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OFFICE OF THE PRINCIPAL COMMISSIONER OF C. G. S. T., AHMEDABAD SOUTH

प्रधान आयुक्त का कार्यालय, के. व. से. क., अहमदाबाद दक्षिण

G. S. T. BHAVAN, AMBAWADI, AHMEDABAD – 380 015

व. से. क. भवन, आम्बावाड़ी, अहमदाबाद - ३८० ०१५

फा.सं. F.No. STC/4-141/O&A/10-11

DIN no. 20200164WS00008J632C

आदेश की तारीख: Date of Order : 27.01.2020

जारी करने की तारीख: Date of Issue : 27.01.2020

द्वारा पारित / Passed by: Shri Mohit Agrawal, ADDITIONAL COMMISSIONER

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मूल आदेश सं./Order-In-Original No.19/Cx-I/Ahmd/ADC/MA/2019

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यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिएयह आदेश जारी किया गया है, उसके (उनके) व्यक्तिगत उपयोग के लिए नि:शुल्क प्रदान की जाती है ।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त (अपील), केन्द्रीय जीएसटी, केन्द्रीय जीएसटी भवन, आंबावाड़ी, अहमदाबाद–15 को प्रारूप इ.ए.–1 में अपील कर सकता है । उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए । इसपर रुपए 2.00/- केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **E.A.1** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारुप सं. इ.ए.-1 में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. E.A.-1 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति ।

Copy of the aforesaid appeal.

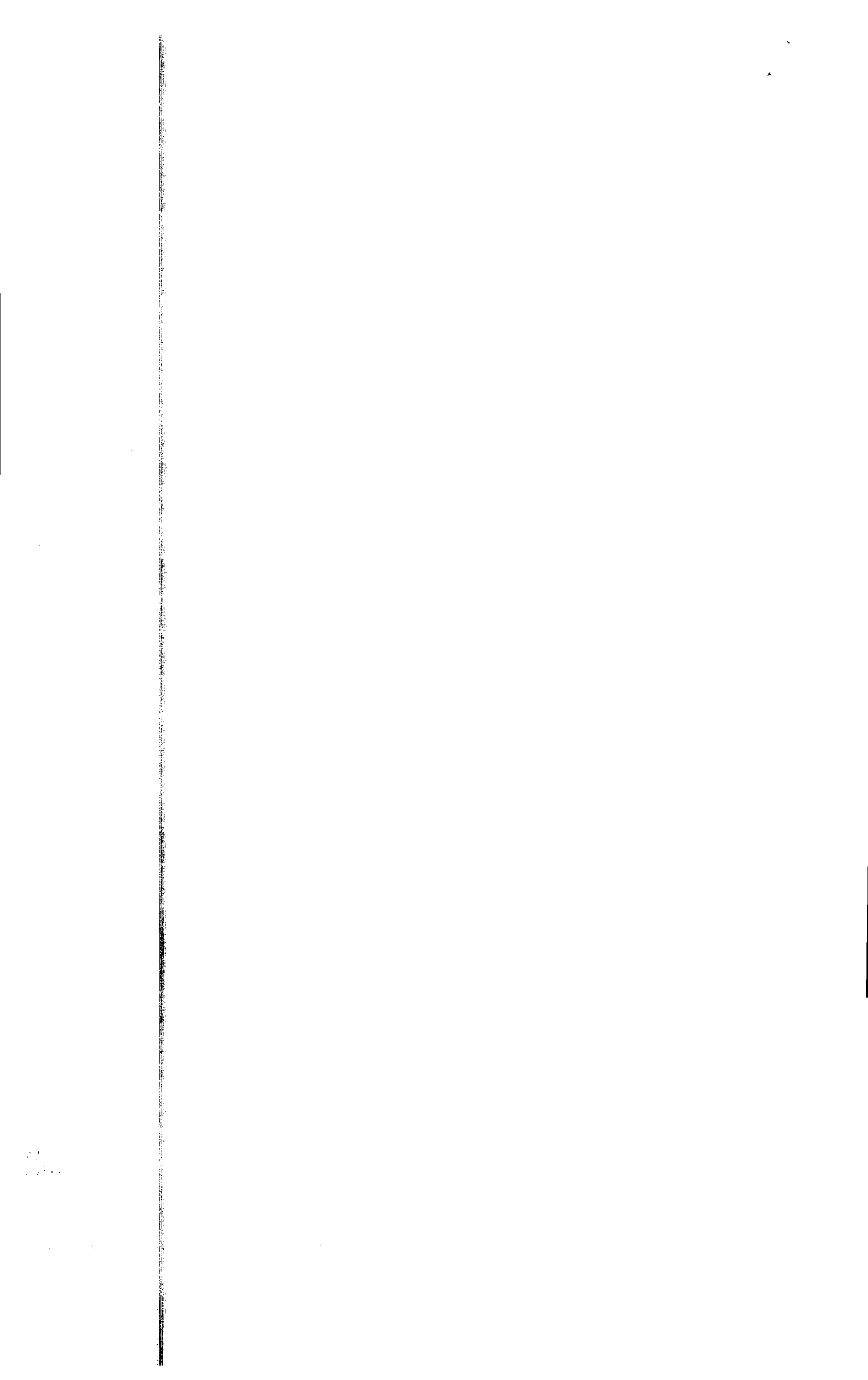
निर्णय की दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है) अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरूद्ध आयुक्त(अपील) में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुकतान करके अपील की जा सकती है ।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference :कारण बताओ सूचना फा.सं. File no. F.No. STC/4-148/O&A/10-11 dated 23/10/2012 issued to M/s. Burt Hill Design Pvt. Ltd., 71-72, Titanium, Nr Prahladnagar Garden, Anandnagar, Ahmedabad



BRIEF FACTS OF THE CASE :

M/s Burt Hill Design Pvt. Ltd. (Now known as INI Design Studio Private Limited), 71-72, Titanium, Nr. Prahaladnagar Garden, Anandnagar, Ahmedabad (here-in-after referred to as "the said assessee" or "the assessee" for the sake of brevity) is engaged in providing taxable services under the category of Consulting Engineer Services, Architect Services, Interior Decorator Services and Information Technology Software Services, which are taxable under sub-clauses (g), (p), (q) and (zzzze) of clause (105) respectively of Section 65 of Finance Act, 1994. The said assessee is registered for the same with Service Tax having Service Tax Registration No.AADCB0953HST001.

2. The audit of the records for the period 2007-08 was conducted by the officers of Audit wing of Service Tax Commissionerate, Ahmedabad, as reported vide Audit Report no. 73/2009-10 dated 16.09.2009. During the course of audit of the documents/records, it was noticed by the audit party that the said assessee had short paid service tax on account of the following:-

a. Non payment of ST on Consulting Engineer Services consumed in India,
b. Non payment of ST on Re-imbursement of expenses,
c. Non payment of ST on Advance received from customer, and
d. Non payment of ST on Foreign Bank charges.

2.1 Non payment of ST on Consulting Engineer Services consumed in India:

2.1.1 The said assessee had entered into various agreements with their H.O. i.e. M/s Burt Hill Inc., USA to provide above services under different projects in India as well as outside India. While scrutinizing the invoices issued by the said assessee, it was observed that the said assessee had issued two sets of invoices during the audit period which had two different series namely BHI--/07-08 and BHI/S/--/07-08. The first series i.e. BHI--/07-08, as stated by the assessee, was for the projects carried out *outside India* and the second series, i.e. BHI/S/--/07-08, was for the projects carried out *in India*. No Service Tax was paid by the said assessee on the services provided through first series of Invoices i.e. projects carried out outside India, under the belief that the same was covered under Export of Services.

2.1.2 As far as second series of invoices was concerned i.e. projects carried out in India, the audit party observed that service tax was paid on the Architect and Interior Decoration Services only and no service tax was paid on the Consulting Engineer Services. The projects were in India i.e. the immovable properties, on which these services were provided, were located in India, and all the services of Architect, Interior Decoration and Engineering were provided through the same invoices on these projects. It was found that no service tax was paid on the services provided under the category of Consulting Engineer Services whereas Service Tax was paid on Architect and Interior Decoration Services.

2.1.3 Thus the said assessee, apart from providing services under the category of Architects Service, Consulting Engineering Services and Interior Decorators Services outside India, was also providing services in India. They had not paid service tax under the category of Consulting Engineering services. On verification of the Agreements produced by the said assesses, it was observed that a clause stating that the said assessee, M/s Burt Hill Design shall provide services from India to the Client i.e. Burt Hill Inc, USA for use in USA for their business, but while having a look at the invoices issued by the said assessee, it was observed that the name of M/s Burt Hill Inc., USA is appearing at the 'Name of the Customer" but the "Project Name" clearly showed that the project was located in India.

2.1.4 As per sub-rule 2(a) of Rule 3 of Export of Service Rule, 2005, the provision of any taxable service shall be treated as export of service if such service is provided from India and used outside India. As per Para 4.3.6 of letter issued by Tax Research Unit vide F. No. B1/4/2006-TRU dated 19.04.2006, Services consumed in India do not fall within the scope of 'export of services'.

