::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,
द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142 Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/168 /RAJ/2016 /6236 TO 6239	58/ADC/PV/2015-16	31.03.2016

ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-124-2017-18

आदेश का दिनांक / Date of Order: **15.11.2017** जारी करने की तारीख / Date of issue: **15.11.2017**

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता** & प्रतिवादी का नाम एवं पता /Name&Address of the **Appellants** & Respondent :-
M/s. Danish & Co., Main Road, Near Kohinoor Service Station, Village : Sikka,Dist : Jamnagar- 361140

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित+त जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६ को की जानी चाहिए ।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहा उत्पाद शुल्क की मांग ,ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहा सेवाकर की मांग ,ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहा संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

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(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।/

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include :

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए ।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते है । /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

M/s. Danish & Co., Near: Kohinoor Garage (Service Station), Main Road, Opp.: Bus Stand, Sikka, Dist. Jamnagar-361140 (hereinafter referred to as 'the appellant') has filed the present appeal against the Order-In-Original No. 58/ADC/PV/2015-16 dated 31.03.2016 (hereinafter referred to as 'the impugned order'), passed by the Additional Commissioner, Central Excise & Service Tax, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2. Briefly stated facts of the case are that the appellant is engaged in providing services falling under "Maintenance or repair services", "Construction services other than Residential Complex including Commercial/Industrial Buildings or civil structures" and "works contract services" and holding Service Tax registration No. AAUPK9963GST001 and has undertaken to comply with conditions prescribed in Service Tax Rules, 1994 (hereinafter referred to as "the Rules"). On the basis of intelligence that the appellant was providing services to various customers including M/s. Reliance Industries Ltd and M/s. Essar Oil Ltd, and were charging and collecting Service Tax, but not paying/short paying the same to the Government exchequer, an inquiry was initiated against the appellant. It was also gathered that they had not filed ST-3 returns w.e.f. October, 2012. The inquiry revealed that Shri Salemohmad Musa Kakkal was the proprietor of the appellant and they had not paid Service Tax payable during the year 2010-11 to 2013-14 on various services provided by them to the extent of Rs. 45,73,928/- (including Education Cess and Secondary & Higher Education Cess).

3. Show Cause Notice No. V.ST/AR-ST-JAM/47/ADC(PV)/2015 dated 21.09.2015 demanding Service Tax of Rs. 44,40,707/- + Education Cess of Rs. 88,814/- and Secondary & Higher Education Cess of Rs. 44,408/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") alongwith interest under Section 75 of the Act and proposing to appropriate Rs. 29,44,876/- already paid. It was proposed to recover late fee of Rs. 2000/- / Rs. 20,000/-, as applicable, per return under Section 70 of the Act read with Rule 7C of the Rules for failure to file ST-3 returns in time. It was also proposed to impose penalties under Section 76, 77 and 78 of the Act. The lower adjudicating authority vide impugned order confirmed demand of Service Tax of Rs. 45,73,928/- (including Education cess and Secondary & Higher

Education Cess) under Section 73 of the Act and appropriated Rs. 29,44,876/- against Service Tax liability and interest under Section 75 of the Act. He also ordered to recover late fee of Rs. 2,000/- per return upto 07.04.2011 and Rs. 20,000/- per return from 08.04.2011 under Section 70 of the Act read with Rule 7C of the Rules and imposed penalty of Rs. 10,000/- under Section 77(1)(b) of the Act, penalty of Rs. 10,000/- per return for filing incorrect ST-3 returns for the period from 2010-11 to 2013-14 under the provisions of Section 77(2) of the Act and imposed imposed penalty of Rs. 45,73,928- under Section 78 of the Act with an option of reduced penalty as provided under Section 78 of the Act but did not impose penalty under Section 76 of the Act.

4. Being aggrieved by the impugned order, appellant preferred the present appeal mainly on the following grounds:

1. The adjudicating authority has passed the OIO, without allowing sufficient opportunity of being heard which is against the principle of Natural Justice. For computing the demand stated in SCN, the adjudicating authority has relied on the detailed working made in Annexure -A, A1, B, C and D to the SCN as well as on the statement of the proprietor, recorded on 18.06.2014. However, the SCN served upon without containing any such annexure or the statement recorded on 18.06.2014. Therefore, they requested to the Superintendent (Adj.), to provide the copy of these documents, vide their letter dated 10.02.2016 and to allow the time at least of a month, to compile the details after providing such documents and enclosed the copy of the letter along with its acknowledgment receipt no. CCEHQ/01172/2015-16 dated 11.02.2016. However, in response to their letter dated 10.02.2016, the Superintendent had provided the copy of such annexures, vide their letter dated 11.03.2016 (served on 16.03.2016), and informed to appear for hearing of SCN on 22.03.2016, i.e. within 7 days' time period after making available of Annexures. Further, they had also not provided copy of statement of the proprietor recorded on 18.06.2014 and relied upon in SCN. Hence, due to insufficient time for compilation of the data of 4 years covered in the notice for replying of SCN and there being the month of march end, they requested the Adjudicating Authority to allow the time limit at least two months and accordingly grant the adjournment of hearing fixed on 22.03.2016, vide their letter dated

17.03.2016 and submitted copy of the adjournment letter along with its acknowledgment receipt no. CCEHQ/01390/2015-16 dated 21.03.2016. Moreover, they submitted all the bills, Work Orders, Form 26AS and the Profit and Loss Accounts along with the other necessary details asked for to the authority who carried out the inquiry proceedings and on which basis the SCN has been issued, the adjudicating authority has not considered while passing the order on the basis of this SCN. However, the adjudicating authority had without noting the above facts and without allowing the final opportunity to be heard and without considering actual facts, passed OIO dated 31.03.2016. Therefore, SCN itself was incomplete and passing of the Order to such SCN is void ab-initio.

2. They submitted that the object and purpose of Show Cause Notice is to inform the recipient in respect of the allegations made against him so that he can defend the same effectively by submitting the necessary documentary evidences and is not prejudiced by manifestly vague notice which leaves him confused and unable to answer/reply. The assessee must be given a reasonable and real opportunity and made aware as to what he has to meet. What is required to be seen is whether the allegations made have been conveyed and set forth, to enable the recipient/assessee to get an opportunity to defend himself against the charges. For this contention, they relied on the ratio of the judgment passed by the Honorable Delhi High Court in case of CST v. ITC Ltd. (2014) 36 STR 481 (Delhi).

3. The adjudicating authority has not served proper SCN and passed the OIO without giving final opportunity of being heard.

4. Even though the adjudicating authority was having 26AS, Invoices, Financial Statements (Accounts) and ST-3 Returns, which were submitted during the course of inquiry proceedings, they have considered the base for taxable value of services, as higher of four amount, viz., aggregate income as per Form 26 AS, gross income as per audited financial statements, gross income as per Invoices and gross income as per Form ST-3 and made the Best Judgment Assessment. Thus, without following any logical base and without allowing any opportunity to reconcile these various amounts proposed to be taken as base for arriving at the taxable

value of services, the adjudicating authority has considered the higher of the four amount as taxable value of services and raised the service tax demand u/s. 72 of the Act.

