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. : V.Misc/15-03/Metro Wireless/OA/2018-19
DIN no. : **20201264WS000000E26F**

आदेश की तारीख: Date of Order : 28.12.2020
जारी करने की तारीख: Date of Issue : 28.12.2020

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

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मूल आदेश सं./Order-In-Original No.27/CGST/Ahmd-South/ADC/MA/2020

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यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिए यह 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 : DENOVO ADJUDICATION, under the direction of Commissioner (Appeal) order no. AHM-SVTAX-000-APP-0150-16-17 dated 25.11.2016, in respect of कारण बताओ सूचना सं. / No. STC/04-100/O&A/ADC/D-II/11-12 dated 11.09.2012, issued to **M/s. Metro Wireless Engineering Pvt Ltd, Ahmedabad.**

BRIEF FACTS OF THE CASE

The present proceedings are denovo proceedings based on Commissioner (Appeals-II), Central Excise, Ahmedabad's OIA No. AHM-SVTAX-000-APP-0150-16-17 dated 25.11.2016 relating to show cause notice F. No. STC/04-100/O&A/ADC/D-II/11-12 dated 11.09.2012 issued to M/s. Metro Wireless Engineering Pvt. Ltd., Ahmedabad.

2. Brief facts of the case are that M/s Metro Wireless Engineering Pvt. ltd., A-4 & 5, 1st floor, Safal Profitaire, Corporate Road, Prahladnagar, Ahmedabad (hereinafter referred to as the 'assessee') was registered with Service Tax Department as a Service provider under the categories of Consulting Engineer's Service and Commercial Training and Coaching Service.

3. An audit of the assessee's records was conducted by the audit team of the Department wherein it was noticed that the income figures recorded in their balance sheet and books of account were more than what was declared in their ST-3 returns for the **year 2007-08**. The difference in value between balance sheet/books of account and ST-3 returns involved a service tax of **Rs.13,88,129/-**. The reconciliation worked out by the audit party was as under:

Year	Value as per Balance sheet	Value as per ST-3 returns	Differential value	Service tax on differential value
2007-08	170889270	159658451	11230819	13,88,129

3.1 The assessee did not agree with the said audit objection and did not pay the Service tax duty involved therein nor the interest or penalty. Consequently, the said audit objection was included as a Revenue Para in Audit Report No.71/2009-10. Thereafter, based on the said Audit Report, the jurisdictional Range Officer wrote a letter to the assessee asking them to pay up the Service Tax dues alongwith interest and penalty. In response to the same, the assessee vide their letter dated 20.12.2010 submitted that they had opted to pay the service tax on TDS amount as on the date of credit to their account and since they received the credit of TDS in May-2008, they had paid service tax in 2008-09 which was also reflected in their reconciliation statement, so, according to them, they had already paid the service tax, as pointed out in the audit report.

4. A statement of Shri Vishrant Shirishbhai Shah, Accounts Manager of the assessee company was recorded, wherein he disagreed with the audit objection and stated that they had opted to pay the service tax on the date of credit of TDS in their account as per the applicable rule. He stated that the credit of TDS amount of Rs.1,15,30,862/- was received by them in May-2008 and they have paid service tax on that amount during the financial year 2008-09. He further stated that they have already paid service tax of Rs.12,68,435/-, during 2008-09. He also stated that they have given discount to their customers, which they have shown as expense in the schedule under the head 'discount expenses' amounting to Rs. 12,15,253/-, which was expenses (write off) during the year 2007-08 and they have received that much amount short, on which they have not paid service tax due to non receipt of amount. It appeared that the discount aspect was already reflected in their income from operations and in their debtors account. Further, as they had availed the benefit of TDS payable amount in 2007-08, it appeared that they were required to pay service tax on this amount during 2007-08.

5. It was also noticed during the course of audit that the assessee had not shown any amount against export of service in their ST-3 returns filed for the period from April-2008 to September-2008 although they had received an amount

of Rs.3,13,040/- from a foreign client against export of service rendered during February-2008. Thus, it appeared that they had not prepared and filed their ST-3 returns properly as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and thereby appeared liable to penalty under Section 77 of the Finance Act, 1994. It appeared that the assessee had contravened the provisions of Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994 by failing to make payment of service tax of Rs.13,88,129/- and provisions of Section 70 of the Finance Act, 1994 and Rule 7 of the Service Tax Rules, 1994 by failing to self assess the services provided by them. It further appeared that the contravention of different provisions was committed by the assessee by way of suppression of facts with intent to evade payment of service tax and therefore extended period of limitation was invokable and service tax not paid was required to be recovered under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest in terms of Section 75 of the Finance Act, 1994 and the assessee also appeared to be liable for penalties under Sections 76, 77 and 78 of the Finance Act, 1994.

6. Therefore a show cause notice bearing F. No. STC/04-100/O&A/ADC/D-II/1-12 dated 11.09.2012 was issued to them asking them to show cause as to why:

(i) Service tax of Rs.13,88,129/- should not be demanded and recovered under proviso to Section 73(1) of the Finance Act, 1994, alongwith interest under Section 75 of the Finance Act, 1994.

(ii) Penalty under Section 76 of the Finance Act, 1994 should not be imposed for contravention of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

(iii) Penalty under Section 77 of the Finance Act, 1994 should not be imposed for failure to file prescribed service tax returns within the stipulated time.

(iv) Penalty under Section 78 of the Finance Act, 1994 should not be imposed for suppressing the value of taxable service provided by them before the department with intent to evade payment of service tax.

Original Adjudication

7. The show cause notice was decided by the Additional Commissioner of Service Tax, Ahmedabad vide his Order-in-Original (OIO) No. 03/STC/AHD/ADC(JSN)2013-14 dated 29.05.2013, whereby entire demand of **Rs.13,88,129/-** was confirmed along with interest and penalties imposed under Sections 76, 77 and 78 of the Finance Act, 1994.