2.1.5 Since the project or immovable property was situated in India and Service Tax was being paid on Architect and Interior Decoration Services, provided thereto, Engineering Services provided on the same project could not be considered as services used outside India and the said assessee was required to pay Service Tax on the value of such services of Rs. 1,70,06,244/-, during 2007-08, which was worked out to be **Rs. 21,01,972/-**.

2.2 Non payment of ST on Re-imbursement of expenses:

2.2.1 While scrutinizing the Audited Balance Sheet of the said assessee for the year 2007-08, it was observed by the audi. party that Rs. 24,54,475/- have been shown under the head 'Loans & Advances' as 'Advance recoverable in cash or in kind or for value to be received'. When asked about the nature of this head, the said assessee stated that it included certain part of reimbursable expenses incurred by them on behalf of their H.O., i.e. Burt Hill Inc., USA.

2.2.2 During the course of scrutinizing the bills of above expenses and records maintained by the said assessee, it was observed that the said, claimant had first incurred the above expenses on behalf of their H.O., i.e. Burt Hill Inc., USA and afterwards claimed reimbursement of the same, but the said assessee had not incurred the above expenses in the capacity of a 'pure agent' since they had not entered into any contractual agreement with the recipient of the service to act as his pure agent to incur expenditure. Moreover, they had not fulfilled condition No.(vi) of Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 as far as separately indicating of payment made in the invoice is concerned and if all the conditions of Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 are not fulfilled, all such expenditures should be treated as consideration for the taxable service provided or to be provided and should be included in the value for the purpose of charging service tax on the said service. Thus, the, expenditure incurred and recovered as reimbursement by the said assessee from their H.O., i.e. Burt Hill Inc., USA, during the year 2007-08, to the tune of Rs. 34,25,318/- should have been included in the value for the purpose of charging Service Tax, which was worked out to Rs. 4,23,369/- (@12.36%) and was required to be recovered from them along with interest.

2.3 Non payment of ST on Advance received from customer:

2.3.1 While scrutinizing the Audited Balance Sheet of the said assessee for the year 2007-08, it was observed that Rs. 2,17,08,167/- were shown as an 'Advance received from customers'. Out of which, the said assessee had paid Service Tax on a sum of Rs. 41,70,913/-, but no Service Tax was paid by them on a sum of Rs. 1,75,37,254/-, out of which, on Rs. 58,87,075/-, tax was demanded under above Para and on the balance amount of Rs.1,16,50,179/-, the said assessee had short paid Service Tax, which worked out to be Rs.14,39,962/- and was required to be recovered along with interest.

2.4 Non payment of ST on Foreign Bank charges:

2.4.1 Also, while scrutinizing the Audited Balance Sheet and ledger accounts of the said assessee for the year 2007-08, it was observed that Rs. 3,823/- was shown as the 'Bank Charges & Commission'. When asked, the said assessee stated that the said charges were paid to the Foreign Banks towards the collection of Export Remittances from their service receivers, in foreign. Thus the said assessee was liable to pay service tax of Rs. 473/- under reverse charge mechanism for the "Banking &Financial services". The services rendered by Bank was taxable under the category of 'Banking and other Financial Services' as per Section 65(105) (zm) of Finance Act, 1994. In the instant case, since the service had been received from outside India, the exporter being a recipient of service was liable to discharge service tax liability in terms of provisions contained in Section 66A of finance Act, 1994 read with Rule 2(l)(d)(iv) of Service Tax Rules, 1994 and Rule 3(iii) of Taxation of Services (provided from outside India and received in India) Rules, 2006, thus they were liable to pay service tax thereon, which was not paid by them and was worked out to Rs. 473/-.

3. To ascertain whether the said assessee had continued to evade service tax on the points, raised during the course of audit, a letter dated 03.01.2011 was issued by the Range Officer, vide F. No. STC/AR-XV/AUDIT/Burt Hill/28/10-11 requesting the said assessee to submit figures for further period in relation to the four unsettled Revenue Paras, viz. paras 1, 2, 3 and 4 raised vide Audit Report No. 73/2009-10, by the audit party.

4. The said assessee submitted their reply to the above said letter, vide letter dated 18.01.2011.

4.1 The said assessee submitted therein as under:

- the income by way of engineering services aggregating to Rs. 8,80,49,640/- was entirely by the way of export of services for which remittance had been received in convertible foreign currency for the period from 01.04.2008 to 30.10.2010 which included the amount considered to be received in lieu of the export of service by the said assessee and advances received from its customers.
- With regard to reimbursement of expenses, they submitted figures of Rs. 22,22,441/- for the further period of April-08 to October-10.
- The said assessee submitted that Rs.10,726/- were paid towards Foreign Bank Charges for the further period of April-08 to October-10.

4.2 Again letter dated 29.03.2012 and dated 23.05.2012 were issued from F. No. STC/AR-XV/AUDIT/Burt Hill/28/10-11, by the Range Officer, requesting the said assessee to submit figures for further period in relation to the four Revenue Paras as raised by the audit party. The said assessee vide letter dated 12.06.2012, infomed that for the period from 01.11.2010 to 31.03.2012 they paid service tax on time to time basis on the reimbursable expenses, they also paid service tax on all advances on taxable service for the concerned period. They informed that during 01.11.2010 to 31.03.2012 the company had not incurred any foreign bank charges. The said assessee did not provide the figure of non payment of service tax on Consulting Engineering service consumed in India.

4.3 Further in reference to letter dated 27.07.2012, the said notice, vide their letter dtd. 03.08.2012, submitted the information regarding the value of service provided for the Consulting Engineering Service for the projects carried out/consumed in India, aggregating to Rs. 46,72,914/- for the period from 01.11.2010 to 31.03.2012.

5. Based on data provided it was noticed that the said assessee short paid Service Tax amounting to Rs.1,47,06,820/- during 2007-08 to 2011-12, on account of following:

Sr.	Reason for Short Payment of Service Tax	Service Tax short paid (Rs.)
1	Non payment of ST on Engineering Services consumed in India	1,25,72,753/-
2	Non payment of ST on Re-imbursement of expenses	6,92,527/-
3	Non payment of ST on Advance received from customer	14,39,962/-
4	Non payment of ST on Foreign Bank charges	1,578/-
	TOTAL	**1,47,06,820/-**

6. Thus, in view of the various provisions of the Finance Act, 1994, Export of Service Rules, 2005 and Service tax (Determination of Value) Rules, 2006, it appeared that the said assessee :

(a) Had not paid service tax on the services, which were consumed in India in relation to consulting engineer services. Since the project or the immovable property is situated in India and Service Tax is being paid on Architect and Interior Decoration Services provided thereto. Engineering Services provided on the same project cannot be considered as services used outside India and the said assessee appears liable to pay Service Tax on value of such services of Rs. 10,97,28,798/-, which is worked out to Rs. 1,25,72,753/- for the period from 2007-08 to 2011-12, along with the interest at the prescribed rates;

(b) Had not included the value of re-imbursement of expenses in the taxable value which is violation of the Service Tax (Determination of Value) Rules, 2006, as the said assessee did not act as a pure agent for the subject output services. Thus, service tax to the tune of Rs. 6,92,527/-, for the period from 2007-08 to 2011-12 is required to be paid along with applicable interest;

(c) Had not paid service tax to the tune of Rs. 14,39,962/- for the period of 2007-08 on the advances received from their customers; and

(d) Had not paid service tax to the tune of Rs. 1,578/- for the period from 2007-08 to 2011-12, on the "Bank Charges & Commission" paid by them. They are required to pay service tax in the capacity of recipient of services under Section 66A.

7. According to Section 68 of the Finance Act, 1994 (as amended from time to time) read with Rule 6 of the service tax rules, 1994 (as amended from time to time), every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed. Thus, the said assessee appears to have failed to pay the due service tax for providing the taxable services of "Architect, Interior Decorator & Consulting Engineer" and being a recipient of "Banking and Financial Service" provided from outside India.

8. According to Section 70 of the Finance Act, 1994 (as amended from time to time), 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. Whereas the said assessee has not disclosed full and correct information about value of the services provided by them and hence appear to have failed to self-assess the correct taxable value for the services provided by him and thereby contravening the Provisions of the Section 70 of the Finance Act, 1994.

9. According to Section 73 of the Finance Act, 1994 (as amended from time to time, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause, why he should not pay the amount specified in the notice :

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

(a) fraud; or
(b) collusion; or
(c) wilful mis-statement; or
(d) suppression of facts; or
(e) contravention of any of the provisions of this Chapter or of the rules made there-under with intent to evade payment of service tax,

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

9.1 Whereas, it appears that there was deliberate withholding of essential information from the department about service provided and value realized by the said assessee and that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of proviso to Section 73(1) of Finance Act, 1994 to demand the service tax short paid.