5. The best judgment assessment means that it does not depend on the arbitrary caprice. There should have reasonable nexus to the available material and circumstances of the case. For this contention, they rely on the ratio of the judgment passed by Honorable Supreme Court in case of State of Kerala V. C Velukutty (1996) 17 STC 465; 60 ITR 239 (SC), Delhi High Court in case of Deepak Industries v. STO & Others (1998) 38 DSTC J - 79 and Honorable Supreme Court in case of Kathyaini Hotels V. ACCT (2004) 135 STC 77 (SC). Hence, assessment to the best of judgment must be considered on a rationale basis so as to include relevant material and logic for having nexus between such basis or material.

6. The adjudicating authority has not taken proper base to raise the demand of service tax although they have ST-3 and Audited Accounts. The demand was raised without following any logical base and without allowing any opportunity to reconcile these various amounts proposed to be taken as base for arriving at the taxable value of services, the adjudicating authority has considered the higher of the four amount as taxable value of services which is bad in law.

7. The adjudicating authority has not considered the fact that all these four records are prepared/generated on different principles of income recognition as per the relevant law, as under :

Form 26AS	It is statement of the income as appeared on the Income Tax site of the assessee and showing those income only whereon TDS has been deducted by the payee (the person who has paid the income to the assessee). It may happens that there would be some income whereon TDS has not been deducted or the TDS deducted by the party and uploaded in the different year then the income relates to. Moreover, some parties deduct the TDS on the gross amount (that means on the total amount including service tax).
Accounts	It is prepared on the basis of the income accrued during the year in respect of the bills submitted to

	the service recipient parties.
ST-3 Service Tax Return	Till the 31.03.2011, Service Tax was to be paid on receipt basis and accordingly filed the ST-3 returns showing only the amount which are received. Moreover, the TDS may deducted on the gross amount of bill (inclusive of Service Tax) while in the ST3 returns only the serviceable amount (net of service tax) is stated.
Invoices	Invoices are prepared not only after completion of the work but also after certifying of the work by the concerned service recipient party. The appellant is not an well organized person and hence, there may be the cases of missing of some bills.

They submitted that the income recorded in the accounts is the correct one and the account is prepared on the basis of the accrual system as per the income tax law. However, the income stated in all three main records viz. 26AS, Accounts and ST-3 returns should need the reconciliation before taking into consideration. The appellant had reconciled these records at the time of inquiry proceedings, however due to no availment of the opportunity it could not be possible to re-submitted these details in reply to SCN. Considering the higher amount out of the four records as stated above, shows that the adjudicating authority is having all these details. Therefore, even after having all the details at the time of passing of the orders, considering the highest amount among the four records and making the assessment under section 72 of the Act is not tenable in the eyes of law at all.

8. They further submitted that the period covered under the SCN and in OIO is from FY 2010-11 to FY 2013-14. They also submitted that the chargeability of Services except stated under the Negative List is applicable from 01.07.2012. Therefore, till 30.06.2012 i.e. for FY 2010-11, FY 2011-12 and the period from 01.04.2012 to 30.06.2012 of FY 2012-13, is governed by the Taxability under the List Based Specified Services as stated and defined in section 65 and 66 of Finance Act, 1994 and therefore, the specification of the relevant services under which alleged amount of the Service Tax sought to be charged in SCN, has been to be clearly specified. However, the adjudicating authority has though defined the services but while confirming the service tax levy of Rs.

45,73,928/-, they has not clearly specified either in the SCN or in the OIO that under which category of services (i.e. whether under "Maintenance & Repairs service" or under "Commercial or Industrial Construction Service" or under "Works Contract Service"), the relevant amounts are covered. This clarification has not been made anywhere in SCN too. Therefore, the levy of service tax as proposed in SCN and confirmed in OIO, is ambiguous in nature. It shows that show cause notice is vague and the service tax charged under the SCN, totaling to Rs.45,73,928/- is general and not specifically covered under any of the category out of the three discussed in the SCN.

9. They rely on the ratio of the judgment passed by the CESTAT Bangalore in case of Abak Constructions V. CCE & C & ST, Tirupati (2013) 29 STR 61; (2013) 31 taxmann.com 221; 42 GST 88 (Cestat, Bangalore) wherein it was held that a demand of service tax without correct classification of the taxable service was alien to the scheme of service tax levy. Therefore, the SCN and OIO passed consequent to such SCN is void-ab-initio.

10. They produced factual figures for each years, regarding value of services provided and various exemption claimed (viz., exemption regarding value of services provided to SEZ, exemption in respect of value of material as well as 50% value of services portion, on which service recipient is liable to pay service tax), service tax liability as discharged by them while filing the ST-3 returns. The relevant details are tabulated as under:

F. Y.	Income as per ST-3 Return (Rs.)	Value of Services claimed as exempt (Rs.)	Value of material claimed as deduction from the value of services (Rs.)	Exemption for 50% value of services being Partial Reverse Charge (Rs.)	Total Value of services claimed as exempt (Rs.)	Taxable value of services (Rs.)	Service Tax	Interest	Service tax paid Including interest (Rs.)
(A)	(C)	(D)	(E)	(F)	(G) = (D+E+F)	(H) = (C - G)	(I)	(J)	(K)=(I) + (J)
2010-11	70,18,962	--	--	--	--	70,18,962	7,22,954	95,457	8,18,413
2011-12	1,11,58,742	--	--	--	--	1,11,58,742	11,49,350	2,74,237	14,23,587
2012-13	32,30,449	11,00,000	6,76,578	7,26,937	25,03,515	7,26,937	89,853	11,627	1,01,480
2013-14	5,90,74,693	33,28,484	1,28,11,444	2,12,13,373	3,73,53,301	2,17,21,398	26,84,765	2,60,110	29,44,876
Total	8,04,82,846	44,28,484	1,34,88,022	2,19,40,310	3,98,56,816	4,06,26,039	46,46,923	6,41,431	52,88,356

11. Thus, out of the total service tax liability as allegedly calculated by the adjudicating authority amounting to Rs.68,99,136/-, they had already accepted and shown the above stated figures in his service tax return and paid service tax along with interest amounting to Rs.52,88,354/-, from time to time and also furnished the Service tax returns in Form ST-3. Out of the four years mentioned above, service tax returns for the period starting from FY 2010-11 to September, 2012 were filed and service tax for the aggregate value of Rs.23,43,478/- was paid prior to inquiry proceedings. However, the adjudicating authority has missed to consider the additional amount of interest paid by the appellant for FY 2010-11, aggregating to Rs.18,270/- and therefore, they have appropriated the sum of Rs.23,25,208/- (i.e. Rs. 23,43,478/- less Rs. 18,270/-) only against the total service tax liability computed by them in the SCN. They produce copy of all the challans for aggregating the additional amount of interest paid of Rs. 18,270/-.

