for the purposes of levy of Service Tax.*

33. *However, if a sovereign/public authority provides a services, which is not in the nature of an statutory activity and the same is undertaken for a consideration (not a statutory fee), then in such cases, Service Tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined.*

34. *Letting of immovable property for consideration, which is determined on the basis of offers received from public at large by the assessee Greater Noida Industrial Development Authority is a service provided for consideration and not on payment of statutory fees, neither it is a statutory service performed by the assessee. It may be that the statute permits such activities of letting out of immovable property for augmenting its finances but the same cannot be termed as the service in public interest nor it is a mandatory or statutory functions of the Development Authority. Accordingly such activity of leasing do constitute a taxable service, in our opinion."*

4.6 The decision of the tribunal dated 26.11.2024, in the appellant own case relied upon by the appellant is clearly distinguishable. Appellant has in that case claimed refund of Rs 80,64,728/- which was denied by the original authority and in Commissioner (Appeal) allowed the appeal filed by the appellant against such rejection. Revenue filed the appeal before the tribunal against the order in appeal. In that case we found that the appellant had filed the refund claim as sequel to tribunal Final Order No 70039/2019 dated 08.01.2019, wherein tribunal has concluded that the activities undertaken by the appellant for GDA in construction of multi level parking at Vaishali Metro Station was not for commerce and hence liable to exemption under Notification No 25/2012-ST. Revenue had accepted that order on the monetary basis in terms of Litigation Policy. In the present case when we have concluded that the activities JPNIC was meant for commerce, we do not find that this judgement will support the case of appellant.

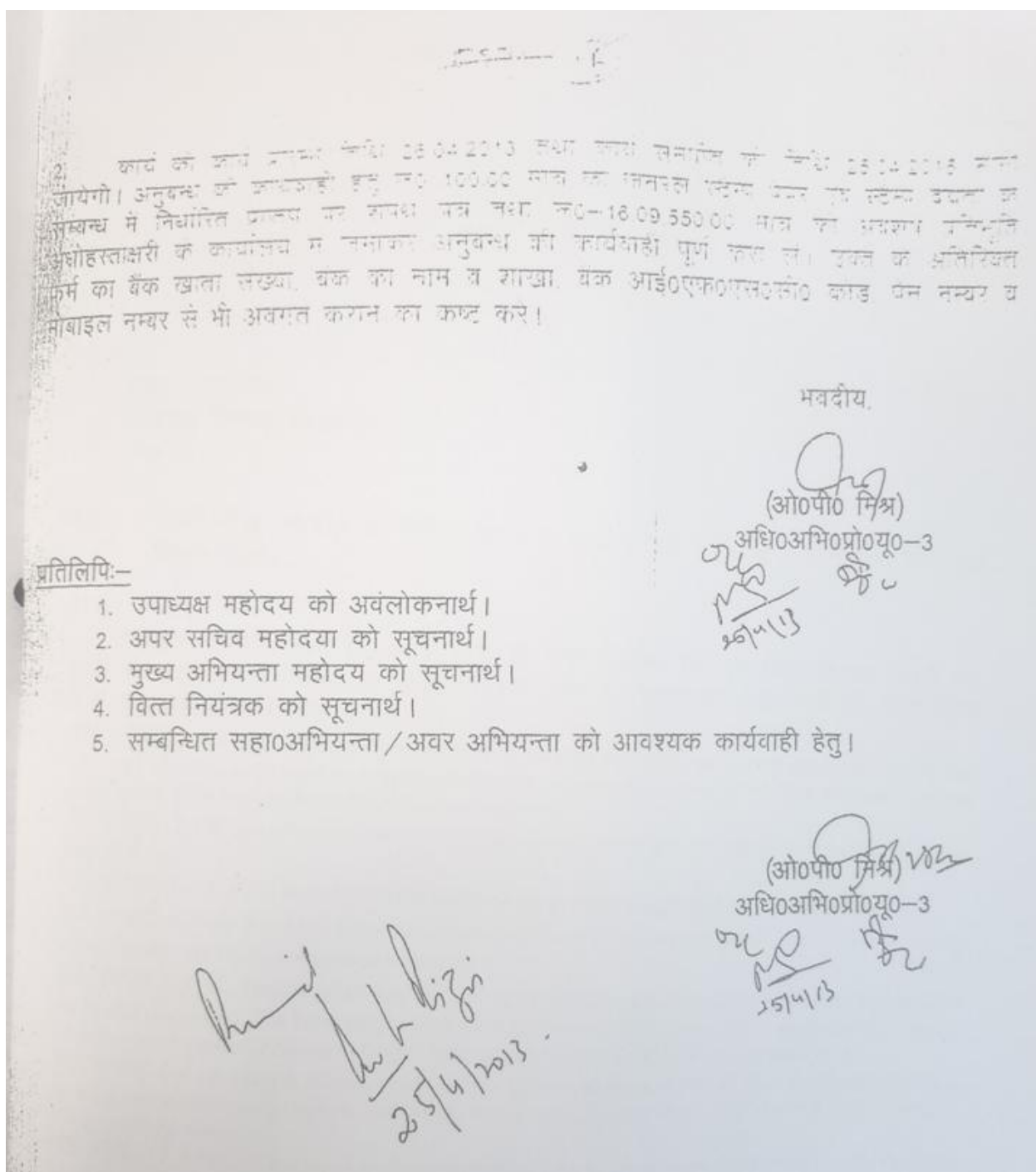
4.7 The above document itself admits that the Service Tax is leviable and payable on the activities being undertaken and JPNICS and the operator on revenue that would be generated out by the operation of the JPNIC. The fact that Service tax is payable by the appellant on the activities of construction of various facilities at JPNIC is payable in respect of this contract for construction activities at JPNIC is evident from the following correspondences between the appellant and LDA reproduced below:



कार्यालय लखनऊ विकास प्राधिकरण	
प्रेषक	प्राप्त
अधि०अभि०,प्रा०यू०-३	महोदय शालीमार कापटिंग लि०
लखनऊ विकास प्राधिकरण	लखनऊ विकास प्राधिकरण
लखनऊ	प्लॉट नं० ३, लखनऊ
	लखनऊ-२२६००१
	फोन नम्बर-०५२२-४०३०४४४
पत्र संख्या २९/आ०यू०-३/१३	नस्थी
दिनांक १५.०४.२०१३	
विषय :-	
गोमती नगर योजना के विपिन खण्ड में जय प्रकाश नारायण अन्तर्राष्ट्रीय केन्द्र का निर्माण कार्य।(प्रथम चरण)	
महोदय,	
उपरोक्त कार्य हेतु आपकी सर्वनिम्न निविदा एवं तदोपरान्त दिये गये पत्र दिनांक २०.०४.१३ द्वारा संशोधित दर व्ययानुमान से १२.३५ प्रतिशत उच्च, के अनुसार निविदा धनराशि रु०-१,४९,५९,५४,०२९.५३ (एक सौ उनचास करोड उनसठ लाख चौद्वन हजार उनतीस एवं पैसे तिरपन) मात्र की स्वीकृति तथा पत्र में उल्लिखित ०८ शर्तों की स्वीकृति निम्नवत् उपाध्यक्ष महोदय द्वारा प्रदान कर दी गयी है:-	
शर्त संख्या-१ :-	सर्विस टैक्स का भुगतान वित्त नियंत्रक, ल०वि०प्रा० के पत्र सं०-३१/एफ० सी०/२०१३-१४ दिनांक ०२.०४.१३ के अनुसार तथा शासन द्वारा लागू कोई नया टैक्स का भुगतान नियमानुसार किया जायेगा।
शर्त संख्या-२ :-	कार्पास टैटो से समस्त ड्राइंग्स प्राप्त कर समय से उपलब्ध करायी जायेगी।
शर्त संख्या-३ :-	यदि मिट्टी का डिस्पोजल १ किमी० दूरी से अधिक दूरी पर करने हेतु निर्देशित किया जायेगा, तो तदानुसार अतिरिक्त दूरी का अतिरिक्त मद के रूप में भुगतान किया जायेगा।
शर्त संख्या-४ :-	निविदा प्रपत्र में अंकित मदों के अनुसार कार्य का सम्पादन किया जायेगा। मदों में कोई भी परिवर्तन यदि आवश्यक हुआ तो सक्षम स्तर की सहमति के उपरान्त किया जायेगा।
शर्त संख्या-५ :-	डी०एस०आर० की मदों में फ्लोर हाईट डी०एस०आर० के अनुसार (३.५० मीटर प्रति फ्लोर) आंकलित होगी।
शर्त संख्या-६ :-	कांक्रीट के कार्यों हेतु हाईट एलाउन्स निविदा प्रपत्र में सम्मिलित किया गया है। यू०पी०पी०डब्लू०डी० एस०ओ०आर० की मदों में विस्तृत ड्राइंग/डिजाइन प्राप्त होने के उपरान्त वास्तविक मात्राओं के आधार पर हाईट एलाउन्स का अतिरिक्त मद के रूप में भुगतान किया जायेगा।
शर्त संख्या-७ :-	अपरिहार्य कारणों अथवा शासन के निर्देशों के क्रम यदि कार्य को बन्द करने के आदेश प्राप्त होते हैं, तो अन्तिम भुगतान की कार्यवाही की जायेगी।
शर्त संख्या-८ :-	अनुबन्ध के अनुसार कार्य पूर्ण होने के उपरान्त यथाशीघ्र अन्तिम भुगतान की कार्यवाही की जायेगी।