10. According to Section 75 of the Finance Act, 1994 (as amended from time to time), every person, liable to pay the tax in accordance with the provisions of section 68 or the rules made there-under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest,[at such rate not below ten per cent, and not exceeding thirty-six per cent, per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, for the period by which such crediting of the tax or any part thereof is delayed.

11. Whereas the said assessee appears to have contravened the provisions of Section 67 of the Finance Act, 1994 in as much as, they have failed to determine the correct value of taxable services provided by them and provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, in as much as, they have failed to determine and pay the correct amount of service tax by the due date and hence appear to be liable to pay the interest as applicable under provision of Section 75 of the said Act.

12. Whereas the said assessee has contravened the provisions of Section 68 of the said Act, in as much as, they have failed to pay service tax as applicable and thereby rendered themselves liable for penalty under section 76 of the said act.

13. Whereas the said assessee has failed to comply with the statutory provisions of the said act and Service Tax Rules, 1994, by not computing the taxable value as per section 67 of the said Act, and thereby rendered themselves liable for penalty under Section 77 of the Finance Act, 1994.

14. The government from the very beginning placed full trust on the service providers, so far as service tax concerned and accordingly measures like self assessment etc., based on mutual trust and confidence are in place. Further, a taxable service provider is required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened as there is a breach of trust placed on the service provider, no matter how innocently. The deliberate efforts by not paying the correct amount of service tax is utter disregard to the requirements of law and breach of trust deposed on them, such outright act in defiance of law appears to have rendered them liable for stringent penal action as per the provisions of the Section 78 of the Finance Act, 1994 for suppression on concealment with intent to evade payment of service tax.

15. Therefore, the said assessee, M/s Burt Hill Design Pvt. Ltd. (Now known as INI Design Studio Private Limited), 71-72, Titanium, Nr. Prahaladnagar Garden, Anandnagar, Ahmedabad, were called upon, vide SCN no. STC/4-148/O&A/10-11 dated **23/10/2012,** to show cause to the Commissioner of Service Tax, having office at 1st floor, Central Excise Bhawan, Panjrapole, Ambawadi, Ahmedabad - 380015 as to why:

(i) The Service Tax amounting to Rs. **1,47,05,242/-** (Rs. 1,25,72,753/- not paid on the service provided under Consulting Engineer Services + Rs. 6,92,527/- not paid on re-imbursement of expenses + Rs. 14,39,962/- not paid on the advances) should not be demanded and recovered from them under proviso to Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years;

(ii) Service Tax amounting to **Rs.1,578/-** not paid on the "Bank Charges & Commission" in the capacity of recipient of services under Section 66A, should not be demanded and recovered from them under proviso to Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years;

(iii) Interest at the applicable rate on the amount of service tax liability, mentioned at Sr. No. (i) and (ii) above, should not be recovered from them, for delay in making the payment, under Section 75 of the Finance Act, 1994;

(iv) Penalty should not be imposed upon the said assessee under Section 76 of the Finance Act 1994, for failure to make the payment of Service Tax payable by them within the stipulated time;

(v) Penalty should not be imposed upon the said assessee under Section 77 of the Finance Act, 1994, as amended, for contravention of the of the Finance Act, 1994 read with Service Tax (Determination of value) Rules, 2006, Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and Service Tax Rules, 1994 as discussed in forgoing paras; and

(vi) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for suppressing the value of taxable services provided by the said assessee from the department with intent to evade payment of Service Tax.

16. In pursuance of CBEC circular no. 1049/37/2016-CX dated 29.09.2016, regarding revision of monetary limit for adjudication, corrigendum to the above said SCN was issued, vide F. no. STC/4-141/O&A/10-11 dated 18/12/2019, to the effect that the cause be shown to the Additional Commissioner, CGST & Service Tax, 6th Floor, Central GST Bhawan, Ambawadi, Panjrapole, Ahmedabad.

DEFENCE REPLY:

17. The said assessee replied to the SCN, vide their letters dated 21.11.2012 along with letter dated 23.05.2012 and letter dated 13.12.2013 along with copy of Service Agreement dated 27.10.2007. Gist of their reply is reproduced point wise as below:

I. Illegality of the Show Cause Notice:

It is submitted that the requirements or conditions or circumstances under which the extended period of five years apply do not exist in the case of the company in absence of any fraud or collusion or will-full mis-statement or suppression of fact or contravention of any of the provisions of this Chapter or rules made there-under with intent to evade payment of service tax. The company has filed Returns of Service Tax regularly within due dates with complete disclosure of taxable services including the service which qualify for non-payment of tax being export of services. There is no fraud or collusion or will-full mis-statement or suppression of facts or intentional contravention of any provisions or rules made there under by the company. The company has filed Returns of Service Tax, for the half-year ending September, 2007, on 09.03.2008 and for the half-year ending March, 2008, on 25.04.2008.

The conclusion in Para 9 of SCN clearly proves that there is no specific findings or evidences or material upon which the Central Excise Officers (CEO) relies and it is merely a general and vague conclusion without going into the factors for determination as to whether the circumstances or conditions laid down in the proviso [to sub-section (1) of Section 73 of the Finance Act, 1994] are satisfied or not. In both the sentences in the paragraph, it has been mentioned that *'It appears that'*, which reflected the state of mind of the CEO, wherein it is only for the purpose of taking benefit of extended period of service of notice and the shelter has been taken without having support of actual findings based on the evidences etc., which are required under any law or rule.

It is submitted that during all audits/inspection carried out by department as also with regard to payment of service tax, taking CENVAT credit as well as filing of returns of service tax, the company has fully complied and co-operated with the authorities, which establishes its clear intent and genuineness to comply and abide by the service tax regulations entirely. There is no case for any of the conditions or circumstances or ingredients mentioned in the proviso enabling the CEO to take advantage of the extended period of service of notice. As none of the requirements mentioned in the proviso is satisfied, period of service of notice shall be one year only from the relevant date. Therefore the notice served is barred by time.

The Returns of Service Tax were filed by the company on 9th March, 2008 and 25th April, 2008 for the half-year ended 30th September, 2007 and half-year ended 31st March, 2008 respectively and therefore, the service of notice is time-barred. As the SCN is a composite notice for various years including F.Y. 2007-08, which is time-barred, it is submitted that the entire notice is not valid in the eyes of law.

The findings in Para 9 of the SCN upon which it has been issued have no merits or are not justified on the facts, circumstances and provisions of law. The service of SCN is bad in law being barred by time. It is submitted that the SCN served upon the company is void ab-initio and illegal and therefore, has no force in law.

It is further submitted that based on the facts and circumstances of the case as well as provisions of law and considering the ratios and principles laid down by the Tribunals and Courts, the issues are debatable having different views. It is well settled that where different views are prevalent about the applicability of tax, the extended period is not available to the Department for the purpose of raising demands. In all the cases where the liability for service tax has been determined by the Department, it is the company's bonafide and genuine belief and understanding backed by consultant's opinion that the same are not liable for service tax. There is complete absence of will-full mis-statement or suppression of facts in this case. The contravention of the provisions of Service Tax Regulations, if any, as alleged by the CEO is also without any intention to evade payment of service tax as has been clearly demonstrated by the company. In the case of Bharat Aluminium Company Limited v/s. CCE (2007) 9 STT 432 (ND – CESTAT), this principle has been laid after considering the ratios laid down by different Courts. **When different views are prevalent about the applicability of tax, the extended period under the proviso to Sub-section (1) of Section 73 is not available to the Department.**

The office of the Commissioner of Service Tax carried out the first audit in July and August, 2009, covering the period from April, 2007 to March, 2008 (Audit Report No. 73/2009-10 dated 16th September, 2009). Thereafter, the company along with its Consultant attended the office of the Commissioner of Service Tax from time to time and explained the issues raised in the Audit Report and the same were concluded and settled as per the understanding of the company. Thereafter, audit for F.Y. 2008-09 and F.Y. 2009-10 was undertaken in December, 2011 and January, 2012 for which Audit Report dated 18th April, 2012 was issued wherein procedure in Para 1 stated that the audit was conducted and Audit Report No. 73/2009-10 (for F.Y. 2007-08) was issued with audit objection for non-payment of service tax on engineering services and non-payment of service tax on reimbursement of expenses and the Assistant Commissioner, Division – III, Service Tax, Ahmedabad has proposed DSCN for the period April, 2007 to October, 2010 for the said objections.