12. During the course of inquiry proceedings, they had filed the ST-3 return for the period Oct-March 2012-13 & FY 2013-14 and also paid services tax amounting to Rs.29,44,876/-. Thus, they had, till the date of issuance of SCN, paid the service tax aggregating to Rs.52,88,354/- and duly filed the Service tax returns in Form ST-3, for the entire period covered in SCN. The details of the service tax paid totaling to Rs. 52,70,084/- with the date of challans is also given in Annexure -D of SCN. They produced copy of the same. (the difference between the amount of Service Tax paid of Rs. 52,88,354/- stated by them and the amount of Rs. 52,70,084/- shown in the Annexure to SCN, is of Rs. 18,270/- being the interest amount paid by the appellant in FY 2010-11 as per the detailed given in the earlier para.

13. However, the adjudicating authority has, while issuing the SCN and computing the service tax liability, arrived at higher amount of taxable value of services and service tax liability, as compared to computation made by them. The adjudicating authority has considered the taxable value of services, as higher among the total value of invoices, income recorded in P & L a/c., ST-3 return as well as Form 26 AS. The same is re-produced here-in-below:

F.Y.	Total amount of	Income as per P	Income as per	Income as per	Base taken for Taxable value of services in SCN

	invoices issued (Rs.)	& L A/c. (Audit Report) (Rs.)	ST-3 (Rs.)	Form 26 AS (Rs.)	
2010-11	60,89,650	60,89,650	70,18,962	73,26,746	26 AS
2011-12	1,41,39,161	1,41,39,158	1,11,58,742	1,39,62,238	P & L A/c.
2012-13	32,30,449	32,30,449	32,30,449	33,96,001	26 AS
2013-14	5,90,74,693	5,30,41,997	5,90,74,693	5,28,95,810	ST-3/invoice
Total	8,25,33,953	7,65,01,254	8,04,82,846	7,75,80,795	

14. Thus, the base taken by the adjudicating authority for computing the taxable value of services itself is improper. They believes that as they have submitted the copy of invoices issued during the year under consideration, during the course of inquiry proceedings and also filed ST-3 returns upto the period September, 2012, total value of services should be taken on the basis of ST-3 returns as well as from aggregate value of invoices. Till the FY 2010-11, the service tax was to be paid on receipt basis as against the TDS was to be deducted on accrual basis as well as the income considered in profit & loss account was also on accrual basis. The Form 26AS generally involves some reconciliation, to match with the taxable value of services shown in ST-3 return viz., in Form 26 AS income is inclusive of service tax value or there may be teeming and lading of income shown in Form 26 AS. However, in their case, the adjudicating authority has not even asked for reconciliation of total income figure derived from various sources, and on ad-hoc basis considered the higher amount of income as taxable value of services. The service tax statute nowhere prescribes for such ad-hoc base for deriving the taxable value of services. Therefore, they are not in agreement with such action of the adjudicating authority and requested to consider the taxable value of services considered in ST-3, keeping in view the year-wise reconciliation made as under:

F.Y. 2010-11

15. As regard to the taxable value of services amounting to Rs.73,26,746/- considered by the adjudicating authority, in Annexure-A of SCN and confirmed in the OIO, on the basis of Form 26 AS, they present a brief reconciliation of income reflected in Form 26 AS vis-a-vis income recorded in ST-3 of FY 2010-11, as under:

Particulars	Income

363

		(Rs.)
	Income as per Form 26 AS	73,26,746
Less:	Service tax included in the income shown in form 26 AS	3,34,812
Less:	Income shown in Form 26 AS but recorded in books of FY 2009-10 (preceding year) (copy of the invoice is enclosed herewith for your verification.)	68,906
	Income in Form 26 AS relating to FY 2010-11	69,23,028
	Income shown in Form ST-3 of FY 2010-11	70,18,962

They submitted the copy of Form 26AS.

From the details tabulated as above, the income shown in ST-3 return was definitely higher as compared to the actual income shown in Form 26AS, relating to FY 2010-11. The mere difference was on account of inclusion of service tax amount of Rs. 3,34,812/- in the value of the Bill. That means the TDS as per the Income Tax Act, was made on the total amount of bill including the amount of Service Tax. Therefore, in Form 26AS which is a statement of the amount on which TDS deducted and the amount TDS, showing the Gross Amount of the Bill with Service Tax. They submitted this fact during the proceedings before the Preventive. The same is submitted herewith showing the Bill Amount, the Service Tax on it and the Gross Amount with Service Tax.

Further, the income of Rs.68,906/- shown in Form 26 AS, was relating to income recorded in books of accounts of preceding financial year i.e. in FY 2009-10. The copy of its Invoice and the relevant Income Ledger Account of the preceding year is submitted.

The variance in income shown in Audit Report and taxable income shown in ST-3 is due to difference in method of recording income under both the statute. Till March, 2011, service tax law prescribes payment of service tax on receipt basis, whereas, in income tax laws, they followed mercantile system of accounting. Therefore, income shown in ST-3 return was computed on receipt basis (which included the receipt of the preceding years received in this year and hence considered in ST-3 return of FY 2010-11) and hence, if the income of ST-3 was higher as compared to income as per Tax Audit Report.

16. On the basis of above facts, they appellant requested to accept the taxable value of services, as computed by them in service tax return for FY 2010-11, i.e. Rs.70,18,962/-. They had duly paid entire service tax, amounting to Rs.7,22,954/- and interest thereon Rs.95,457/- (total Rs.8,18,411/-) at the relevant time and also filed service tax return, along with due late filing fees, prior to initiation of inquiry. Therefore, there are no any outstanding service tax dues, in respect of FY 2010-11 and request to delete the service tax demand to the extent of Rs.7,54,655/- raised in the SCN and confirmed in OIO.

17. Thus, they rightly paid the service tax of Rs. 7,22,954/- on the serviceable amount of Rs. 70,18,962/- as against alleged Service Tax amount of Rs. 7,54,655/- on the Serviceable amount of Rs. 73,26,746/- stated in the SCN and confirmed in the OIO and request to considered the same.

F.Y. 2011-12

18. As regard to FY 2011-12, they appellant submitted that the adjudicating authority has considered taxable value of services as Rs.1,55,93,862/-, from Tax Audit Report, being the highest amount among 'total value of invoices', 'Income stated in the Tax Audit Report', Income stated in the ST-3 Returns and the Income stated in Form 26 AS which reflected the amount on which TDS was deducted in that year. The total turnover of the appellant for FY 2011-12 was amounting to Rs.1,41,39,161/- only (Total Income without inclusion of service tax) and Financial Statement forming part of Tax Audit Report also reflected the same figure. However, Annexure - I, forming part of Tax Audit Report mistakenly reflected a sum of Rs.1,55,93,862/- which is total of Rs. 1,41,39,161 + Service Tax of Rs. 14,54,700. Thus, in the Annexure to Tax Audit Report the Turnover shows the inclusive of service tax figure. They enclosed the copy of the ledger account of Contract Income from the books of account for the verification of both the above figures. They submitted that Annexure -1 is an informative part to Form 3CD as per the Income Tax Rule and it is not the part of the Audited Accounts. The adjudicating authority has, on the basis of the Annexure -1 which is not the part of the audited accounts too, considered the value of taxable services, as Rs.1,55,93,862/-. In support of the above claim, they relied on the audited financial statement wherein contract income excluding service

tax had been written as well as the copy of invoices, aggregate value of which amounts to Rs.1,41,39,161/-. The amount shown in the Form 26AS is also Rs.1,39,62,238/- which is less than the amount stated as Income in the books of account.