CONTRACTOR

सहायक अधिकारी



4.8 From the facts as stated above it is evident that while entering into and awarding the contract of work to appellant, Appellant and LDA have taken into account the fact that service tax is payable on this transaction and have made it a part of the contract document. The fact that appellant was fully aware that service tax is payable on this transaction is evident from the letter dated 20.04.2013 of the appellant reproduced above. Even being fully aware that service tax was payable, appellant did not pay any service tax in respect of these transactions nor ever declared the same in the ST-3 return filed by them. The suppression with the intention to evade payment of service tax

in respect of this transaction is evident. It is settled law that when appellant who was aware of the fact the service tax was payable in respect of these transactions but had not declared the same to the department in ST-3 returns, then the charge of suppression with intent to evade payment of tax is established. In case of Chemphar Drugs & Liniments [1989 (40) E.L.T. 276 (S.C.)] following was observed:

"8. Aggrieved thereby, the revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case..."

4.9 In case of Grauer & Weil (India) Ltd. [1994 (74) E.L.T. 481 (S.C.)] following was observed after referring to the above facts:

14. As has been observed in the above-quoted passage the question as to whether in a given case the requirements for invoking the proviso are fulfilled or not is one of fact. It has therefore to be ascertained whether in

the set of facts and circumstances of the instant case, the Collector and Tribunal were justified in concluding that the appellant was guilty of wilful mis-statement and suppression of facts. On perusal of the record we find that in arriving at the above conclusion the Collector and the Tribunal relied upon the following facts and circumstances :-