The conduct and the manner in which the procedures adopted or carried out by the Department clearly reflects the acceptance of the stand and views of the company with regard to chargeability of service tax in respect of the issues for which SCN has been issued. The fact that there was no case for applicability of any of the essential ingredients or conditions or circumstances mentioned in the proviso to Section 73(1), the Department did not issue SCN as the company had paid service tax in accordance with the facts of the case and provisions of law. **The SCN was served at 8.45 P.M. on 23rd October, 2012, which was the last date for serving the notice. The notice was also signed on the last day of the assumed extended period for service of the notice. The notice was served much after the closure of official working hours of the company and was forcefully served upon a Junior Clerk of the company.**

In view of the above submissions, taking comprehensive view of the facts, circumstances of the case, legal provisions, principles and ratios laid down by different Courts and Tribunals and also the conduct of the Department and absence of any reliable evidence or facts, which empowered the Department to invoke the extended period for serving the SCN, **the SCN served is time-barred by limitation and therefore, is void ab-initio. Therefore, the proposed demands & liabilities are without any legal force and not binding at all. We state that SCN cannot be further pursued being void ab-initio and no further action on the basis of this SCN is granted under law.**

II. Export of services – Consulting Engineer's services:

In respect of the engineering services provided by the company outside India complying with the conditions of Sub-rule (iii) of Rule 3(1) of Export of Services Rules, there was no liability for payment of service tax. This was disclosed clearly in the Returns of Service Tax filed by the company from time to time as well as during various audit and inspections carried out by the Department. Detailed submissions were made vide our letters dated 18th May, 2012 as well as 23rd May, 2012, enclose herewith form part of our reply to SCN. The relevant portions of these replies in respect of above services give detailed submissions encompassing facts, legal provisions; circulars issued by CBEC, etc. and are part of this submission.

In terms of the contract with the foreign customer, the foreign customer would use the inputs by way of engineering services for finalizing deliverables to its customers; the services rendered by the company would go through necessary modifications, improvements, adjustments, additions and such other necessary qualitative and subjective tests, checks and verifications as required by the foreign customer for its business purpose; the foreign customers who were located outside India would utilize the services for its business operations outside India; that the services or deliverables delivered by foreign client of the company to its customers including those located in India were not the same services as provided to them by the company as it went through necessary value-additions and various factors described above to suit the compliance of terms of conditions of the agreement between foreign customer of the company and its customer. They submitted that the services rendered by the company were consumed or used by foreign customer outside India and the products by way of deliverables produced by foreign customer and delivered to its ultimate customer were distinct from the services rendered by the company to them; therefore, as far as the conditions with regard to providing of services and its use outside India as required by the Export of Services Rules, 2005 were fully complied by the company.

Only on account of the fact that the properties in relation to which engineering designs were prepared were located in India, the services cannot be said to be consumed or used in India with regard to the following two reasons:

a) **The company did not have any contractual relationship with the party in India, who is customer of the foreign customer of the company and to whom the services were provided by the company. In absence of any such relations as well as in absence of any services provided by the company to the owners of such immovable properties located in India, the services cannot be said to have been consumed or used in India, as, ultimately** the entity/person/client who consumes the services was not the property or the local entity who owns the property, i.e. the India party who is the client of the foreign customer, but foreign customer of the company.

b) **The services rendered by the company to its foreign customer were already consumed or used outside India by the foreign customer and thereafter, it could not be delivered to/consumed by again anywhere in the world.** The foreign customer by using and by consuming the services provided by the company produced deliverables in terms of its agreement/contract with the owners of immovable properties located including in India, which were separate and distinct from the services rendered by the company.

As explained based on the legal provisions as well as facts of the case in detail, the services were export of services under the relevant Rules and therefore, did not attract liability for payment of service tax.

After reproducing the legal provisions in Para 3.1.1 to Para 3.1.3 of the SCN, in Para 3.1.3.1, it has been mentioned that "In the present case the services provided under the category of "Consulting Engineer Service" are utilised in India and hence does not qualify under the clause of export of service." In Para 2.1.6 of the SCN it has been mentioned that since the immovable property in respect of which the services are provided and as the company has paid service tax on architectural and interior decoration services, engineering services on the same property cannot be considered as services used outside India and therefore, service tax is payable on such services. However, attention is drawn to the Export of Services Rules under which there is no liability for payment of service tax in respect of certain services wherein architectural and interior decoration services are classified in Part 1 where the criteria relates to immovable property situated outside India and these services shall not be considered as export of services under the said Rules if the property in relation to which services are rendered are not located outside India. However, consulting Engineer's services are classified in Part 3 in the criteria of location of the recipient of the services outside India and there is no requirement (of property being located outside India) or any relationship with the location of the property. The Department has not disputed the category of services provided which falls under the Consulting Engineer's services. Therefore, once the service is considered as taxable service under the category of Consulting Engineer's services, the only requirement with regard to Export of Services Rules is the criteria-compliance as mentioned in the said Rules. As the Consulting Engineer's services fall in the third part wherein the only requirement is location of the recipient of services outside India has been prescribed irrespective of the location of the property, there is no force or legal

ground for exclusion of Consulting Engineer's services from the eligibility as export of services under the Export of Services Rules and therefore, the liability for payment of service tax shall not be attracted.

With regard to use of services/consumption of services/utilisation of services is concerned, it is once again submitted that the services are rendered to a foreign customer of the company located in the U.S.A., who utilises the services for its own business purposes and after making suitable modifications to the services exported by the company so as to suit & comply with their requirements, the same are used for their further business purposes. Therefore, the services provided by the company are fully used/consumed/utilised by the foreign customers outside India. Only because the immovable property in respect of which such services are provided, it cannot be assumed or confirmed or concluded that such services are used in India. More particularly, reliance on the Circular No.111/2009 (F. No. 137/307/2007) dated 24th February, 2009 and our reliance on various judgments of the hon'ble Supreme Court and High Courts are emphasized.

With regard to reliance placed in the SCN on the letter of TRU dated 19th April, 2006, it is submitted that it is misplaced and incorrect as mentioned in detail in our letter dated 23rd May, 2012. In the SCN in Para 2.1.4 and 2.1.6, emphasis and reliance is placed on the Invoice prepared by the company and location of the property being in India. However, the location of property being in India is not disputed by the company and the mention of project name in the Invoice itself clearly demonstrates the genuineness and bona-fides of the company. However, considering the provisions of Export of Services Rules with regard to engineering services and the fact that the services are rendered to the customer located in the U.S.A., who consumed services outside India and the person who owns the immovable property has no contractual relationship with the company and the company is not providing any service to that party, the question of chargeability of these services is fully ruled out. The payment for services has also been made by the customer to the company located outside India, who has consumed the services and not the party to whom the property in India belongs to. It is reasonable and commercially prudent & correct that the person who receives services shall only make the payment for such services and the party who has not received any service will not make any payment. Accordingly, Burt Hill Inc. U.S.A., who is the receiver and consumer of services, has made the payments for the services rendered by the company.

It is therefore, submitted that as the company has satisfied the criteria of use of services outside India as well as receipt of payment for the services rendered in convertible foreign exchange, it is export of services as per the said Rules and hence, no liability for payment of service tax arises.

We therefore, request you to please drop the proposed levy of service tax in respect of engineering services exported by the company and fully consumed and utilised outside India being wrong in law and on facts.

III. Reimbursement of expenses:

In the SCN, service tax is determined to be payable on the amounts of reimbursement of expenses obtained by the company from third parties who are not clients or customers of the company and with whom the company has no contractual

relationships and to whom no services have been provided by the company. The company had paid certain expenses which mainly included travel expenses.

Service Tax (Determination of value) Rules, 2006 deal with valuation of services for levy of Service Tax. Rule 5(1) of the said Rules reads as under:

> *"Where any expenditure or costs are incurred* ***by the service provider in the course of providing taxable service,*** *all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging Service Tax on the said service"*

According to the above definition, the basic requirement is that the expenditure or costs are incurred by the service provider in the course of providing taxable services and that the taxable services in the case of the services provided by the company were Architectural Design Services [Section 65(105)(p)], Consulting Engineering Services [Section 65(165)(g)] and Interior Decoration Services [Section65(105)(q)] wherein 'Taxable service' meant any service provided or to be provided to any person (client) by an Architect/by a Consulting Engineer/by an Interior Decorator relevant to respective services. Therefore, the basic requirement for an expenditure or cost for its inclusion in the consideration for the taxable service should be that such expenditure or costs are reimbursed by the service receiver to whom the services are provided. In the case of the company, expenses were recovered from certain parties with whom the company had no contractual relationship and that the company had not provided any taxable services to those parties.

The expenses or costs recovered from such parties are not pursuant to any service provided by the company to such parties. These parties are not clients of the company. In absence of any contractual relationship between the company and the party from whom the expenses were recovered or in absence of client relationship with those parties and the fact that no taxable services have been provided to such parties, these amounts could not be included or be treated as consideration for the taxable services provided. The Rule 5(1) will come into play only when any taxable services are provided by the service provider to any party and from whom the same party expenses or costs are recovered or received in addition to value of services. It is therefore submitted that on the facts of the case, contractual relationship and legal provisions, Rule 5(1) does not apply and therefore, in absence of NIL value of taxable services provided to such parties, the amounts of expenses or costs recovered are not liable to Service Tax.

In the hands of the recipient-company there is no surplus or accretion or addition to revenue in absence of any other flow of revenue coming from those parties. In absence of provision of any taxable service, there cannot be any question of taxability of expenses or costs.