19. They already discharged the service tax liability on the total value of services amounting to Rs.1,41,39,161/- and paid aggregate service tax amounting to Rs.11,49,350/- as well as interest of Rs.2,74,237/- (total Rs.14,23,587/-). They requested to consider the taxable value of services as Rs.1,41,39,161/- only and the service thereon amounting to Rs. 11,49,350/- as against alleged amount of service tax of Rs. 16,06,168/- calculated on the serviceable amount of Rs. 1,55,93,862/- stated in the SCN and confirmed in the OIO.

INCOME FROM VADINAR OIL TERMINAL LTD. IN FY 2010-11 & 2011-12

20. The adjudicating authority has alleged in Para 2.8 of OIO that the appellant has earned income from Vadinar Oil Terminal Ltd., during the FY 2010-11 & 2011-12 but not submitted invoices issued in this regard. However, the above allegation is not correct as they duly recorded the income reflected in Form 26 AS in the name of Vadinar Oil Terminal Ltd., amounting to Rs.22,060/- and Rs.32,87,399/- in FY 2010-11 & 2011-12 respectively. However, the bill was issued in the name of Essar Oil Ltd. only (as the Vadinar Oil Terminal Ltd. is group concern of Essar Oil Ltd.) and accordingly, the income ledger reflected such income in the name of Essar Oil Ltd. Only.

Thus, the appellant has duly recorded income shown in Form 26 AS, in its books of accounts and therefore, the allegation made by the adjudicating authority in its OIO is not correct.

F.Y. 2012-13

21. For the FY 2012-13, the adjudicating authority has considered the serviceable amount of Rs. 33,96,001/- on the basis of Form 26AS, in its SCN and OIO and calculated the Service Tax of Rs. 1,94,870/- on this amount. Against this, they submitted that the actual Income as per the Books of Account, Aggregates of the Invoices and Income as per Service Tax Returns are the same which is Rs. 32,30,449/- (refer to Annexure A to the OIO). The amount stated in 26AS of the year is not the correct

income for the year under consideration. The reconciliation of the amount stated in 26AS and in other records are given here in below table:

	Particulars	Income (Rs.)
	Income as per Form 26 AS	33,96,001
Less:	Service tax included in the income shown in form 26 AS (Rs. 40,078 + 40,858 + 934 = 81,896 as per Table given in Para 40)	81,896
Less:	Income shown in Form 26 AS but recorded in Books of FY 2011-12 (preceding year)	21,96,368
	Income in Form 26 AS relating to FY 2012-13	11,17,737
Add:	Income recorded in books as well as in ST-3 of FY 2012-13 but reflected in Form 26 AS of FY 2013-14	21,12,711
	Income shown in Books/ ST-3/Aggregate of Invoices of FY 2012-13	32,30,449

22. On the basis of the above reconciliation of income, they had duly recorded the entire income reflected in Form 26 AS of FY 2012-13, in its books of accounts and not only that, they have also recorded income to the extent of Rs.21,12,711/-, over and above the same reflected in Form 26 AS. They submitted the details of the bills amounting to Rs. 21,96,368 which are already considered in FY 2011-12 and the details of the bills amounting to Rs. 21,12,711/- which are considered in the FY 2013-14. Hence, the base taken by the adjudicating authority, for computing taxable value of services, is not correct, in the view of above reconciliation of income. Therefore, they requested to consider the taxable value of services Rs.32,30,449/- only.

23. In furtherance to the above, all such services provided by the appellant during the FY 2012-13, were in nature of Works Contract Services, within the meaning of section 65B(54) of the Finance Act, 1994. Out of such total value of services amounting to Rs.32,30,449/-, they arrived at taxable value of services amounting to Rs.7,26,934/-. The bill wise details of the same along with the service tax calculated and paid is given here in below :

Name of the Party	Nature of Work	Bill Amount	Material Portion	Service Portion	Taxable Amt @ 50% PRC	S. Tax @ 12.36%	Shown in ST-3 of
Reliance Ind. Ltd.	Works Contract for const. of boundary Wall with material	7,84,365	1,35,850	6,48,515	3,24,258	40,078	Oct - March 2012-13
- Do-	Civil Work for Animal kingdom Area	9,71,853	3,10,728	6,61,125	3,30,563	40,858	-Do-

- Do-	Providing & Fixing of Concertina coil on Boundary Wall	3,29,121	2,00,000	1,29,121	64,561	7,979	-Do-
Polestar Maritime Ltd.	Providing & Fixing of Concertina coil on Boundary Wall	45,110	30,000	15,110	7,555	934	-Do-
Reliance Ind. (SEZ)	Civil Work for cast in situ sleepers at RLS area	11,00,000	-	11,00,000 (to SEZ)	0	0 (SEZ)	-Do-
		32,30,449	6,76,578	25,53,871	7,26,937	89,849	

The Summary of the above table is given here in below

	Particulars	Amount (Rs.)
	Total Value of services provided	32,30,449
Less:	Services provided to SEZ units and claimed as exempt from service tax net	11,00,000
	Taxable Services	21,30,449
Less:	Value of material supplied in course of providing of services (Works Contract service)	6,76,578
	Service portion of taxable services	14,53,871
	50% value of services, on which service tax to be paid by the service recipient as per reverse charge mechanism	7,26,937
	Net Taxable value of services	7,26,936

24. They submitted the copy of the above invoices wherein service tax is specifically mentioned along with the copy of the Form 26AS highlighting Total Amount of Bill on which Tax is deducted at source for FY 2012-13 co-relating with the Bill Amount. The details and the submission in respect of the exempted services of Rs. 11,00,000/- provided in SEZ and the Value of Material of Rs. 6,76,578/- supplied during the course of providing services, are given in the below mentioned paras. (after the submission in respect of FY 2013-14)

25. They also submitted that during the course of inquiry proceedings, they had duly filed the service tax return for FY 2012-13, in Form ST-3, after discharging due service tax liability amounting to Rs.89,853/- (i.e. Rs.7,26,936/- * 12.36%) and applicable interest thereon Rs.11,627/- (total Rs.1,01,480/-) They had also paid applicable late fees, of Rs.20,000/-, at the relevant time. Therefore, in view of above calculation, they requested to delete the excess amount of demand raised in the SCN and then after confirmed in OIO accordingly.