First and Second Appeal Proceedings

8. Aggrieved with the OIO, the assessee filed an appeal with Commissioner (Appeals-IV), Central Excise, Ahmedabad and Commissioner (Appeals-IV) vide his OIA upheld the confirmation of demand of service tax on TDS receivable amount of Rs.1,12,30,819/- but found that the demand of service tax on the discount amount of Rs.12,15,153/- was not sustainable. Thereafter, the assessee approached CESTAT, Ahmedabad and the Hon'ble Tribunal in its Order No.A/11170/2014 dated 02.07.2014 remanded the matter back to the adjudicating authority by observing that both the lower authorities had recorded that the appellant has not produced any documentary evidence and has not properly explained the reconciliation statement whereas mere perusal of reconciliation statement for 2008-09 shows inclusion of TDS amount for payment of service tax.

First Remand Proceedings

9. In view of the remand back order, the original adjudicating took up the matter and the personal hearing held on 27.01.2016, which was attended by the representative of the assessee and during the course of hearing, he made a written submission wherein it was mainly submitted that the assessee had opted to pay service tax on TDS amount as on the date of credit to their account and since credit of TDS for 2007-08 was received in May-2008, service tax thereon was paid by them in 2008-09; that according to the assessee, they have already paid the service tax of Rs.12,68,435/- on the TDS amount on receipt basis and it was only for the accounting purpose that it was accounted for in the books of account on accrual basis as per generally accepted principles of accounting and therefore the demand of Rs.12,68,435/- was liable to be dropped. They had also submitted reconciliation statements for 2007-08 and 2008-09 which according to the assessee proved that the TDS accrued in 2007-08 was accounted for in 2008-09 for payment of service tax.

10. The adjudicating authority further mentioned that since CESTAT allowed the appeal of the assessee by way of remand, the scope of the said adjudicating proceeding was limited to the issue of non-payment of service tax on TDS receivable in 2007-08, invocation of extended period and imposition of penalties under Section 76, 77 and 78 of the Finance Act, 1994 as these were issues which were decided by the Commissioner(Appeals) in favour of revenue and become the subject matter of appeal filed in CESTAT. He also mentioned that as the issue of non-payment of service tax on 'discount expense' was decided by the Commissioner (Appeals) in favour of the assessee, accordingly, the same did not require reconsideration in the said denovo proceedings. After going through the documents submitted by the assessee as well their written submission, the adjudicating authority found that the assessee had reiterated the income reconciliation statement (which they had submitted earlier) for the Financial year 2007-08, showing a deduction of TDS amount of Rs.1,15,30,862/- in 2007-08 which according to them was credited in the following year in the month of May-2008 and that in their reconciliation statement for 2008-09, they have considered this TDS amount as their receipt and have already paid a service tax of Rs.12,68,435/- on the same in 2008-09.

11. The adjudicating authority found that the levy of service tax on TDS amount was not in dispute and nor was it in dispute that the amount which accrued in 2007-08 was credited in 2008-09 for the reason that the service tax payment was on receipt basis. He further stated that the dispute was with regard to the assessee's claim that they have already paid a service tax of Rs.12,68,435/- on the TDS amount in 2008-09, that although the assessee has been claiming from the stage of show cause notice itself that applicable service tax on TDS stands paid but had been unable to come up with any documentary evidence to prove this and that by simply stating that such payment was evident from the reconciliation statement of 2008-09 was not sufficient proof. He further found that this issue had come up for consideration at the time of passing of the Order-in-original and Order-in-Appeal but the same could not be given credence in absence of documents to prove that tax liability involved in the said TDS amount was discharged in 2008-09; that the assessee had not added anything new to their already made submissions at the time of passing of the OIO or the OIA and that if the claim of the assessee was correct, what was preventing them to produce the necessary proof of payment. In view of the above, the adjudicating authority held that the assessee had not discharged the service tax liability in respect of the aforementioned TDS amount as their claim was not substantiated by any documents and accordingly he found that the demand raised in the show cause notice on account of difference in income reconciliation for 2007-08, except to the extent of service tax involved in

discount amount of Rs.12,15,253/-(involving Service tax amount of Rs.1,50,205/-) stands decided by the Commissioner (Appeals) in favour of the assessee and therefore, out of a demand of Rs.13,88,129/-, an amount of Rs.1,50,205/- involved in discount amount of Rs.12,15,253/- was liable to be deducted and the remaining amount of Rs.12,37,924/- was liable to be confirmed under Section 73(1) of the Finance Act, 1994. Accordingly, the adjudicating authority vide OIO No.AHM-SVTAX-000-IC-025-15-16 dated 09.02.2016 confirmed the service tax demand of Rs.12,37,924/- alongwith interest, dropped the demand of Rs. 1,50,205/-, imposed a penalty of Rs.5000/- on the assessee under Section 77(2) of the Finance Act, 1994 and a penalty of Rs.12,37,924/- under Section 78 of the Finance Act, 1994.

12. Aggrieved with the said order, the assessee filed an appeal with the Commissioner (Appeals-II), Central Excise, Ahmedabad. Vide OIA No.AHM-SVTAX-000-APP-0150-16-17 dated 25.11.2016, the Commissioner (Appeals-II), Central Excise, Ahmedabad **upheld the levy of Service Tax confirmed by the adjudicating authority along with interest and penalties.** As regards the request made by the appellants, he remanded back the case ***once again*** in light of the principle of natural justice, to the adjudicating authority with a direction to check the bonafides of the documents issued by the appellants by way of cross examining the books of accounts or any other records in that regard and to ascertain the genuineness of the statement. He also directed the appellants to extend full cooperation to the adjudicating authority by submitting required payment particulars.

Submission of the assessee for second remand proceeding:

13. The assessee submitted that at the outset they vehemently object to the proposal of demand of service tax and interest as stated in the show cause notice and state that no such service tax or interest is payable by them and the penalty cannot be imposed on them as they have not violated any of the provisions of the Act or the rules made thereunder and that the SCN is based on presumptions and assumptions and is issued in sheer disregard of facts on record, legal provisions, decided case laws and departmental instructions; that it is issued in sheer disregard of facts on record which clearly shows that tax is demanded on accrual basis without going to the concept of accounting only by any stretch of imagination and accordingly the demand under the SCN is not sustainable on merit.