- (i) the reference to the declaration dated April 15, 1981 by the appellants in their letter dated September 19, 1981 was incorrect and misleading inasmuch as the said declaration related to M/s. Growel Chromates Pvt. Ltd. and was filed for availing exemption under Notification No. 105/80, dated June 19, 1980, which pertained to factories wherein the total investment on plant and machinery was not over 10 lakhs, and had no reference or relevance to Notification No. 46/81, dated March 1, 1981;*
- (ii) the copy of the prescribed form of the above declaration dated April 15, 1981, which was filed in the impugned proceeding indicates that, against the column "reference to the notification under which exemption from duty is claimed" is the remark "105/80, dated 19-6-1980; Not as 92/81 (not falling under Factories Act having less than 10 workers)" but in the original of the declaration form the words "Not. No. 92/81 (not falling under Factories Act having less than 10 workers)" are significantly missing;*
- (iii) the claim of the appellants that the Factories Act authorities had on February 9, 1982 approved their lay out plan wherein the Chromic Acid Section has been described as*

"premises which do not come under Section 2(m) of the "Factories Act", was unfounded for it had not been signed by a duly empowered officer administering the Factories Act;

(iv) the statement of non-factory status of the Chromic Acid Section in the letter dated September 19, 1981 was a conclusion drawn without any factual basis for the same, for, on the own showing of the appellants, the endorsement regarding the "non-factory" status of the said section was made for the first time on or around February 9, 1982; and

(v) though the appellants showed the Chromic Acid Section in the ground plan submitted to the Factories Act authorities and claimed 'non-factory' status for it, in the ground plan submitted to the Excise authorities for approval of license for manufacture of 'Sodium Bichromate' they did not even indicate its existence.

15. In our opinion from the above facts and circumstances when taken together, a reasonable conclusion can certainly and legitimately be drawn that the appellants wilfully and deliberately made mis-statements and suppressed material facts to avoid payment of excise duty. In other words it is not a case of simple inaction or failure on the part of the appellants to furnish material information.

4.10 In case of Metal Box [1995 (75) E.L.T. 449 (S.C.)] following was held:

9. *So far as contention No. 1 is concerned, it is obvious that the Department invoked proviso to Section 11A on the*

ground that while submitting the price list, the appellant had suppressed material facts. It has been found on record that in the price lists submitted by the appellant details of advances made by Ponds (I) Limited, the wholesale buyer of appellant's goods and that too interest free advances of huge amounts were all suppressed from the Department and, therefore, it has to be held that the duty have been short levied on account of wilful suppression of relevant facts by the assessee. This finding is well sustained on record and calls for no interference. We, therefore, concur with the conclusion reached by the Tribunal that longer period of limitation is available to the Department. We reject contention No. 1.

4.11 As we uphold invocation of extended period of limitation as per proviso to Section 73 (1) of the Finance Act, 1994 we also uphold the penalty levied under Section 78 *ibid*. In case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)] Hon'ble Supreme Court has held as under:

"17. The main body of Section 11AC lays down the conditions and circumstances that would attract penalty and the various provisos enumerate the conditions, subject to which and the extent to which the penalty may be reduced.

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.

20. At this stage, we need to examine the recent decision of this Court in Dharamendra Textile (supra). In almost every case relating to penalty, the decision is referred to on behalf of the Revenue as if it laid down that in every case of non-payment or short payment of duty the penalty clause would automatically get attracted and the authority had no discretion in the matter. One of us (Aftab Alam, J.) was a party to the decision in Dharamendra Textile and we see no reason to understand or read that decision in that manner. In Dharamendra Textile the court framed the issues before it, in paragraph 2 of the decision, as follows :