F.Y. 2013-14

26. As regard to FY 2013-14, they had provided services for the aggregate value of Rs. 5,90,74,693/- and they have duly submitted the bills for the

said aggregate value, during the course of inquiry proceedings. For FY 2013-14, the aggregate amount of invoices was highest amongst the four parameters (viz., aggregate value of invoice, total income as per Audit Report, ST-3 Return and Form 26 AS) considered by the adjudicating authority. Out of such total value of services amounting to Rs.5,90,74,693/-, they arrived at taxable value of services amounting to Rs.2,17,21,392/-, after making following adjustments:

	Particulars	Amount (Rs.)
	Total Value of services provided	5,90,74,693
Less:	Services provided to SEZ units and claimed as exempt from service tax net	33,28,484
	Taxable Services	5,57,46,209
Less:	Value of material supplied in course of providing of services (Works Contract service)	1,28,11,444
	Service portion of taxable services	4,29,34,765
Less :	50% value of services, on which service tax to be paid by the service recipient as per reverse charge mechanism	2,12,13,373
	Net Taxable value of services	2,17,21,392

27. They duly filed service tax return for aggregate value of services amounting to Rs.5,90,74,693/-, after paying the due service tax amounting to Rs.26,84,766/- and interest thereon amounting to Rs.2,60,110/- (total Rs.29,44,876/-) Therefore, the demand raised in the SCN and OIO is excessive in nature and liable to be deleted.

DEDUCTION IN RESPECT OF VALUE OF MATERIAL PROVIDED IN WORK CONTRACT SERVICES

28. During the FY 2012-13 & 2013-14, they had provided Works Contract Services. The adjudicating authority has nowhere shown disagreement or challenged the fact regarding provision of Works Contract Service by the appellant to their service recipient. It is merely stated that the appellant failed to produce evidence for supply of material. Otherwise, it is accepted the fact that the appellant had provided services in nature of Works Contract Service (Vide Para 2.2 of OIO). Therefore, the appellant had rightly classified the services provided by them, under the head - Works Contract Service. A party-wise breakup of value of service provided during these two years is as under:

Service Recipient	Value of Services (Rs.)	
	FY 2012-13	FY 2013-14
Reliance Industries Ltd.	31,85,339	5,83,48,246
Polestar Maritime Ltd.	45,110	--
Sukhdev Earth Movers	--	3,32,942
Himachal Futuristic Communications Ltd.	--	1,47,700
Balajee Infratech & Construction Pvt. Ltd.	--	2,45,805
Total Value of Services provided	32,30,449	5,90,74,693

29. Out of such total value of services, they claimed exemption in respect of value of material amounting to Rs.6,76,578/- and Rs. 1,28,11,444/- for FY 2012-13 & 2013-14, respectively, by computing the actual value of material provided in course of provision of service. However, the adjudicating authority has not allowed the deduction in respect of such value of material, even if the invoices submitted before them during the course of inquiry proceedings duly reflected value of material separately. On prima facie verification of P & L account, the adjudicating authority had concluded that there is no purchase or very nominal purchase in the profit & loss account. (Para 2.7 of OIO)

Further, the adjudicating authority has stated in their SCN (vide Para 7.2.3) that the appellant had vide their letter dated 07.07.2015, expressed incapability to produce VAT returns. However, the appellant's letter was just to inform to the service tax inquiry team that the services provided to RIL was inclusive of material and all such work was done with the help of sub-contractors, who were allotted work on back - to - back basis. It is quite evident from perusal of the appellant's letter dated 07.07.2015 that it nowhere stated about incapability of furnishing the VAT return. (Copy of the letter dated 07.07.2015 is enclosed herewith for ready reference). This fact regarding work done through subcontractor (with material) can also be verified from the Audited Financial Statement wherein sub contract expense was debited in the profit and loss account. Therefore, the allegation made by the adjudicating authority for not allowing the deduction in respect of value of material is vague and without proper findings.

Further, they had not availed the CENVAT credit, in respect of any of the Input and input services availed by them, during the course of execution of Contract.

30. In view of above facts, they submitted that the copy of the relevant page of work order along copy of the invoice to substantiate the above facts that the contract/work order were allotted to do the work with material (that means these were Works Contracts). Work order, being bulky in nature hence they submit the relevant page of work order. However, they submitted the soft copy of work order containing in CD for FY 2012-13 and 2013-14 to save the paper. From the above facts, they requested to allow the deduction in respect of value of material, as stated in the bills which were duly accepted by the third parties(which are multinational reputed corporate house of our country) and claimed in the ST-3 return for FY 2012-13 & 2013-14. In case of work undertaken for Polestar Maritime Ltd., copy of the certificate for the work undertaken is submitted as there is very small work done for Polestar Maritime Ltd.

ALTERNATE CLAIM - TO ALLOW THE DEDUCTION IN RESPECT OF VALUE OF MATERIAL, ACCORDING TO RULE 2A(ii) OF THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006:

31. They submitted that there is an undisputed fact of providing the Works Contract Services in respect of the above stated amounts of FY 2012-13 and 2013-14. As stated above, this fact is also accepted by the adjudicating authority in the SCN as well as in OIO. The dispute is only in respect of the matter that they failed to produce documentary evidences etc. for the supply of materials and the purchases reflected in the books of account in these two years are less than the amount of what is claimed by them in their bills as material and get deduction under rule 2A(i) of Service Tax (Determination of value) Rule, 2006. In respect of this, they submitted that in case of the Works Contract Service, its very nature of inclusion of the material while providing the service and therefore, they has to exclude of that 'Material' part included in Gross Amount Charged for the execution of Works Contract Service while calculating the Service Tax on the same. Therefore, they has to follow THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006 to determine the value of service portion in the execution of the Works Contract as the service tax would be applicable only on the 'Service Part'. Considering the same, they excluded/deducted the value of material and calculated the service tax on the service part only.

32. They submitted that the provisions relating to determination of value of service portion involved in the execution of work contract are contained in Rule 2A of Service Tax (Determination of Value) Second amendment Rules, 2012 (Notification 24/2012 - ST dated 06.06.2012). As per the said rule either the value of the material included in the provision of the service is to be deducted as provided in clause (i) on the basis of actual of material or a fixed percentage is to be deductible considering the nature of the work, as per clause (ii), to determine the Taxable Service Portion.