14. The assessee raised the **issue of limitation** and further submitted that there is no fraud, or collusion or willful misstatement or suppression of facts or contravention of any of the provisions of the Act or the rules made thereunder with intent to evade payment of service tax on their part, hence demand is not sustainable on the ground of limitation also as the SCN is issued after a limitation period of one year from the relevant date i.e. SCN covering period from 01.04.2007 to 31.03.2008 has been issued on 11.09.2012 which shows that the same is issued beyond a period of one year from the relevant date; that the SCN is vague in its contents as it straight away alleges and states on its para 10, without in any manner stating or substantiating any positive act of fraud, collusion, willful misstatement, suppression or intent to evade payment of service tax on their part; that the assessee is registered with the Department under "Consulting engineering service" and have regularly filed ST-3 returns with the Department and despite these facts clearly having been in the knowledge of the Department since 2009 and onwards, have saddled the SCN issued in 2012 alleging suppression proves that this fact itself is a ground on which the SCN is illegal, unfair and uncalled for; that confirmation of having knowledge about the practice of the assesses since 2009 and onwards and issuing SCN on the same issue in 2012 alleging suppression proves clear contradiction of the stand taken in the SCN and therefore the SCN is

capricious; that in light of the above the assessee had requested to drop the proceedings under SCN on the ground of being vague and capricious.

14.1 The assessee has submitted the brief facts of the case as under:

(i) The assessee are registered with the Service Tax Department vide Service Tax Registration No.AAECM1702ESR001 under the category of Consulting Engineer Service and Commercial Training and Coaching service as defined under Section 65(105) of the Finance Act, 1994.

(ii) As per Revenue Para of Audit Report No.71/2009-10, the Department while reconciling the figures shown in the ST-3 returns filed by the assessee with the figures shown in their Balance Sheet and Books of Accounts for the year 2007-08 during the course of audit, found that figures in ST-3 returns were less than the figures shown in Books of Accounts and as a result, Service Tax short paid by the assessee was found to be Rs.13,88,129/- which was required to be recovered from them.

(iii) The Range office issued a letter to the assessee dated 01.10.2009 to pay the service tax as pointed out by the Audit to which the assessee submitted their reply on 20.12.2010 when audit was again conducted and Audit Report No.10/2010 was issued wherein the above issue was taken up as a procedural para. The assessee replied that they had opted to pay Service Tax on TDS amount as on date of credit to their account which they received as credit in the month of May, 2008 and had paid the service tax on receipt basis during the year 2008-09 which is also reflected in their reconciliation data.

(iv) Statement of Shri Vishrant Shirishbhai Shah, Account manager of the assessee was recorded wherein he stated that they are providing services of Consulting Engineers and Commercial training and coaching and they have valid Service tax registration; that on being shown the revenue para of the audit report, he stated that they have to pay service tax amount on date of credit to their account as per applicable rule; that during the impugned period, the assessee was not in receipt of TDS receivable in May, 2008 and they have paid service tax on the said amount during 2008-09; that during the impugned period, assessee had given discount to the customer which they had shown under the head 'discount expenses' amounting to Rs.12,15,253/- which was expenses (write off) during the year 2007-08 and they have received that much amount short on which they have not paid service tax due to non receipt of the amount. He also produced copy of audited balance sheet.

(v) The Department also observed that the discount aspect was already reflected in their income from operations and in their debtors account and as per Department's contention " the assessee had availed the benefit of TDS payable amount in 2007-08 and therefore they were required to pay service tax on the said amount during 2007-08.

(vi) During the course of audit, the Department also observed that the assessee had not shown any amount against export of services in their ST-3 filed for the period from April-2008 to September, 2008; that on verification of records, the Department found that assessee had received an amount of Rs.3,13,040/- from a foreign client against export of service rendered during the month of February, 2008 and that the Department contended that the assessee had not prepared and filed ST-3 returns properly as required under Section 70 of the Finance Act read with Rule 7 of the Service Tax Rules and were thereby liable to penalty under Section 77 of the Act.

(vii) On the basis of the above facts of the case, the Additional Commissioner of Service Tax, Ahmedabad issued SCN to the assessee

demanding service tax of Rs.13,88,129/- interest thereon and penalty under Section 76, 77 and 78 of the Finance Act, 1994 and in response, they had filed reply but even then, the Additional Commissioner of Service Tax passed OIO confirming the Service Tax Demand, interest thereon and penalty as stated in the SCN.

(viii) Being aggrieved with the OIO, the appellant had filed appeal with the Commissioner (Appeal-IV), Ahmedabad who passed the OIA wherein he allowed the appeal of the assessee in respect of non-applicability of service tax on discount income which is written off and procedural lacuna in showing export of service income in ST-3 return of relevant period, but rejected the appeal of the assessee with respect to service tax TDS receivable on receipt basis.

(ix) The assessee had not agreed with the impugned OIA of not giving relief in respect of service tax demand on TDS receivable on accrual basis rather than considering receipt basis. They denied all the allegations/observations raised in the show cause notice and stated that the show cause notice was not sustainable on the basis of the submission made below which were independent and without prejudice to each other:

(1) Regarding service tax payable on the TDS receivable on accrual basis or on receipt basis, the assessee stated that during the impugned period, they had opted to pay Service Tax on TDS amount as on date of credit to their account and the receipt of credit was in the month of May, 2008 on which amount the assessee have paid service tax during the year 2008-09 which reflects in their reconciliation data, that they have already deposited the service tax on receipt basis and but for the accounting purpose, they had accounted in the books of accounts on accrual basis as per generally accepted principals of accounting.

(2) The assessee states that reconciliation statement was given to the audit team and the range officer at the time of statement so that there may not arise difficulty to re-examine the figures of the previous year and succeeding year with the current year figures and service tax levied on receipt basis and value of the taxable service received being taxable during a taxable period, that should exclude the payment of service provided in the past and service to be provided in the future since future realization becomes taxable in the year of receipt; that receipts of the current taxable period is to be determined to avoid double taxation of the figures of the past or future realizations; that every care is to be taken to tax the receipts of taxable period only in which service was provided; that it is an undisputed fact that realization will effect in the month of May-2008 and during the relevant month, assessee had also discharged service tax liabilities on the amount of Rs.1,15,30,862/- and service tax amount of Rs.12,68,435/- in time, so there was no short payment and payment in time on receipt basis as per Rule 6 of the Service Tax Rules, 1994.