As submitted during the course of audit, the company has raised Debit Notes for the expenses reimbursable to the parties to whom the company is not rendering any service for the payments made on their behalf at their request the copies of specimen Debit Notes are also enclosed herewith which are in the names of JSW Steel Limited, Mumbai and Orbit Shelter Private Limited, Mumbai as the obligation for payment of these expenses was on these parties, however, for practical convenience and as per the mutual understanding, the payments were made by the company for and on behalf of these parties. The company after making payments on behalf of these parties sought reimbursement which will make good the actual amounts paid. **It has been mentioned in**

the SCN in Para 3.2.3 that "it was with they (Burt Hill Designs) had first incurred the above expenses on behalf of their H.O., i.e. Burt Hill Inc., U.S.A. and afterwards claimed reimbursement of the same". On the basis of this observation, the liability for service tax was proposed. However, the observation is wrong in as much as the payments were not made on behalf of Burt Hill Inc., U.S.A. but for and on behalf of Indian parties (JSW Steel Limited, Orbit Shelter Private Limited, etc.) and reimbursement was also received from Indian parties and not from Burt, Hill Inc., U.S.A. to whom services are provided. The attached copies of Debit Notes and books of accounts of the company clearly show that these payments were debited to the accounts of those parties in the books of accounts of the company and payments were received by them only. Therefore, the basis upon which the liability for service tax has been determined is wrong on facts and therefore, in accordance with the provisions of Service Tax (Determination of value) Rules, 2006 also, the said amounts will not be considered as consideration for the services rendered to Burt, Hill Inc., U.S.A. it is therefore, kindly submitted that the proposed levy of service tax on such amounts being wrong in law and on facts requires to be dropped.

IV. Advance received from customers:

The company had received USD 4,00,000 pursuant to the terms of the Services Agreement dated 15th June, 2007 executed between the company and its parent-company, BHI, USA. As per the terms of the agreement, the company would provide computer-aided designs like architectural, engineering and interior decoration over a period of time for which the BHI would pay an average/blended hourly rate of USD 35.25. There was no specific or identified project or assignment or exact nature of services including details like location of property for which the services are to be rendered, product mix of the services, etc. The agreement was based upon the assumption with regard to utilization of man-hours of the Indian company by its parent-company for various projects and assignments over a period of time.

Based on the nature and terms of contract, the quantum of taxable services in respect of architectural services, engineering services and interior decoration services could not be reasonably estimated or determined on any rational method. The fee was based on hourly services utilized by the parent-company for three different types of services. The amount of consideration was already received in foreign currency. The services rendered by the Indian company and received by the parent-company in USA were to be utilised for the purposes of the business outside India. In absence of any details with regard to the factors which determine whether a particular service would fall in Category I or III of Export of Services (Rules), 2005, it was not possible to reasonably estimate as to what quantum of fees would be covered by the Export of Services (Rules) and therefore, no Service Tax would be payable thereon.

Moreover, as per the terms of agreement and understanding between the parties, if the advance paid in terms of the agreement were not appropriated as per the hours of services rendered by the Indian company within the time frame agreed, balance amount of advances shall be refunded. As a matter of fact, the company has refunded Rs. 74,34,051/- on 19-07-2010 being unadjusted advance out of the amount.

Section 67 of Finance Act 1994 deals with valuation of taxable services for charging service tax. Explanation 3 to this section provides the gross amount charged for the taxable services shall include any amount received towards the taxable services before, during or after provision of such services. As per the explanation read with clarification

issued by the Central Government, the payment of service tax is linked with the receipt for payment of taxable services provided or advance payment received towards taxable services to be provided in future. This is also clarified that when the advance payment is received for a service, which is non-taxable at the time of receipt of payment but becomes taxable during the course of provision of services, such payments would be apportioned appropriately between the two periods and that part of services provided on or after the service becomes taxable service, shall only be liable for service tax. Therefore when payment is received in advance for the services to be provided in respect of which there is no reasonable or prima-facies details or principals as to whether this would be chargeable to service tax or not in future depending upon whether it would be covered by Export of Services (Rules) or not , no liability shall arise for the payment of service tax.

After the receipts of advance, in future periods, against the bills raised for the services rendered pursuant to the contract wherever service tax is payable, the company has paid service tax on the gross amount of the bill including advances received under the agreement, the company has complied with the provisions of Service Tax Regulations as under:

a) In respect of taxable services provided, the company had paid Service Tax on the full value of services rendered;

b) In respect of the services rendered covered by Export of Services Rules, no Service Tax is payable;

c) No services were rendered and therefore, advances were refunded.

In view of the above, it is submitted that if the company is required to pay Service Tax on the outstanding balance of advances of Rs. 1,16,50,179/-, it would amount to double taxation in respect of the services in respect of which Service Tax has been paid subsequently by the company or in respect of services which are exempt under Export of services Rules or there is no liability of Service Tax for the amount of advance refunded.

As mentioned, out of above amount of Rs. 1,16,50,179/-, Rs. 74,34,051/- has been refunded on 19th July, 2010. In view of the nature of agreement stated hereinabove, service tax was payable only on rendering services from time to time, which has already been paid by the company. There is no question of payment of service tax on the amount of advance refunded as the same was not advanced against taxable services to be provided.

In view of above, we request you to please drop the proposed levy of service tax on the advance of Rs. 1,16,50,179/-.

V. Foreign Bank Charges:

We refer to the detailed submission in Para 4 of our letter dated 23rd May, 2012. Considering the facts of the case and provisions of law, it is submitted that there is no liability for service tax on foreign bank charges and therefore, the proposed levy of service tax be dropped.

In view of the foregoing submission, we state as under:

1. Service Tax of Rs. 1,47,05,242/- as determined to be payable is not payable and therefore, the same be dropped/deleted.

2. Service Tax of Rs. 1,578/- o bank charges and commission being wrongly determined as payable be dropped and cancelled.

3. In absence of any service tax liability, no interest is payable u/s. 75 of the Finance Act, 1994

4. In absence of any liability to pay service tax as alleged, no penalty u/s. 76 is levible and therefore, be kindly dropped and cancelled.

5. On the facts and provisions of Section 77, no penalty is levible there-under and therefore, we request to please drop and cancel.

6. As mentioned in (1) above, there is no case that service tax has not been paid or has been short-paid or erroneously refunded by reason of fraud or collusion or will-full mis-statement or suppression of facts of contravention of any of the provisions of Chapter V or Rules made there under with intent to evade payment of service tax and therefore, penalty u/s. 78 is not levible. We therefore, request to kindly drop the proposed levy of penalty u/s. 78.

18. The said assessee made further submission vide their letter dated **07.11.2019**. Gist of the same is reproduced point wise as below:

Reimbursement of Expenses:

As per the show-cause notice dated 23/10/2012, in respect of amounts received by the company as reimbursement of expenses incurred, service tax is proposed to be levied pursuant to provisions of Section 67(1)(i) of the Finance Act, 1994 read with Rule 5 of the Service Tax (Determination of Value) Rules, 2006. In our submission, we have analyzed the facts and legal provisions in detailed. Accordingly, the reimbursement of expenses shall not be considered as consideration for the Consulting Engineers Services rendered by the company and therefore can-not be subject to charge of service tax being not part of value of taxable services.

Recently, the Hon'ble Supreme Court in the case of Union of India & ANR. vs. M/s. Intercontinental Consultants And Technocrats Private Limited vide judgment dated 7/3/2018, on identical facts has held as under:

Para 2 of the Order:

"All the assessees are paying service tax. The services which these assessees are rendering broadly fall in the following four categories:

(a) Consulting engineering services.

(b) Share transfer agency services.

(c) Custom house agent services covered by the head 'clearing and forwarding agent'.

(d) The site formation and clearances, excavation and earth moving and demolition services."

Para 3 of the Order:

"While rendering the aforesaid services, the assessees are also getting reimbursement in respect of certain activities undertaken by them which according to them is not includable to arrive at 'gross value' charged from their clients. As per Rule 5 of the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as the 'Rules'), the value of the said reimbursable activities is also to be included as part of services provided by these respondents. Writ petitions were filed by the assessees challenging the vires of Rule 5 of the Rules as unconstitutional as well as ultra vires the provisions of Sections 66 and 67 of Chapter V of the Finance Act, 1994 (hereinafter referred to as the 'Act.'). The High Court of Delhi has, by the judgment dated November 30, 2012, accepted the said challenge and declared Rule 5 to be ultra vires these provisions. Other cases have met similar results by riding on the judgment dated November 30, 2012. This necessitates examining the correctness of the judgment of the Delhi High Court and outcome thereof would determine the fate of all these appeals/transfer petitions."

Para 4 of the Order:

"This judgment was rendered by the High Court in the writ petition filed by M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. out of which Civil Appeal No. 2013 of 2014 arises. Therefore, for our purpose, it would suffice to advert to the facts of this appeal and take note of the reasons which have prevailed with the High Court in arriving at this conclusion."