33. Therefore, if they are not allowed to take the credit of the value of the material due to any reason, they has to allow the lumsum credit in respect of the material under Rule 2A(ii) as stated above. As the work carried out by them under the contract with RIL and other service recipients was 'original work', they are liable to pay service tax on service portion of Total Amount charged for Works Contract Service, determined @ 40% of Total Amount charged for Works Contract, according to Rule 2A(ii)(A) of the Service Tax Valuation Rules. Consequently, 60% of the Total Amount Charged for the execution of works contract service is liable for deduction for the value of material. Accordingly, the taxable value of services and consequent tax liability after applying Rule 2A(ii)(A) of the Valuation Rules would be as under:

Financial Year	As per actual computation under Rule 2A(i)		As per alternate computation under Rule 2A(ii)(A)	
	Taxable value of services (Rs.)	Service Tax (Rs.)	Taxable value of services (Rs.)	Service Tax (Rs.)
2012-13	7,26,937	89,853	4,26,090	52,671
2013-14	2,17,21,392	26,84,764	1,15,55,663	14,28,281
Total S. Tax		27,74,613		14,80,952

On the verification of the above, in case they are allowed the benefit of Rule 2A(ii) of the Valuation Rules, 2006, service tax liability for FY 2012-13 & 2013-14 would be quite lower as compared to the actual service tax paid by them at the relevant time.

34. Therefore, they submitted an alternate ground that in case, if the fact regarding value of material claimed as deduction following Rule 2A(i) of the Valuation Rules, 2006 is not considered for any reason, they

requested to extend the benefit of the Rule 2A(ii) of the Service Tax (Determination of Value) Rule, 2006 to them as there is no dispute regarding the fact that they had provided the Works Contract Service and to value the service portion of Works Contract Service by applying Rule 2A(ii) of the Valuation Rules and to derive the service tax payable value accordingly.

TO ALLOW THE BENEFIT OF PARTIAL REVERSE CHARGE MECHANISM IN RESPECT OF WORKS CONTRACT SERVICES

35. As already stated above, they had provided services for the value of Rs.45,110/-, to Polestar Maritime Ltd., during the FY 2012-13 and services amounting to Rs.1,47,700/- to Himachal Futuristic Communications Ltd., during the FY 2013-14. Both these contracts were carried out inclusive of material and therefore, the services were classified as Works Contract services. Accordingly, they had while making the payment of service tax as well as while filing the service tax return in form ST-3, computed the taxable service portion and service tax as under:

Particulars		Polestar Maritime Ltd. (FY 2012-13)	Himachal Futuristic Communications Ltd. (FY 2013-14)
	Value of services provided	45,110	1,47,700
Less:	value of material included in above	30,000	88,620
	Total Service Portion	15,110	59,080
Less:	50% value of service portion on which service tax is to be paid by service recipient in view of partial reverse charge mechanism	7,555	29,540
	Taxable value of services	7,555	29,540
	Service Tax Payable	935	3,651

36. They had duly paid service tax computed as above at the relevant time and the said fact is also accepted in the SCN as well as OIO. However, the adjudicating authority has contended in their OIO, vide Para 2.5 - Page 18 that the appellant has failed to provide evidence to establish their claim for payment of 50% of service tax under works contract service. In this regard, they stated that the work orders in original were submitted to the preventive team, during the course of inquiry proceedings and they was not having copy of such work order on hand, when asked by the adjudicating authority. As already mentioned above,

they had requested the superintendent to provide the copy of invoices and the same will be submitted as soon as available.

37. There is undisputed fact that they, being proprietor concern had provided Works Contract Service to Polestar Maritime Ltd. and Himachal Futuristic Communications Ltd. In FY 2012-13 and 2013-14 respectively and they both are Business Entity registered as Body Corporate (as their names are ended with the work 'Limited'). Hence, as per section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994 persons liable to pay service tax on works contract service is both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.

38. The Notification 30/2012-ST dated 20.06.2012 issued in exercise of power conferred by sub-section (2) of section 68 of the Act prescribes the extend of service tax payable by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I which includes Works Contract Service provided by the Individual to service recipient located in the taxable territory being Business Entity registered as Body Corporate shall be as specified in the following Table, namely:

Sr. No.	Description of a service	% of service payable by the person providing service	% of service tax payable by any person liable for paying service tax other than the service provider
(1)	(2)	(3)	(4)
9	In respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%

39. Service Tax has to be paid by the person liable to pay in terms of section 68(1) and section 68(2) and there cannot be any deviation from the statutory provisions.

40. Hence, in the light of above facts for FY 2010-11 to 2013-14, they requested to consider the facts and provisions submitted by them and allow claim of reverse charge mechanism, 50% of service tax under Notification No. 30/2012-ST. Accordingly delete the excess demand raised by the adjudicating authority.

TO EXEMPT THE SERVICES PROVIDED IN SEZ FROM SERVICE TAX PURVIEW

41. The adjudicating authority has allowed exemption claim of Rs. 11,00,000/- with respect to the service provided in SEZ in FY 2012-13. Out of the total value of services claimed as exempt in FY 2013-14, amounting to Rs.33,28,484/-, being services provided in SEZ, the adjudicating authority has not allowed such exemption in respect of aggregate value of services provided to Sukhdev Earthmovers amounting to Rs.3,32,942/- and Balajee Infratech & Constructions Pvt. Ltd. amounting to Rs.2,45,805/- (Total amount - Rs.5,78,747). In this regard, the adjudicating authority has contended that the appellant has failed to provide documentary evidence to claim the exemption benefit in respect of these two companies (vide Para 2.4 - page 18 of OIO). The adjudicating authority has made the above contention without taking into account the fact that the appellant has duly stated the fact regarding services provided in SEZ unit in the invoices issued by them to both the parties, at the relevant time. The invoices issued upon Sukhdev Earthmovers also reflected the fact that it is a developer of Reliance Jamnagar SEZ unit. Copy of the invoice is submitted.

42. They further submitted Section 70 of the Finance Act, 1994 provides for furnishing returns. Rule 7C of Service Tax Rules, 1994 quantifies the amount of such late fees for delay in furnishing returns. The same is summarized here-in-below in tabulated form:

Period of Delay	Amount of Late Fees payable
Fifteen days from the date prescribed for filing such return	Rs.500/-
Beyond fifteen days but not later than thirty days from the date prescribed for filing such return	Rs.1,000/-
Beyond thirty days from the date prescribed for filing such return	Rs.1,000/- plus Rs.100/- for every day till the date of furnishing return

43. In this regard, they submitted the details regarding filing of service tax returns for FY 2010-11 to 2013-14 as under:

Period	Date of filing of ST-3 Return	Late fees paid (Rs.)	Remarks
FY 2010-11 Half - I	24.11.2011	2,000	
FY 2010-11 Half - II	24.11.2011	2,000	
FY 2011-12 Half - I	15.10.2011	Not Applicable	Return filed before due date

FY 2011-12 Half - II	22.10.2013	--	
FY 2012-13 Quarter - I	19.11.2012	Not Applicable	As the return was NIL
FY 2012-13 Quarter - II	11.04.2013	Not Applicable	Being due date extended to 30.04.2013
FY 2012-13 Half - II	23.07.2014	20,000	
FY 2013-14 Half - I	23.07.2014	20,000	
FY 2013-14 Half - II	15.07.2014	6,200	

44. Thus, they has duly paid the late fees as applicable, at the time of filing of return itself. As regard to the late fees for delay in filing of return for FY 2011-12, half - II, they shall pay the late fees at the earliest.