(3) The assessee has explained the basic provisions of Rule 6 of the Service Tax Rules as under:

(a) The service tax on the value of taxable services received during any calendar month shall be paid to the credit of the Central Government by the 5th of the month immediately following the said calendar month. Provided further that where the assessee is an individual or proprietary firm or partnership firm, the service tax on the value of taxable services received during any quarter

shall be paid to the credit of the Central Government by the 5th of the month immediately following the said quarter.

(b) The assessee shall deposit the service tax liable to be paid by him with the bank designated by the Central Board of Excise and Customs for this purpose in Form TR-6 or in any other manner prescribed by the Central Board of Excise and Customs.

(c) Where an assessee has paid to the credit of Central Government service tax in respect of a taxable service, which is not so provided by him either wholly or partially for any reason, the assessee may adjust the excess service tax so paid by him (calculated on a pro rata basis) against his service tax liability for the subsequent period, if the assessee has refunded the value of taxable service and the service tax thereon to the person from whom it was received.

(d) Where an assessee is, for any reason, unable to correctly estimate on the date of deposit the actual amount payable for any particular month or quarter, as the case may be, the assessee may make a request in writing to the Central Excise Officer to make a provisional assessment of the tax on the basis of the amount deposited and the Central Excise Officer, may, on receipt of such request, order provisional assessment of tax and where the Central Excise Officer makes a provisional assessment, the provisions of Central Excise Rules, 1944 relating to provisional assessment, except so far as it relates to execution of bond, shall, so far as may be, apply to such assessment.

(e) Where an assessee under sub-rule(4) requests for a provisional assessment he shall file a statement giving details of the difference between the service tax deposited and the service tax liable to be paid for each month in a memorandum in Form ST-3A accompanying the quarterly or half yearly return, as the case may be.

(f) Where the assessee submits a memorandum in Form ST-3A under sub-rule(5), it shall be lawful of the Central Excise Officer to complete the assessment, wherever he deems it necessary, after calling such further documents or records as he may consider necessary and proper in the circumstances of the case.

15. The assessee has submitted that from the above it is clear that they are liable to **discharge service tax only on receipt basis** which they have complied and discharged regularly, so demand of Service tax amounting to Rs.12,68,435/- has to be dropped. Further, the assessee has reiterated the reconciliation statement prepared in the Departmental format as under:

Reconciliation statement for the year 2007-08:

	VALUE AS PER ST-3 RETURN		142128637	
ADD	SERVICE TAX PAID		17537577	
ADD	VALUE OF TAXABLE SERVICES		159666214	(A)
	TAXABLE INCOME as per Profit & Loss A/c.		187030581	
	Reimbursement expenses		5912127	
	Total Expenses		192942708	
Less	Increase in inventory	7379023	7379023	
Less	Other income			
	(1)Foreign exchange gain	285833		

	Interest on IT refund	82394	368227	
	Taxable income for Service Tax		185195458	
ADD	SERVICE TAX CHARGED			
	@12.24% on Rs.1112644	136188		
	@12.36% on Rs.184082814	22752635.8	22888824	
	Total		208084282	
ADD	Opening DEBTORS (BOTH TAXABLE & EXPORT)	27031558		
			235115840	
LESS	Opening DEBTORS (EXPORT SERVICES)	313040		
			234802800	
LESS	Closing DEBTORS	63913530		
			170889270	
			170889270	
			170889270	(B)
	DIFFERENCE(A-B)		11223056	
LESS	TDS for the year 2007-08		11530862	
Add	TDS for the year 2006-07		1375981	
LESS	Discount given to Customer as per P&L A/c.		1215253	
	Excess value of Taxable services		-147078	
	SER TAX PAYABLE(REFUNDABLE)		-18179	

Reconciliation statement for the year 2008-09:

Sr.No.	Particulars	2008-09	Sources of data as shown in the col-2
1	**2**	**3**	**4**
1	Gross income as per all income ledgers (Credit side)	348821244	Ledger's of income
	Add: Service tax charged, if not included in ledgers' income	39979388	Service tax payable A/c.
	Less: Amount of entries reversed/debited other than related to expenditure	384319	Sales A/c.
A	**(=) Gross ledgers' income inclusive Service Tax**	**388416313**	
2	Gross Income as per Balance Sheet (P&L A/c.)	348435976	P&L Account
	Add: Service Tax charged if not included in the income	39979388	Service tax payable A/c.
	(=)Gross Balance Sheet income inclusive of Service Tax	**388415364**	-
3	Additions		
	(i)Opening debtors (Services related)	63913530	Debtor ledger

	TDS Receivable Provision last year	**11530862**	
C	**(=) Total additions**	**75444392**	
4	Deductions		
	(i)Closing debtors (Services related)	77735443	Debtor ledger
	(vii)Interest income	26069	Schedule to P&L
	(viii)Dividend income	335100	Schedule to P&L
	(ix)S.T./L.T Capital gain	9878	Schedule to P&L
	Increase in WIP inventory	20607580	Schedule to P&L
	TDS Receivable Provision current year	7881921	
	Foreign exchange gain	146204	
D	**(=)Total deductions**	**106742195**	
5	Taxable income as per Income ledgers (inclu. Of ST) (Details A+C-D)	357118510	
6	Taxable income as per Balance sheet (inclu. Of ST) (Details B+C-D)	357117561	
7	Taxable Income Ledgers (Details 5) or B/s. (Details 6) whichever is higher (inclu. Of ST)	357117561	
8	Abatement admissible, if any (%) Noti.No. and date		
9	Net taxable income (inclu. ST) as per Books of Accounts (Details 7-8)	357117561	
10	Taxable value (inclu.ST) as per ST-3 returns	358395148	ST-3 Returns
11	Difference of taxable value (Details 9-10)	-1277587	
12	Service tax liability/payable, if any	-140539	

15.1 The assessee has stated that from the above, it is clear that deduction sought by the applicant in the year 2007-08 is on accrual basis, service tax has been discharged in the subsequent period 2008-09 on receipt basis, which can be verifiable from the above reconciliation statement which they have produced before the adjudicating authority as well as the Commissioner (Appeals) and has therefore requested to drop the proceedings in the interest of justice.