Para 5 of the Order:

"The assessee M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. is a provider of consulting engineering services. It specializes in highways, structures, airports, urban and rural infrastructural projects and is engaged in various road projects outside and inside India. In the course of the carrying on of its business, the petitioner rendered consultancy services in respect of highway projects to the National Highway Authority of India (NHAI). The petitioner receives payments not only for its service but is also reimbursed expenses incurred by it such as air travel, hotel stay, etc. it was paying service tax in respect of amounts received by it for services rendered to its clients. It was not paying any service tax in respect of the expenses incurred by it, which was reimbursed by the clients. On 19.10.2007, the Superintendent (Audit) Group II (Service Tax), New Delhi issued a letter to the petitioner on the subject "service tax audit for the financial year 2002-03 to 2006-07. In this letter, it was mentioned by the appellant that service tax was liable to be charged on the gross value including reimbursable and out of pocket expenses like travelling, lodging and boarding etc. and the respondent was directed to deposit the due service tax along with interest @13% under Sections 73 and 75 respectively of the Act. In response, the respondent provided month-wise detail of the professional income as well as reimbursable out of pocket expenses for the period mentioned in the aforesaid letter. Thereafter, a show cause notice dated March 17, 2008 was issued by the Commissioner, Service Tax, Commissionerate vide which the respondent was asked to show cause as to why the service tax should not be recovered by including the amounts of reimbursable which were received by the respondent, pointing out these were to be included while arriving at the gross value as per provisions of Rule 5(1) of the Rules."

As shown above, the facts of the company and facts in the case of Intercontinental are identical as both are providing consulting engineering services and the service tax is paid on the value of services of consulting services and on the amount of expenses reimbursed by the client like conveyance, travelling, hotel charges, etc., no service tax is paid by the company for which show cause notice was issued by Service Tax Commissioner. On a writ petition made by Intercontinental in the High Court of Delhi, the Hon'ble Delhi High Court has held that the amount of expenditure incurred by service provider can never be part of gross value of services and therefore can never be subject to charge of service tax.

After hearing the submissions made by both the parties, the Hon'ble Supreme Court held as under:

Para 24 of the Order:

"In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 01, 2006) or after its amendment, with effect from, May 01, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasized that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service."

Para 25 of the Order:

"This position did not change even in the amended Section 67 which was inserted on May 01, 2006. Sub-Section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider."

Para 29 of the Order:

"In the present case, the aforesaid view gets strenghtened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argue by the learned counsel for the Department that Section 67 is a declaratory provision, nor could it

be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature."

Para 30 of the Order:

"As a result, we do not find any merit in any of those appeals which are accordingly dismissed."

Accordingly, it was held that prior to May 14, 2015 when the law is amended so that reimbursement of expenses would also form part of valuation of taxable services for charging service tax, such amounts of reimbursement of expenses will not form part of value of taxable services. The period covered by show-cause notice in our case is upto 31st March, 2012 only. Therefore, it is submitted that service tax shall not be payable on the amount of reimbursement of expenses received by the company as the same shall not form part of value of taxable services.

19. The case was posted for personal hearing on 20.12.2019, when Shri Chintan Thanki and Ms. Bindu Hariyani, directors of the said assessee unit referred their earlier submissions dated 21.11.2012, 23.05.2012, 13.12.2013 and dated 07.11.2019. They also submitted a summary of the case.

DISCUSSION AND FINDINGS:

20. I have carefully gone through the show cause notice, relevant case records and the assessee's submissions both, in person and in written.

Demand of service tax has been raised in the SCN on the following four counts:

a. Non-payment of ST on Consulting Engineering Services consumed in India.
c. Non-payment of ST on Re-imbursement of expenses.
d. Non payment of ST on Advance received from customer
e. Non payment of ST on Foreign Bank charges

I will proceed to consider each issue on its merits.

<u>Short payment of service tax on Consulting Engineering Services consumed in India.</u>

21. It has been alleged in the show cause notice that the assessee have rendered Consulting Engineering Services to M/s Burt Hill Inc., USA but the services have been used and consumed in India in as much as the invoices indicate the name of the project which is located in India. Thus, it has been alleged that the same cannot be considered as export of services and the services tax is required to be paid on such services. The assessee have contended that Consulting Engineering service was classified under Sec. 65(105)(g) of the Finance Act, 1994 and as such the same was covered under Sub-rule (iii) of Rule 3(1) of Export of Services Rules, 2005 for which the only condition is that the recipient of the service should be located outside India. In this regard it would be in proper context to look into the provisions of sub-rule 2 of Rule 3 of the Export of Services Rules, 2005 which reads as under:

"(2) The provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied, namely:-

(a) such service is provided from India and used outside India; and

(b) payment for such service provided outside India is received by the service provider in convertible foreign exchange.

Explanation. - For the purposes of this rule "India" includes the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof."

21.1 The above statute indicates that Rule 3 of the Export of Services Rules, 2005 is in two parts viz. Sub-rule 1 & sub-rule 2 wherein sub-rule 1 stipulates certain conditions in respect of specified services therein. Further the language employed in sub-rule 2 indicates that the conditions spelt therein are over and above the conditions spelt out at sub-rule 1 and the said conditions apply to all the categories of services covered under sub-rule 1 which includes sub-rule 1(iii). Thus, for the purpose of considering Consulting Engineering Service as 'export of service', the following three conditions are required to be fulfilled in terms of the provisions of Rule 3(1)(iii) and Rule 3(2) of the Export of Services Rules, 2005:

i. The services ought to have been provided to a recipient who is located outside India at the time of provision of such service

ii. such service is provided from India and used outside India

iii. payment for such service provided outside India is received by the service provider in convertible foreign exchange

21.2 In the instant case, it is the contention of the assessee that the services have been used outside India. However, they have not adduced any evidence to support their claim. On the contrary the invoices under consideration indicate that the projects in respect of which Consulting Engineering Services have been rendered were in India and the immovable properties on which these services were provided were located in India. The agreements contain a clause to the effect that the said assessee would provide services from India to the Client i.e. Burt Hill Inc., USA for use in USA for their business. However, the Invoices issued by the said assessee show that the name of M/s Burt Hill Inc., USA is appearing as the 'Name of the Customer" but the "Project Name" clearly showed that the project was located in India. Thus, the invoices of the assessee clearly indicate that the services have been used for the project located in India.

21.3 The above is fortified by the fact that the assessee themselves have contended in respect of the reimbursable expenses that the debit notes raised against JSW Steel Limited, Mumbai and Orbit Shelter Private Limited, Mumbai were in respect of the payments made by them for and on behalf of those parties. This clearly indicates that the assessee had made certain payments on

behalf of the parties located in India and the inference that can be drawn from the said facts is that services have been rendered in India.

21.4 The inference that follows from the said observation is that the services have not been used outside India. Therefore, I find that the condition at Rule 3(2)(a) of the Export of Services Rules, 2005 is not fulfilled in the instant case. I further find that the clarification issued by Tax Research Unit at Para 4.3.6 of letter F. No. B1/4/2006-TRU dated 19.04.2006 makes it clear that services consumed in India do not fall within the scope of 'export of services'. In the instant case, the invoices clearly indicate that the project is located in India and the natural corollary that follows is that the services have been consumed in India.

21.5 Further, it has been contended that the foreign customer, by using and consuming the services provided by them, produced deliverables in terms of its agreement/contract with the owners of immovable properties located including in India, which were separate and distinct from the services rendered by the company. However, they have failed to adduce any evidence to substantiate their claim that the services rendered by them had been used outside India. In absence of evidence to that effect, the averment of the assessee cannot be taken at its face value.

21.6 In view of the above, I find that the conditions at Rule 3(2)(a) of the Export of Services Rules, 2005 has not been fulfilled in this case and as such the same cannot be considered as export of services as claimed by the assessee. Therefore, the Service Tax to the tune of Rs. 1,25,72,753/- is liable to be demanded and recovered from the assessee.

NON PAYMENT OF ST ON RE IMBURSEMENT OF EXPENSES:

22. It has been alleged in the show cause notice that the assessee had not discharged proper service tax on the services rendered by them by way of not paying the service tax on the value shown as 'reimbursement expenses'. In this regard it has been contended that the said amount had been received from third parties i.e. JSW Steel Limited, Orbit Shelter Private Limited, etc. who were not clients or customers of the company. It was argued that in absence of any contractual relationship between the company and the party from whom the expenses were recovered or in absence of client relationship with those parties and the fact that no taxable services have been provided to such parties, these amounts could not be included or be treated as consideration for the taxable services provided.