45. The adjudicating authority has confirmed the demand of Rs.45,73,928/- under section 73(1) of the Act, which prescribes for recovery of service tax not levied or not paid or short levied or short-paid or erroneously refunded. They rely on the time limit prescribed under section 73(1) of the Act. Thus, it is very much clear from the provisions of Section 73 that the period of five years can be invoked only in the cases, where short levy, non-levy, short payment or non-payment of service tax arises due to fraud, collusion, willful misstatement or suppression of facts or contravention of any provisions of the Act or the rules made there under, with an intent to evade payment of tax. In case of any other reasons, show cause notice can be issued only within eighteen months from the relevant date. Therefore, as per their view, their case does not involve any fraud, collusion, misstatement or suppression of facts. Hence, invoking of extended period of five years in the appellant's case is not tenable in the eyes of law.

46. They further submitted that they are not liable to pay interest as they had already paid the same at the relevant time. The penalties imposed upon them under Section 77 and 77(2) are liable to be dropped. Further penalty imposed under Section 78 of the Act is liable to be dropped as their case is not covered under any of the ingredients enumerated under Section 78 of the Act. Further, they have already paid Service Tax alongwith applicable interest during the course of inquiry proceedings and before issuance of Show Cause Notice dated 21.09.2015 and therefore they are not liable to any penalty.

5. A personal hearing in the matter was attended by Shri Bharat R. Oza, Chartered Accountant under letter of authority and reiterated grounds of

appeal. He submitted detailed written submissions dated 02.08.2017 contending that they have not been given proper opportunity of being heard. The adjudication order has been passed within 7 days of getting 2nd P.H. notice. Order has not considered Service Tax already paid by them duly reflected in 26AS in 2010-11, 2011-12, 2012-13 which is not correct at all. These factual facts have been narrated in their submission at para 31, 32, 35, 36, 38, 43. Services provided to SEZ units and value of material supplied in course of providing services have not been deducted while computing Service Tax liability which need to be excluded as there are works contract service. These details have been emphasized in para 43, 48 of their written submission explaines alternative claim for deduction under Rule 2A(i) of the Service Tax Valuation Rules, 2006. Benefit of partial reverse charge mechanism should be made available to them as explained in para 52 of their written submission. They explained their submission at para 60 to give exemption of services of Rs. 33,28,484/- having been provided in 2013-14 to SEZ units. Penalty under Section 78 should not be imposed on them as they paid Service Tax of Rs. 46.46 lakhs and interest of Rs. 6.41 lakh immediately an initiation of inquiry.

FINDINGS:

6. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made during personal hearing.

6.1 The issue to be decided in the present appeal is as to whether the appellant is liable to pay Service Tax, interest and penalties under Section 77, 77(2) and 78 of the Act, or otherwise in the facts of the case.

7. I find that the appellant in their appeal memorandum as well as during the course of personal hearing, vehemently contested that they have not been given proper opportunity of being heard and the adjudication order has been passed within 7 days of getting 2nd personal hearing notice. I find that in Para 1.35 of the impugned order, the lower adjudicating authority has recorded that the appellant has not submitted any written submission. Personal hearing was fixed on 11.02.2016 and the appellant was informed vide letter F.No. V.ST/15-33/ADJ/2015-16 dated 01.02.2016 but they did not turn up for personal hearing. Another date of personal hearing on 22.03.2016 was informed vide letter F.No. V.ST/15-33/ADJ/2015-16 dated 11.03.2016 but again the appellant did not turn up and not even submitted any letter for adjournment/ extension

of personal hearing.

7.1 On going through above facts mentioned at Para 1.35 of the impugned order, I find that only two opportunities of personal hearing have been extended to the appellant whereas, the law prescribes for 3 opportunities of personal hearing which have not been given by the lower adjudicating authority to the appellant. The lower adjudicating authority has mentioned that the appellant has neither asked for adjournment nor extension of personal hearing, whereas the appellant submits that they have vide letter dated 10.02.2016 requested to adjourn the date for reply to Show Cause Notice with a request to provide copy of Annexure A, A1, C and D and also requested to allow one month's time from providing these Annexures so that they can refer to the documents relied upon in better way while attending the case and produced letter through Departmental inward system of acknowledgement as detailed below:

केन्द्रीय उत्पाद एवं सीमा शुल्क आयुक्तालय

"SEVOTTAM" केन्द्रीय उत्पाद शुल्क भवन, रेसकोर्स रिंग रोड,
राजकोट - 360 001. (गुजरात)

Reference No. : 72043

रसीद संख्या : (પહોંચ નંબર)	CCEHQ/01172/2015-16	तारीख : (તારીખ)	11-Feb-2016	समय : (સમય)	12:50:55

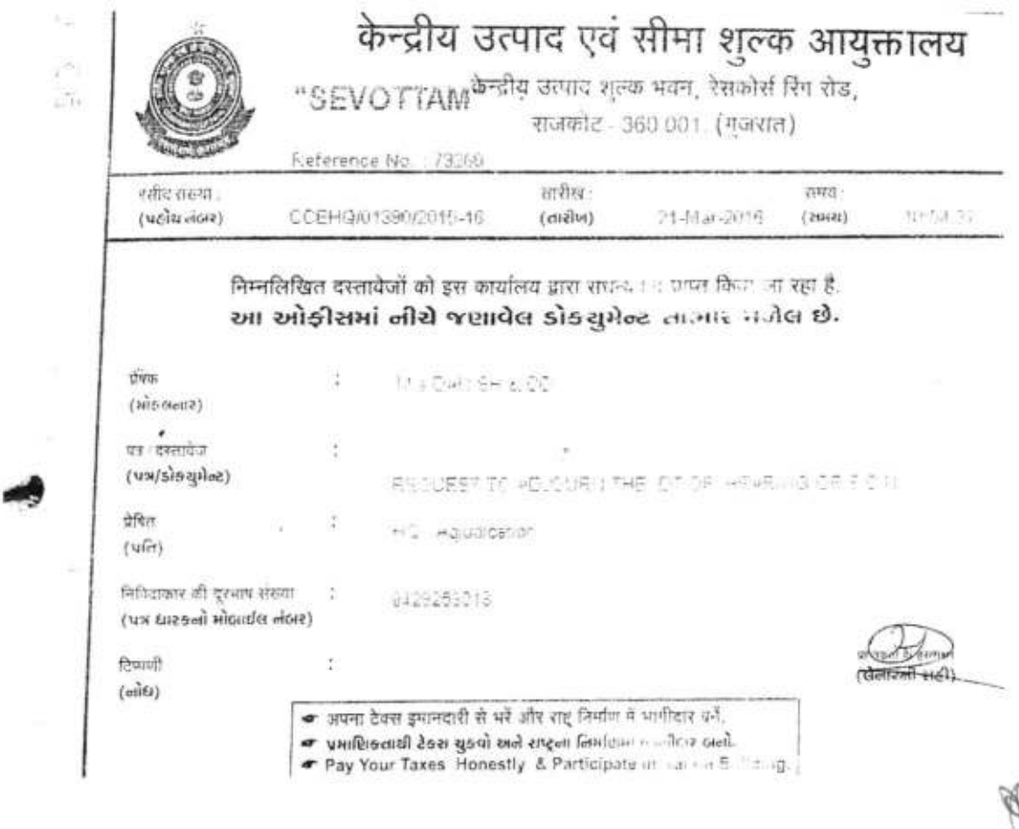
निम्नलिखित दस्तावेजों को इस कार्यालय द्वारा सधन्यवाद प्राप्त किया जा रहा है.
આ ઓફીસમાં નીચે જણાવેલ ડોકયુમેન્ટ સાભાર મળેલ છે.