16. The assessee has also quoted in support of their contention, the judgment in the case of **M/s Moon Network Pvt. Ltd.** [*2011(24) S.T.R.723 (Tri.-Del.)*] passed by the CESTAT, Principal Bench, New Delhi, wherein it was held that *Demand - Reconciliation of tax liability-Figures in balance sheet and books of account seized from computer of assesses should not be in variance with those submitted by them, and in case of variation, penalty has to be imposed-Since service tax is levied on receipt basis, it excludes payment of services provided in past and future-Receipts of current taxable period is to be determined to avoid double taxation of figures of post or future realizations-Every care is to be taken to tax receipts of the taxable period only in which service was provided.* The assessee has contended that on the above basis, demand of service tax without receipt was not sustainable and hence requested to drop the proceedings in the interest of justice.

17. The assessee further submitted that the **entire demand is time barred;** that the show cause notice covered the period from 01.04.2007 to 31.03.2008 but was issued on 11.09.2012 whereas the facts were in the knowledge of the Department

since 2007 and onwards, thus show cause notice had invoked extended period of limitation based on the allegation that assessee had suppressed the information from the Department; that the extended period cannot be invoked in the present case since there was no suppression of facts or willful misstatement on their part; that penalty cannot be imposed under Section 78 of the Finance Act, 1994 as they have not suppressed any information from the Department and there was no willful misstatement on their part; that it was clear from the statutory provisions that for imposing penalty under Section 78 of the Act, it had to be established that there was a short payment of service tax by reason of fraud, collusion, willful misstatement, suppression of facts or contravention of any provisions of the Act or the rules made there under with intent to evade payment of service tax. The assessee has also stated that the show cause notice has not given any reason whatsoever for imposing the penalty under Section 78 of the Act and merely mentions that there is suppression on their part; that the present show cause notice has not brought any evidence/fact which can establish that assessee have suppressed anything from the Department, hence no case has been made out on the ground of suppression of facts or willful misstatement of facts with the intention to evade the payment of service tax; that the present case is not the case of fraud, suppression, willful misstatement of facts etc, hence no penalty under Section 78 of the Act can be imposed and the show cause notice is liable to be dropped on this ground also; that the appellant is entitled to entertain the belief that their activities were not taxable hence cannot be treated as suppression from the Department. The assessee relied on Hon'ble Gujarat High Court's decision in case of **M/s Steel Cast Ltd.** [2011(21) STR 500 (Guj.)].

18. The assessee has also submitted that the **penalties under Section 76 and 77 is also not imposable** since there is no short payment of service tax since as per the merits of the case, the assessee is not liable for payment of service tax; that for imposing penalty, there should be an intention to evade payment of service tax on their part; that the penal provisions are only a tool to safeguard against contravention of the rules; that they have always been and are still under the bonafide belief that the assessee is not liable for payment of service tax and that such bonafide belief was based on the grounds given above; that there was no intention to evade payment of service tax as mentioned in the ground above and no penalty was imposable in the present case. In support of their above view, they have placed reliance on the decision of the Hon'ble Supreme Court in the case of **Hindustan Steel Ltd**. v/s. The State of Orissa reported in AIR 1970 (SC) 253; that this decision of the Apex Court was followed by the Tribunal in the case of **Kelinar Pharmaceuticals** ltd. v/s. CCE, reported in 1985 (20) ELT.80 wherein it was held that proceedings under Rule 173Q are quasi-criminal in nature and as there was no intention on the part of the appellants to evade payment of duty, the imposition of penalty cannot be justified; that the ratio of these decisions squarely applies in all force to the present case since there was neither any malafide intention to evade payment of tax, hence no penalty is imposable.

19. The assessee has further submitted that even if there is any contravention of provisions, the same was solely on account of their bona-fide belief and such bona-fide belief was based on the reasons stated above and the contraventions, if any, were not with the intention to willfully evade payment of service tax. They have placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Pushpam Pharmaceuticals Company** v/s. CCE 1995 (78) ELT 401 (SC).

20. The assessee has stated that the Hon'ble Supreme Court had a similar view in the case of CCE v/s. **Chemphar Drugs and Liniments** 1989 (40) ELT 276 (SC), (Supra); that the ratio of both the above cited cases is squarely applicable to their case, hence no penalty under Section 76 of the Act is sustainable in the present case; that the present case is a fit case to be covered under Section 80 of

the Act, which expressly provides that no penalty shall be imposed under Section 76 and 78 if the assessee has a reasonable cause for default. The assessee has further stated that without prejudice to the above submission, no case has been made out by the Department that the present demand of service tax is on account of fraud, collusion, willful mis-statement, suppression of facts or contravention of any of the provisions of Act or rules made hereunder with intention to evade payment of service tax, hence no interest or penalty under Section 76, 77 and 78 of the Act can be imposed on this ground itself and that the show cause notice is liable to be dropped on this ground also.

21. The assessee has further submitted that penalties under Section 76 and 78 of the Act cannot be simultaneously imposed as both these penalties are mutually exclusive; that Section 78 is applicable if the non-payment of service tax is due to reasons specified therein with an intention to evade payment of service tax whereas Section 76 is applicable in cases other than those covered under Section 78 of the Act. The assessee has placed reliance on the following cases:

i. The Financers v/s. CCE, Jaipur – 2007 (8) STR 7 (Tri.Del).
ii. Commissioner of Central Excise, Ludhiana v/s. Pannu Property Dealer-2009(14) STR.687 (Tri.Del).
iii. Commissioner of Central Excise, Chandigarh v/s. City Motors 2010 (19) STR.486 (P&H).
iv. CCEC, Chandigarh v/s. M/s. Cool Tech. Corporation (Service Tax Appeal No.47 of 2010) (P&H).
v. CCE, Commissionerate v/s M/s. First Flight Courier ltd. 2011 (22) STR 622 (P&H).