22.1 In this regard, I find that the show cause notice alleges that the audit party had observed an amount of Rs. 24,54,475/- under the head 'Loans & Advances' as 'Advance recoverable in cash or in kind or for value to be received' in the financial statements of the assessee. It is further observed that the nature of this head was explained by the assessee to the audit officers and they

had stated that the said head included certain part of reimbursable expenses incurred by them on behalf of their HO i.e. Burt Hill Inc., USA. Further, it is observed that the relevant documents of the above said expenses had been examined by the audit officers and it was observed that the assessee had first incurred the above expenses on behalf of their HO i.e. Burt Hill Inc., USA and subsequently claimed reimbursement of the same. Thus, the contentions, put forth by the assessee at this stage, to the effect that the said expenses have been incurred on behalf of JSW Steel Limited, Orbit Shelter Private Limited, etc., is nothing but an afterthought. This plea has not been taken at the time of audit or at any subsequent time other than their written submissions which is at a much later stage to the issuance of show cause notice. At this juncture it is noteworthy to point out that the assessee are in receipt of Final Audit Report and nowhere have they disputed the narration in the Final Audit Report to the effect that the said expenses had been incurred on behalf of their HO situated in USA. Had it been an error of facts, it was upon the assessee to dispute the same at the FAR stage. However, they have not been in a position to produce any correspondence with the audit officers in respect of this so called factual error. In such circumstances, I find that the averment of the assessee is simply an afterthought and does not merit consideration.

22.2 Further, the assessee have placed reliance on the judgment in the case of M/s Intercontinental Consultants and Technocrats P Ltd. reported at 2018 (10) GSTL 401 (SC). In this regard I find that the said judgment dealt with a situation wherein reimbursement of the out of pocket expenses such as travelling, lodging, boarding, etc. were in consideration in light of the provisions of Rule 5(1) & (2) of the Service Tax (Determination of Value) Rules, 2006. In the said case, the validity of Rule 5(1) & (2) of the Service Tax (Determination of Value) Rules, 2006 were under challenge and it was held that the same were not in consonance with the provisions of Sec. 67 of the Finance Act, 1994. The said judgment only deals with inclusion of reimbursement expenses in valuation. The term 'reimbursement' in terms of the linguistic principles of interpretation indicate that the same is some expense which the service provider is not required to incur during the course of rendering service but is merely an amount that the service recipient was required to incur and the service provider has merely made payment on behalf of the service recipient. Thus, some amount which is not required to be incurred by a person but has merely been incurred purely on behalf of some other person is called 'reimbursement'. However, certain expenses of which the onus lied on the service provider cannot be considered as 'reimbursement expenses'. I would like to elaborate the same with an illustration. Let us assume X to be the service provider and Y to be the service recipient. In a case where Y would like to visit the place where the service is being provided and Y requests X to book the tickets on his behalf, such expense is not a part of the contractual agreement of rendering the service and is purely an expense which Y was required to incur but X has incurred the same on behalf of Y for sake of convenience. In such a case, the expenses incurred by X on behalf of Y falls within the ambit of 'reimbursement expenses'. However, in a case where X

undertakes to paint the office of Y and for this purpose X is required to hire a painter, the salary given to the painter would not fall within the ambit of 'reimbursement expenses' in as much as the onus of making such expense lied on X and not Y. Such expenses incurred by X would form an integral part of the value of services rendered. Thus, 'reimbursement expenses' is totally on a different footing than the expenses incurred for rendering a service.

22.3 In the instant case, I find that the assessee is rendering services to their HO and they have incurred certain expenses towards rendering the contractual services. Such expenses become an integral part of the value of services rendered and are not covered under the ambit of 'reimbursement expenses'. In the instant case, the assessee has artificially vivisected the value of service in two portions viz. service value and reimbursement expenses. However, the so called reimbursement expenses were actually expenses incurred during the course of rendering a service and the onus to make such expenses lied on the assessee and not the recipient. The assessee has not made out a case that the expenses, under dispute, were not related to the services but were purely expenses that the recipient was liable to incur. Thus, I find that the ratio of the case law of the M/s Intercontinental Consultants and Technocrats P Ltd. *supra* is not applicable to the facts of the case at hand in as much as the amount claimed as 'reimbursement expenses' is an artificial vivisection of the value of the services provided. Accordingly, I find that the service tax amounting to Rs. **6,92,527/-** on such so-called reimbursement expenses is liable to be recovered from the assessee.

NON PAYMENTOF ST ON ADVANCE RECEIVED FROM CUSTOMER:

23. The Show Cause Notice proposes to recover service tax to the tune of Rs. 14,39,962/- in respect of the advances received from their customers. It has been contended by the assessee that the company had received USD 4,00,000 pursuant to the terms of the Services Agreement dated 15th June, 2007 executed between the company and its parent-company, BHI, USA and as per the terms of the agreement, the assessee would provide computer-aided designs like architectural, engineering and interior decoration over a period of time for which the BHI would pay an average/blended hourly rate of USD 35.25. There was no specific or identified project or assignment or exact nature of services including details like location of property for the services are to be rendered, product mix of the services, etc. The contentions of the assessee in themselves are an indication that the advance has been received towards providing services such as computer-aided designs like architectural, engineering and interior decoration to their customer. Thus, it is an undisputed fact that the advances have been received towards rendering of services.

Relevant portion of Rule 6(1) of the Service Tax Rules, 1994 in force at the material time reads as under:

"(1) The service tax shall be paid to the credit of the Central Government,-

> *(i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and*
>
> *(ii) by the 5th day of the month, in any other case,*

immediately following the calendar month in which the payments are received, towards the value of taxable services:"

23.1 The above clearly indicates that the service tax is required to be discharged at the time of receipt of payment towards the value of services. In the instant case, it is an undisputed fact that the advances have been received towards the value of services and as such in terms of the provisions of the above rule, the service tax has to be discharged at the time of receipt of such advances. However, I find that the assessee have failed to discharge their service tax liability on such advances received and thereby contravened the provisions of law. Further, the assessee has contended that they have subsequently discharged service tax on such advances at the time of raising the invoices. However, they have not adduced an iota of evidence to substantiate their claim and in absence of evidence the averments of the assessee cannot be simply taken at their face value. Therefore, I hold that the service tax to the tune of Rs. **14,39,962/-** levible on the advance received is required to be recovered from the assessee in terms of the proviso to Sec. 73(1) of the Finance Act, 1994.

NON PAYMENT OF SERVICE TAX ON FOREIGN BANK CHARGES:

24. The demand has been raised for service tax on charges paid to the Foreign Banks towards the collection of Export remittances from Foreign Service receivers of the assessee. The allegation is that the assessee was liable to pay tax under reverse charge mechanism as the service had been received from outside India and the exporter being a recipient of service was liable to discharge service tax liability in terms of provisions contained in Section 66A of finance Act, 1994 read with Rule 2(l)(d)(iv) of Service Tax Rules, 1994 and Rule 3(iii) of Taxation of Services (provided from outside India and received in India) Rules, 2006. In this regard the assessee have contended that they are not required to pay the service tax but the Indian Bank is required to pay service tax on such charges. In this regard it is relevant to discuss the theory of reverse charge mechanism, as applied in the matter of services received from outside India. Section 66A(1) of the Finance Act, 1994 provided for fastening the liability of service tax on the service recipient and the relevant text of the same, in force at the material time, is reproduced as under:

*"**66A. Charge of service tax on services received from outside India.—***

(1) Where any service specified in clause (105) of section 65 is,--

(a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and

(b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India,

such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:"

24.1 In view of such provisions, the person liable to pay tax has been stipulated under Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 as the recipient of services provided by any person from a country other than India and the same reads as under:

"(d) "person liable for paying service tax". -

(i) -----------

(ii) -----------

(iii) -----------

(iv) in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under section 66A of the Act, the recipient of such service;"

24.2 The above statute clearly indicates that in case where the service provider is located in a country other than India and the service recipient is located in India, the person liable to pay tax is the service recipient. The term service recipient is to be construed as the person who is actually the beneficiary of the services not the intermediary. In case of payments received from abroad. the foreign bank deducts certain charges towards the act of remitting the amount in the beneficiary's account. In such cases, the actual beneficiary of the services rendered by the foreign bank is the person in whose account such amount has been remitted and not the Indian Bank in which the beneficiary is the account holder. Thus, in such cases the service recipient would be the beneficiary i.e. the account holder and not the Bank of the account holder. Thus, I find that the arguments put forth by the assessee are devoid of merits and the service tax amounting to Rs. **1,578/-** is liable to be recovered from them in respect of the foreign bank charges incurred by them.

24.3 The assessee have further contended that the extended period of limitation is not applicable to the facts of the case on the ground that they had filed Returns of Service Tax

regularly within due dates with complete disclosure of taxable services including the service which qualify for non-payment of tax being export of services. There was no fraud or collusion or wilful mis-statement or suppression of facts or intentional contravention of any provisions or rules made there under by the company. In this regard I find that Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the service tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the service tax on the assessee. The definition of "assessment" available in Rule 2(b) of Service Tax Rules, 1994 is reproduced as under:

> *"(b) "assessment" includes self assessment of service tax by the assessee, re-assessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed."*

24.4 In the instant case the assessee has failed to properly assess the service tax liability and also failed to reflect the correct information in the ST-3 returns. Thus, they have resorted to suppression of material facts by not reflecting the correct taxable income. Accordingly, it appeared that the service tax as quantified hereinabove is liable to be recovered by invoking the extended period of limitation as provided for under Sec. 73 of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994.