"2. A Division Bench of this Court has referred the controversy involved in these appeals to a larger Bench doubting the correctness of the view expressed in *Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai & Anr.* [2007 (8) SCALE 304]. The question which arises for determination in all these appeals is whether Section 11AC of the Central Excise Act, 1944 (in short the "Act") inserted by Finance Act, 1996 with the intention of imposing mandatory penalty on persons who evaded payment of tax should be read to contain mens rea as an essential ingredient and whether there is a scope for levying penalty below the prescribed minimum. Before the Division Bench, stand of the revenue was that said section should be read as penalty for statutory offence and the authority imposing penalty has no discretion in the matter of imposition of penalty and the adjudicating authority in such cases was duty bound to impose penalty equal to the duties so determined. The assessee on the other hand referred to Section 271(1)(c) of the Income Tax Act, 1961 (in short the IT Act) taking the stand that Section 11AC of the Act is identically worded and in a given case it was open to the assessing officer not to impose any penalty. The Division Bench made reference to Rule 96ZQ and Rule 96ZO of the Central Excise Rules, 1944 (in short the "Rules") and a decision of this Court in *Chairman, SEBI v. Shriram Mutual Fund & Anr.* [2006 (5) SCC 361] and was of the view that the basic scheme for imposition of penalty under section 271(1)(c) of IT Act, Section 11AC of the Act and Rule 96ZQ(5) of the Rules is common. According to the Division Bench the correct position in law was laid down in *Chairman, SEBI's* case (*supra*) and not in *Dilip Shroff's* case (*supra*).

Therefore, the matter was referred to a larger Bench."

After referring to a number of decisions on interpretation and construction of statutory provisions, in paragraphs 26 and 27 of the decision, the court observed and held as follows :

"26. In Union Budget of 1996-97, Section 11AC of the Act was introduced. It has made the position clear that there is no scope for any discretion. In para 136 of the Union Budget reference has been made to the provision stating that the levy of penalty is a mandatory penalty. In the Notes on Clauses also the similar indication has been given.

"27. Above being the position, the plea that the Rules 96ZQ and 96ZO have a concept of discretion inbuilt cannot be sustained. Dilip Shroff's case (supra) was not correctly decided but Chairman, SEBI's case (supra) has analysed the legal position in the correct perspectives. The reference is answered.....".

21. From the above, we fail to see how the decision in Dharamendra Textile can be said to hold that Section 11AC would apply to every case of non-payment or short payment of duty regardless of the conditions expressly mentioned in the section for its application.

22. There is another very strong reason for holding that Dharamendra Textile could not have interpreted Section 11AC in the manner as suggested because in that case that was not even the stand of the revenue. In paragraph 5 of the decision the court noted the submission made on behalf of the revenue as follows :

"5. Mr. Chandrashekharan, Additional Solicitor General submitted that in Rules 96ZQ and 96ZO there is no reference to any mens rea as in section 11AC where mens rea is prescribed statutorily. This is clear from the extended period of limitation permissible under Section 11A of the Act. It is in essence submitted that the penalty is for statutory offence. It is pointed out that the proviso to Section 11A deals with the time for initiation of action. Section 11AC is only a mechanism for computation and the quantum of penalty. It is stated that the consequences of fraud etc. relate to the extended period of limitation and the onus is on the revenue to establish that the extended period of limitation is applicable. Once that hurdle is crossed by the revenue, the assessee is exposed to penalty and the quantum of penalty is fixed. It is pointed out that even if in some statutes mens rea is specifically provided for, so is the limit or imposition of penalty, that is the maximum fixed or the quantum has to be between two limits fixed. In the cases at hand, there is no variable and, therefore, no discretion. It is pointed out that prior to insertion of Section 11AC, Rule 173Q was in vogue in which no mens rea was provided for. It only stated "which he knows or has reason to believe". The said clause referred to wilful action. According to learned counsel what was inferentially provided in some respects in Rule 173Q, now stands explicitly provided in Section 11AC. Where the outer limit of penalty is fixed and the statute provides that it should not exceed a particular limit, that itself indicates scope for discretion but that is not the case here."

23. The decision in Dharamendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no discretion in quantifying the

amount and penalty must be imposed equal to the duty determined under sub-section (2) of Section 11A. That is what Dharamendra Textile decides."

4.12 Demand for interest automatically flows on the delayed payment of service on account of demand upheld by us. Thus, we also uphold the demand of interest made under Section 75 of the Finance Act, 1994.

4.13 In view of discussions as above we do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on-16 October, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

akp