22. The assessee has stated that the above view is reinforced by the proviso to Section 78 and has stated that the issue involved in the present case is of interpretation of statutory provisions, penalties cannot be imposed for the said reason also. The assessee has further submitted that it is a settled principle of law that if a dispute is arising out of interpretation of the provisions of statute or exemption notification, no penalty can be levied and if at all it is held that the service tax is payable as demanded by the show cause notice, then also it can be said that it is a dispute arising out of interpretation of the provisions of the law and not because of any intentional avoidance of tax. They have placed reliance on the following case laws in this regard:

a) Bharat Wagons & Engg.Co.Ltd. v/s. Commissioner of Central Excise, Patna (146) ELT 118 (Tri.-Kolkata).
b) Goenka Woollen Mills ltd. v/s. Commissioner of Central Excise, Shillong, 2001 (135) ELT 873 (Tri.-Kolkata).
c) Bhilwara Spinners ltd. v/s. Commissioner of Central Excise, Jaipur, 2001 (129) ELT 458 (Tri.-Del).

23. The assessee has submitted that Section 80 of the Act will be applicable in the present case; that Section 80 of the Act provides that no penalty shall be imposed on the assessee for any failure referred to in Sections 76 or 78 of the Act, if the assessee proves that there was reasonable cause for the said failure; that the Act statutorily provides for waiver of penalty; that in the present case, there was a bonafide belief on part of the assessee that the activities carried out by them are not taxable, there was reasonable cause for failure, if any, on their part to pay service tax and to file the service tax return; hence in terms of Section 80 of the Act, penalties cannot be imposed under Section 76 and 78 of the Act. The assessee has placed reliance on the following judgements:

i. ETA Engineering ltd. v/s. CCE, Chennai, 2004 (174) ELT.19 (T-LB).

ii. Flyingman Air Courier pvt.ltd. v/s. CCE 2004 (170) ELT 417 (T).
iii. Star Neon Singh v/s. CCE, Chandigarh, 2002 (141) ELT 770 (T).

The assessee concluded his submission by stating that a lenient view may be taken and the proceedings may be dropped in the interest of justice.

Personal hearing:

24. Personal hearing in the matter was held on 26.10.2020 which was attended by Shri Vipul Khandhar, C.A. as well as authorized representative of M/s. Metro Wireless Engineering Pvt. Ltd., Ahmedabad. During the course of personal hearing, he reiterated their earlier submissions and copies of the service tax audit reports of the years 2007-08 and 2008-09 produced and considering the same, requested to drop the proceedings against them.

Discussion and Findings:

25. I have carefully gone through the following documents:

(i) Show cause notice dated 11.09.2012 issued by the Additional Commissioner, Service Tax, Ahmedabad.
(ii) OIO No.03/STC/AHD/ADC(JSN)/2013-14 dated 29.05.2013 issued by the Additional Commissioner, Service Tax, Ahmedabad.
(iii) OIA No.AHM-SVTAX-000-APP-007-14-15 dated 15.04.2014 issued by Commissioner (Appeals-IV), Central Excise, Ahmedabad.
(iv) CESTAT, Ahmedabad's Order No. A/11170/2014 dated 02.07.2014.
(v) Denovo order vide OIO No.AHM-SVTAX-000-JC-025-15-16 dated 09.02.2016 issued by the Joint Commissioner, Service Tax, Ahmedabad.
(vi) OIA No. No. AHM-SVTAX-000-APP-0150-16-17 dated 25.11.2016 issued by Commissioner (Appeals-II), Central Excise, Ahmedabad.

25.1 I have also gone through the written submission given by M/s. Metro Wireless Engineering Pvt. Ltd., Ahmedabad as well as the arguments/discussions made by their authorized representative during the course of personal hearing. The present proceedings are denovo proceedings based on the directions given in the OIA No.AHM-SVTAX-000-APP-0150-16-17 dated 25.11.2016 issued by Commissioner (Appeals-II), Central Excise, Ahmedabad wherein the Commissioner (Appeals), **while upholding Service tax confirmed along with interest and penalties**, remanded back the matter to the adjudicating authority with the directions to check the bonafides of the documents issued by the appellant by way of cross examining the books of accounts **and also directed the appellant to extend full cooperation to the adjudicating authority by submitting required payment particulars.**

26. Before proceeding further, I find it necessary to look into the sequence of events that occurred prior to the issuance of the aforementioned Order-in-Appeal of the Commissioner (Appeals-II), Central Excise, Ahmedabad dated 25.11.2016. On going through the show cause notice, I find that the short payment of service tax noticed on reconciliation of income with that of the ST-3 returns filed by the assessee for the financial year 2007-08 was worked out to Rs.13,88,129/- which was confirmed by the Additional Commissioner, Service Tax, Ahmedabad vide OIO No.03/STC/AHD/ ADC(JSN)/2013-14 dated 29.05.2013 along with interest and penalties under Sections 76, 77 and 78 of the Finance Act, 1994. Aggrieved with the said order, the assessee filed appeal with Commissioner (Appeals-IV), Central Excise, Ahmedabad. Hon'ble Commissioner (Appeals-IV) vide OIA No. AHM-SVTAX-000-APP-007-14-15 dated 15.04.2014 observed that the amount of