25. In view of discussion in the fore going paras, it appeared that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are on the part of the said assessee that they have wilfully suppressed the facts, nature and value of service provided by them by not assessing and paying due service tax liability, therefore, the above said amounts of service tax of Rs. **1,47,06,820/-** is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras.

26. Moreover in the present regime of liberalization, self-assessment and filing of ER/ST returns online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about such non-payment of duty/service tax only during audit or preventive/other checks. Therefore, it appeared that all these information has been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. In the case of Mahavir Plastics versus CCE Mumbai, [2010 (255) ELT 241], it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, in this case all essential ingredients exist to invoke the extended period under proviso to Section 73 (1) of Finance Act, 1994 to demand the service tax not paid along with interest under Section 75 of the

Act ibid. All these acts of contravention of the provisions of the Finance Act, 1994, and Rules framed there under, appear to have been committed with intent to evade payment of service tax and constitute offence of the nature and type as described in Section 78 of the Finance Act, 1994.

26.1 In the case of Rathi Steel & Power Ltd. -2015(321) ELT200(All), The High court of Judicature at Allahabad held that:

> *"32. We further find that under Rules, 2004, a burden is cast upon the manufacturer to ensure that Cenvat credit is correctly claimed by them and proper records are maintained in that regard.*
>
> *33. The assessee, in response to the show cause notice had stated that there is no provision in Central Excise Law to disclose the details of the credit or to submit the duty paying documents, which in our opinion is false and an attempt to deliberately contravene the provisions of the Act, 1944 and the rules made there under with an intent to evade the duty.*
>
> *34. In our opinion, the facts of the present case clearly suggest willful suppression of material facts by the assessee as well as contravention of the provisions of the Act and rules framed there under with an intent to evade the demand of duty as would be covered by Clauses IV and V of Section 11A(1) of the Act, 1944. Therefore, the invocation of the extended period of limitation in the facts of the present case is fully justified."*

26.2 Similar view was expressed by the Hon'ble High Court of Judicature for Andhra Pradesh at Hyderabad in the case of Sree Rayalaseema Hi-Strength Hypo Ltd. Versus Commissioner of Cus. & C. Ex., Tirupati – [2012 (278) E.L.T. 167 (A.P.)] and held:

> *"9. The contention of the learned counsel for the assessee that the extended period of limitation of five years for recovery of the duty under the proviso to Section 11A(1) of the Central Excise Act, 1944 would not be available to the Revenue in this case, as the penalty proposed to be levied was dropped, does not hold water. The extended period of five years for recovery of duties either levied or short-levied arises under various situations such as fraud, collusion, willful mis-statement, suppression of facts or contravention of the provisions of the Act or the Rules made there-under with intention to evade payment of duty. It is no doubt true that the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty [Union of India v. Rajasthan Spinning and Weaving Mills - (2009) 13 SCC 448 = 2009 (238) E.L.T.3 (S.C.)]. But merely because the ingredients for both are the same, it would not mean that in case penalty is not imposed, the duty also cannot be recovered.* ***Once the assessee availed credit under Rule 2(k) of the Rules of 2004 without entitlement it***

<u>amounts to contravention of the rule with the intention of evading payment and the extended period of limitation would be available to the Revenue, notwithstanding the decision not to propose penalty upon the assessee.</u>"

26.3 The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd – [2010 (260) E.L.T. 17 (S.C.)] – has held:

> *"12. Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty. The extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five years, it needs to be construed strictly. <u>The initial burden is on the department to prove that the situation visualized by the proviso existed. But the burden shifts on the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section.</u>"*

27. In the self-assessment era, the Service Providers are required to be proactive in declaring their activities to the department and getting themselves registered and fulfil their tax obligations. Service Tax being an indirect tax requires the service provider only to collect the same from the service receiver and remit it to the Government. The Government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by them for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider. These facts only came to the knowledge of the Department only when the Department initiated enquiry and this act of the said assessee is tantamount as wilful misstatement and suppressing the facts with an intention to evade service tax payment. The assessee is also liable for penal action as per Section 78 of the Finance Act, 1994 for making wilful misstatement and suppression of facts from the department, with an intention to evade service tax payment. Therefore. the service tax not paid by the assessee is required to be demanded and recovered along with Penalty and interest at the applicable rate from them under the proviso to Section 73 (1) and Section 75 of the Finance Act, 1994 by invoking extended period of five years.

28. The above discussions amply demonstrate that the assessee has suppressed the facts and contravened the provisions of the Finance Act, 1994 and the rules framed there-under, as discussed hereinabove and as such the consequences shall automatically follow. The Hon'ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008 (231) E.L.T. 3 (S.C.) and further clarified in the case of U.O.I. Vs. R. S. W. M. reported in 2009 (238) E.L.T. 3 (S.C). Hon'ble Supreme Court has said that the presence of mala-fide intention is not relevant for imposing penalty and *mens-rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation.

29. As regards the imposition of penalty under Sec. 76 of the Finance Act. 1994 is concerned, I find that Section 78B of the Finance Act. 1994 stipulates that the provisions of the **amended Section 76 and 78** will be applicable in cases where the order is passed after the date on which the Finance Bill, 2015 received the assent of the President. The relevant text of the same reads as under:

> ***"SECTION 78B. Transitory provisions. —***
> *(1) Where, in any case,—*
> *(a) ________*
> *(b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and a notice has been served under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President,*
> *then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable."*

30. The Finance Bill, 2015 received the assent of the President on 14.5.2015 and as such the amended provisions of the relevant sections will be applicable. The amended provision of sub-section (1) of Section 76 of the Finance Act, 1994 reads as under:

> *"(1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten percent of the amount of such service tax:"*

31. The above makes it amply clear that the penalty under Sec. 76 is imposable only in cases where the non-payment/ short-payment of service tax is on account of reasons other than fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax. In the instant case, as I have already discussed hereinabove, that the non-payment/ short-payment of service tax is on account of suppression of facts and contravention of the provisions of law with an intent to evade payment of service tax and as such the provisions of Sec. 76 of the Finance Act, 1994 will not be applicable to the facts of the present case and no penalty can be imposed under Sec. 76 of the Finance Act, 1994.

32. Penalty under Sec. 77 of the Finance Act, 1994 has been proposed in the show cause notice. In this regard I find that the assessee had failed to discharge the onus of correct self-assessment cast upon them in terms of Sec. 70 of the Finance Act, 1994 and as such I find that they have rendered themselves liable to penalty in terms of the provisions of Sec. 77(2) of the Finance Act, 1994.

33. In view of my above findings, I pass the following order:

ORDER

a) I confirm the demand of Service Tax to the tune of Rs. **1,47,05,242/-** (Rs. 1,25,72,753/- not paid on the service provided under Consulting Engineer Services + Rs. 6,92,527/- not paid on so-called re-imbursement expenses + Rs.14,39,962/- not paid on the advances) and order recovery of the same in terms of proviso to Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

b) I confirm the demand of Service Tax to the tune of **Rs.1,578/-**, not paid on the "Bank Charges & Commission" under the reverse charge mechanism, and order recovery of the same in terms of proviso to Section 73 (1) of the Finance Act, 1994, invoking the larger period of five years as discussed herein above.

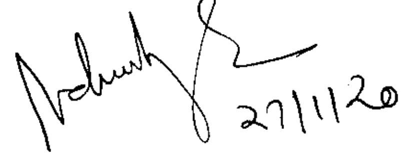
c) Interest at applicable rate shall be charged and recovered on the amount of service tax liability mentioned at Sr. No. a) and b) above in terms of the provisions of Section 75 of the Finance Act, 1994

d) I do not impose any penalty on the assessee in terms of the provisions of Section 76 of the Finance Act 1994

e) I impose a penalty of Rs. **10,000/-** (Rs. Ten Thousand only) on the assessee in terms of the provisions of Section 77(2) of the Finance Act, 1994 for failure to discharge the onus of self-assessment of service tax.

f) I impose a penalty of Rs. **1,47,06,820/-** (Rs. One Crore Forty Seven Lakhs Six Thousand Eight Hundred and Twenty only) on the assessee in terms of the provisions of Section 78

of the Finance Act, 1994. However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.



(MOHIT AGRAWAL)
Additional Commissioner of CGST,
Ahmedabad South

F. No. STC/4-141/O&A/10-11 Date: - 27.01.2020

BY REGD POST A.D.

To
INI Design Studio Private Limited,

(Earlier known as M/s. Burt Hill Design Pvt. Ltd.)

71-72, Titanium, Nr. Prahaladnagar Garden,

Anandnagar, Ahmedabad.

Copy to: -

(1) The Principal Commissioner, CGST, Ahmedabad South.
(2) The Assistant/Deputy Commissioner (RRA), Central GST, Ahmedabad South.
(3) The Assistant/Deputy Commissioner, Central GST, Division-VIII, Ahmedabad South.
(4) The Superintendent, Central GST, Range-I, Division-VIII, Ahmedabad South.
(5) The Assistant Commissioner (System), Central GST, Ahmedabad South.
(6) Guard File.