प्रेषक (મોકલનાર)	:	M/s DANISH & CO.
पत्र/दस्तावेज (પત્ર/ડોકયુમેન્ટ)	:	REQUEST TO ADJOURN THE DATE FOR REPLY TO SCN
प्रेषित (પ્રતિ)	:	HQ : Adjudication ,
निविदाकार की दूरभाष संख्या (પત્ર ધારકનો મોબાઈલ નંબર)	:	9426263013
टिप्पणी (નોંધ)	:	(लेनारनी सही)

- अपना टैक्स इमानदारी से भरें और राष्ट्र निर्माण में भागीदार बनें.
- પ્રમાણિકતાથી ટેકસ ચુકવો અને રાષ્ટ્રના નિર્માણમાં ભાગીદાર બનો.
- Pay Your Taxes Honestly & Participate in Nation Building.

The acknowledgement receipt No CCEHQ/01172/2015-16 dated 11.02.2016 having time 12:50:55 clearly indicates the subject as "REQUEST TO ADJOURN THE DATE FOR REPLY TO SCN".

7.2 The appellant vide letter dated 17.03.2016 submitted through Departmental inward system on 21.03.2016, as detailed below, again requested that the required documents were received by him on 16.03.2016 only and since four year's period is covered in the Show Cause Notice, he requested two months time to defend case with the help of supporting material and documents.



केन्द्रीय उत्पाद एवं सीमा शुल्क आयुक्तालय

"SEVOTTAM" केन्द्रीय उत्पाद शुल्क भवन, रेसकोर्स रिंग रोड, राजकोट - 360 001. (गुजरात)

Reference No. : 73269

रसीद संख्या : (पहोंच नंबर)	CCEHQ/01390/2015-16	तारीख : (तारीख)	21-Mar-2016	समय : (समय)	10:54:37

निम्नलिखित दस्तावेजों को इस कार्यालय द्वारा सफलतापूर्वक प्राप्त किया जा रहा है.
આ ઓફીસમાં નીચે જણાવેલ ડોકયુમેન્ટ સ્વીકારવામાં આવેલ છે.

प्रेषक (મોકલનાર)	:	M/s Owais Sheikh
पत्र / दस्तावेज (પત્ર/ડોકયુમેન્ટ)	:	REQUEST TO ADJOURN THE DT OF HEARING OF S.C.N.
प्रेषित (પ્રતિ)	:	HQ Adjudication
निर्धारक की दूरभाष संख्या (પત્ર લખનારનો મોબાઈલ નંબર)	:	9429253013
टिप्पणी (નોંધ)	:	

(खेलानी सही)

- अपना टेक्स इमानदारी से भरें और राष्ट्र निर्माण में भागीदार बनें.
- પ્રમાણિકતાથી ટેક્સ ચુકવો અને રાષ્ટ્રના નિર્માણમાં ભાગીદાર બનો.
- Pay Your Taxes Honestly & Participate in Nation Building.

The above acknowledgement No CCEHQ/01390/2015-16 dated 21.03.2016 having time 10:54:37 clearly indicates the subject of letter/documents as "REQUEST TO ADJOURN THE DT OF HEARING OF S.C.N.".

7.3 The above documentary evidences establish that fair and reasonable opportunities of personal hearing have not been granted to the appellant. Though they requested two months time for filing defense reply as well as attending personal hearing vide their letter inwarded on 21.03.2016 on documents have given by the Department only on 16.03.2016, nothing was heard from lower adjudicating authority and impugned order was passed on 31.03.2016, which is a clear violation of principles of natural justice. I also find

force in the arguments of the appellant for the difference in value shown in ST-3 returns vis-à-vis value shown in P&L account and value shown in 26AS and value as per invoices produced by the appellant. This case on hand needs proper verification of the facts duty supported by corroborative evidences as the appellant has paid Service Tax of Rs. 23,43,478/- prior to inquiry proceedings. I find that the Department has demanded Service Tax of Rs. 45,73,928/-, whereas the appellant is contending that they have already paid Service Tax of Rs. 46,46,923/- alongwith interest of Rs. 6,41,431/- before issuance of Show Cause Notice. Therefore, I find that this is a fit case for remanding back to the adjudicating authority to consider the submissions made by the appellant and pass reasoned order following principles of natural justice.

8. The Commissioner (Appeals) has power to remand as has been decided by the Hon'ble CESTAT in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported as 2012(284) ELT 97 (Tri-Del). I also rely upon decision of the Hon'ble Tribunal in the case of CCE, Meerut-II Vs. Honda Seil Power Products Ltd. reported in 2013 (287) ELT 353 (Tri-Del) wherein the similar views have been expressed in respect of inherent power of Commissioner (Appeals) to remand a case under the provisions of Section 35A of the Act. The Hon'ble Gujarat High Court in Tax Appeal No. 276 of 2014 in respect of Associated Hotels Ltd. has also held that even after the amendment in Section 35A (3) of the Central Excise Act, 1944 after 11.05.2011, the Commissioner (Appeals) would retain the power to remand.

9. In view of above, I set aside the impugned order and remand this case to the jurisdictional adjudicating authority to pass speaking and reasoned order within 3 months from receipt of this order giving fair and reasonable opportunities to the appellant. The appellant is directed to submit detailed reply and required documents to the jurisdictional adjudicating authority within 30 days of receipt of this order.

९.१ अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

9.1 The appeal filed by the appellant is disposed of in above terms.

15/11/2017

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.
To,

M/s. Danish & Co., Near: Kohinoor Garage (Service Station), Main Road, Opp.: Bus Stand, Sikka, Dist. Jamnagar-361140	मे. दानीश एण्ड कं., कोहिनूर गेरेज (सर्विस स्टेशन) के पास, मेइन रोड, बस स्टेंड के सामने, सिक्का, जिल्ला: जामनगर - ३६११४०.

Copy to:

1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2) The Commissioner, GST & Central Excise, Rajkot.
3) The Assistant Commissioner, GST & Central Excise, Division, Jamnagar.
4) The Superintendent, GST & Central Excise, Range, Jamnagar.
5) Guard File.