Rs.12,15,253/- was the discount amount given by the assessee to the service recipients and was the amount received short by them, hence the demand in respect of the same was not sustainable, but upheld the penalties imposed on them under Sections 76, 77 and 78 of the Finance Act, 1994. Aggrieved with the said order, the assessee filed appeal with CESTAT, Ahmedabad. CESTAT, Ahmedabad, vide Order No. A/11170/2014 dated 02.07.2014 remanded the matter back to the adjudicating authority to reconsider the issue afresh and take into consideration any additional evidences that may be produced by the assessee during the course of personal hearing. The Joint Commissioner in his denovo order No. OIO No.AHM-SVTAX-000-JC-025-15-16 dated 09.02.2016 dropped the amount of Rs.1,50,205/- (on the grounds that amount of Rs.12,15,253/- was the discount amount given by the assessee to the service recipients and hence was the amount received short by them, as observed by the Commissioner (Appeals)) but confirmed the remaining amount of Rs.12,37,924/- alongwith interest and imposed penalties under Sections 77 and 78 of the Finance Act, 1994 but refrained from imposing penalty under Section 76 of the said Act. Aggrieved with the said order, the assessee filed appeal with Commissioner (Appeals-II), Central Excise, Ahmedabad and the said appellate authority vide his OIA No.AHM-SVTAX-000-APP-0150-16-17 dated 25.11.2016 remanded the matter back to the adjudicating authority . In the said OIA, he held as under:

> *"4. Personal hearing in the case was granted on 14.09.2016 wherein Shri Vipul Khandhar, Chartered Accountant, on behalf of the said appellants appeared before me and reiterated the contention of their submission. Shri Khandhar states that the* ***reconciliation sheet issued by their internal audit for subsequent year was not verified by the adjudicating authority*** *and therefore he requested before me that the appeal may be remanded back to the original adjudicating authority once more so as to permit them one opportunity before the original adjudicating authority for examination of records.*
>
> *5. In view of the above, I first of all* ***uphold the levy of Service tax as confirmed by the adjudicating authority*** *vide the impugned order* ***along with interest and penalties****. Further, regarding the request made by the appellants, I remand back the case once again, in light of the principle of natural justice, to the adjudicating authority. However, while doing so I direct the adjudicating authority* ***to check the bonafides of the documents issued by the appellants by way of cross examining the books of accounts*** *or any other records in that regard and to ascertain the genuineness of the statement. The appellants are hereby directed to extend full cooperation to the adjudicating authority by submitting required payment particulars."*

27. I, therefore, find that the aforementioned OIO has been remanded back for the **specific and limited purpose** of checking the bonafides of the ***reconciliation sheet*** issued by the appellant by way of cross examining the books of accounts or any other records in that regard and to ascertain the genuineness of the ***reconciliation statement*** with regard to **payment of service tax,** since the Service tax confirmed by the adjudicating authority vide the impugned order has been upheld by the Commissioner (Appeals-II), Central Excise, Ahmedabad along with interest and penalties.

28. On going through the submission as well as the documents submitted by the assessee, I find that they have submitted the reconciliation statements of 2007-08 and 2008-09 (in their submission) and also submitted copy of Balance Sheet for

the financial year 2007-08. I further find that no other documents such as the required payment particulars *(as directed by the Commissioner (Appeals-II), Ahmedabad in his aforementioned OIA),* Balance Sheets for the financial year 2008-09 and relevant ledgers have been submitted consequent to the issuance of the aforementioned order of Commissioner (Appeals-II) or during the course of personal hearing or thereafter. However, since I am required to check the bonafides of the documents issued by the assessee by way of cross examining the books of accounts or any other records and to ascertain the genuineness of the statement of the assessee, I proceed to examine the Balance sheet submitted by the assessee for the financial year 2007-08 vis-à-vis their reconciliation statement, since the issue of reconciliation of income (on the basis of which demand has been raised) pertains to 2007-08 only and assessee has submitted his reconciliation statement for the financial year 2007-08.

29. On going through the reconciliation sheet submitted by the assessee for the financial year 2007-08, I find that they have shown amounts of reimbursement expenses and opening and closing balances of debtors and amount of discount given to customers for reconciliation. **However, no supporting evidences have been furnished by the assessee to verify the same.** The assessee has also shown an amount of Rs.1,15,30,862/- as TDS for the year 2007-08 which they claim to have accrued in 2007-08 and claim to have received the said amount in 2008-09 and paid duty of Rs.12,38,435/-on it in 2008-09. **However, no supporting evidences have been furnished by the assessee to verify the same.**

29.1 In fact, in relation to TDS deducted for income tax purpose, in my considered view, there is no dispute that the amount of TDS which was deducted by their clients out of the payment being made to the assessee, at the time of making payment, for income tax purpose, attributable to income tax leviable on the said payments made by their clients. **This amount of TDS cannot be said to be an amount not received by the assessee but it is received by the assessee in their income tax account.** It is misconceived to hold that the amount deducted as TDS is an amount that only accrued but not received by the assessee. The amount of TDS deducted by the clients is very much in receipt of the assessee in their income tax account. Therefore, there is no reason to hold that the amount representing TDS has not been received by the assessee. Therefore, there arises no question of disputing taxability of the amount of difference between the amount declared in ST-3 returns and the amount shown in Balance Sheet. **In fact, Hon'ble Commissioner (Appeals) himself has first of all upheld the levy of Service tax as confirmed by the adjudicating authority vide the impugned order along with interest and penalties.** Therefore, there remains only issue of verification of payment of service tax attributable to the said differential amount claimed by the assessee to pertain to TDS deduction and quantified by the adjudicating authority to be of **Rs.12,37,924/-** and interest applicable thereon along with penalties imposed by the adjudicating authority **and duly upheld** by the Hon'ble Commissioner (Appeals-II), Central Excise, Ahmedabad.

30. I find that the assessee has shown an amount of Rs.1,15,30,862/- as TDS for the year 2007-08 which they claim to have accrued in 2007-08 and claim to have received the said amount in 2008-09. However, The assessee has furnished no documentary evidences, to prove as to what was the basis on which the assessee has mentioned/arrived at the amount of Rs.1,15,30,862/- claimed to pertain to TDS not recieved and also as to how they arrived at the amount of service tax of Rs.12,68,435/-, claimed to be paid by them, however no payment particulars or evidences furnished in their support. Further, on going through the Balance Sheet for the year 2007-08, I find that there is an amount of Rs.66,73,649/- shown in Schedule-8 of the Balance Sheet against the entry 'TDS Receivables (F.Y.2007-08), as against their claimed amount of Rs.1,15,30,862/-.

Thus, there is a huge difference/discrepancy of nearly 50 lakhs between the TDS amount shown by the assessee in their reconciliation statement of 2007-08 and that which is reflecting in their Balance Sheet. This simple fact, itself shows that the bonafides of the assessee are not genuine but suspicious and cannot be relied upon nor can be accepted at face value as they appear to have submitted a distorted picture in the reconciliation figures submitted by them vis-a-vis their Balance Sheet submitted by them to the adjudicating authorities and the same appears to have been done with an intention to mislead the adjudicating authorities to cover up the short payment of service tax made by them. In view of the above, I do not find the need to delve any further into the issue in hand also because of the fact that the said amount of service tax confirmed vide the aforementioned OIO dated 09.02.2016 has been upheld by the Commissioner(Appeals-II), Central Excise, Ahmedabad vide his aforementioned order along with interest and penalties. I also find that during the period of audit i.e. 2007-08, the payment of duty was on receipt basis and the reconciliation appears to have been done by the Revenue Department Auditors correctly, as they have taken into consideration all the sources of income of the assessee and also allowed the deductions applicable to them during the course of reconciliation, as per the prescribed norms to arrive at the differential amount of service tax. The method of working adopted in the show cause notice has arrived at the amount received during the year 2007-08 and not accrued as argued by the assessee. Since the demand has been raised in respect of the amount received in the year 2007-08, the reconciliation for the subsequent year i.e. 2008-09 is not relevant to the facts of the case. Further, although, the Commissioner (Appeals) had specifically directed the assessee to submit the payment particulars to the adjudicating authority, the assessee has not submitted any such details neither along with their submission, nor during the course of personal hearing held on 26.10.2020, nor thereafter. Their malafide intention is also confirmed from the fact that the assessee has wrongly claimed a deduction of TDS amount of Rs.1,15,30,862/- (in their reconciliation statement submitted for 2007-08) which they claim, had accrued in 2007-08 and had been credited to their account in 2008-09 (on which they claim to have paid tax in 2008-09), but their balance sheet for the year 2007-08 only shows an amount of Rs.66,73,649/- against TDS receivables shown in Schedule-8 of their Balance sheet for the said year, which shows that the bonafides of the assessee are suspicious and cannot be relied upon and appears to have been done with an intention to cover up their unpaid service tax liability. Moreover, the assessee has not submitted the Balance Sheet and the financial statements for the year 2008-09 so as to verify the reconciliation for the year 2008-09. In view of the facts mentioned above, it can be concluded that the contention of the assessee that the TDS amount of Rs.1,15,30,862/- accrued in 2007-08, was received in 2008-09 and payment of Service tax duty was made in 2008-09, does not hold water and appears to be just an afterthought to cover up their unpaid service tax liability. **Therefore, I conclude that the Joint Commissioner, Service Tax, Ahmedabad in his OIO No. AHM-SVTAX-000-JC-025-15-16 dated 09.02.2016, has correctly confirmed the amount of service tax of Rs.12,37,924/-, along with interest and penalties which has also been upheld by the Hon'ble Commissioner (Appeals-II) in his OIA dated 25.11.2016. I further find that the assessee has failed to furnish required payment particulars, as directed by the Hon'ble Commissioner (Appeals-II) in his OIA dated 25.11.2016.**

31. I find that the said assessee was earlier registered under the Jurisdiction of the Commissioner of Service Tax, Ahmedabad. Consequent to the issue of the Notification No.12/2017-Central Excise (NT) to 14/2017-Central Excise (NT) all dated 09.06.2017, appointing the officers of various ranks as Central Excise officers & reallocating the jurisdiction of the Central Excise Officers and Trade Notice No. 001/2017 dated 16.06.2017 issued by the Chief Commissioner, Central

Excise & Service Tax, Ahmedabad Zone, the said assessee is now registered under the Jurisdiction of the Commissioner, Central Goods and Service Tax, Ahmedabad South. Further, the then effective provisions of the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985, as repealed vide Section 174(1) of the CGST Act, 2017 and the then effective provisions of the Chapter V of the Finance Act, 1994, as omitted vide Section 173 of the CGST Act, 2017, and the then effective provisions of the Cenvat Credit Rules, 2004, as superseded vide notification no.20/2017-CE (NT) dated 30.06.2017, have been saved vide Section 174(2), of the CGST Act, 2017 and notification no. 20/2017-CE (NT) dated 30.06.2017. Therefore, the provisions of the said repealed/amended Acts and Rules made there under are rightly enforceable for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice. **As per Section 142(8)(a)** of the CGST Act, 2017, where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act.

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

ORDER

Following the specific and limited directions of the Hon'ble Commissioner (Appeals-II), on cross examining the books of accounts of the assessee with the reconciliation statements submitted by the assessee, I hold that the Joint Commissioner, Service Tax, Ahmedabad in his OIO No:AHM-SVTAX-000-JC-025-15-16 dated 09.02.2016, has correctly confirmed the amount of service tax of **Rs.12,37,924/-,** along with interest and penalties which was also upheld by the Commisioner (Appeals-II) in his OIA no. AHM-SVTAX-000-APP-0150-16-17 dated 25.11.2016 and the same should be enforced.

28/12/20

(Mohit Agrawal)
Additional Commissioner,
Central GST, Ahmedabad –South.

F. No. V.Misc/15-03/Metro Wireless/OA/2018-19 Date:28 -12-2020

DIN – 20201264WS000000E26F

By HAND DELIVERY / Regd. Post A.D.

To,

M/s. Metro Wireless Engineering pvt.ltd.,
A-4 & 5, 1st Floor, Safal Profitaire,
Corporate Road, Prahladnagar,
Ahmedabad.

Copy to:-

(1) The Hon'ble Principal Commissioner, CGST, Ahmedabad-South.
(2) The Deputy Commissioner (RRA), Central GST, Ahmedabad South.
(3) The Deputy Commissioner, Central GST, Division-VI, Ahmedabad South.
(4) The Superintendent, Central GST, Range-V, Division-VI, Ahmedabad South.
(5) The Assistant Commissioner (System), Central GST, Ahmedabad South.
(6) Guard File.