

November 21, 2023

To,
The General Manager,
Department of Corporate Services,
BSE Limited,
P.J. Towers, Dalal Street,
Mumbai – 400 001

Dear Sirs,

Sub. : Scheme of Amalgamation between Eulogia Inn Private Limited (the Transferor Company) with Praveg Limited (the Transferee Company) and their respective shareholders and creditors under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder

Ref. : Details of action taken / pending by Govt /Regulatory body /Agency against all the entities involved in the scheme for the period of recent 8 years

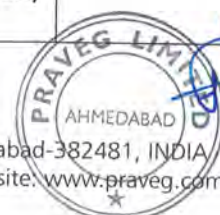
This is in reference to your query dated November 13, 2023 with regards to scheme of arrangement/ merger between Eulogia Inn Private Limited with and into Praveg Limited. The details of action taken / pending by Govt /Regulatory body /Agency against all the entities involved in the scheme for the period of recent 8 years, is as follows:

Sr No	Particulars	Summary of order	Date of final order
1	Adjudication Proceedings u/s 12 (1) of Companies Act, 2013	It was held that the Company and its directors have committed default under section 12 (1) of the Companies Act, 2013 for not maintaining of registered office. As a matter of the fact that the notice sent by Directorate was undelivered as above stated, it was hereby ordered that sum of Rs. 3,000/- each to company and its 3 officers have been imposed as penalty and the matter stood disposed off.	20 th May, 2019
2	Revocation of suspension in trading of equity shares	The BSE Limited, vide its notice no. 20170104-19 dated 04 January, 2017 revoked the suspension in trading of equity shares of Sword & Shield Pharma Ltd. (Scrip Code: 531637).	04 th January, 2017
3	Objection raised by BSE Limited to the scheme of amalgamation/ merger	The BSE Limited raised objections with regards to the scheme of arrangement/ merger of Praveg Communication Limited with and into Sword and Shield Pharma Limited. The Hon'ble NCLT, Ahmedabad Bench vide its order no. 121 of Company Appeal 19 (AHM) 2021 in CP (CAA) 103 of 2019.	20 th September, 2021

PRAVEG LIMITED

(Formerly known as Praveg Communications (India) Limited)

Regd. Office: 214, Athena Avenue, Behind Jaguar Showroom, S. G. Highway, Gota, Ahmedabad-382481, INDIA
CIN: L24231GJ1995PLC024809 | Phone: +91 79 27496737 | Email: info@praveg.com | Website: www.praveg.com



4.	Other Authorities Actions taken / pending by Govt. / Regulatory body / Agency against	Annexure attached herewith.	As per Annexure
----	---	-----------------------------	--------------------

We further declare that no other actions are taken or pending against the company in last 8 years.
You are requested to take above on record.

For Praveg Limited

(Formerly known as Praveg Communications (India) Limited)

Mukesh Chaudhary
Company Secretary &
Compliance Officer



Encl. : As Above

PRAVEG LIMITED

(Formerly known as Praveg Communications (India) Limited)

Regd. Office: 214, Athena Avenue, Behind Jaguar Showroom, S. G. Highway, Gota, Ahmedabad-382481, INDIA
CIN: L24231GJ1995PLC024809 | Phone: +91 79 27496737 | Email: info@praveg.com | Website: www.praveg.com

In the matter of Companies Act, 2013

And

**In the matter of adjudication proceeding under Sub-section (1)
of section 12 of the Companies Act, 2013.**

And

In the matter of M/S. SWORD & SHIELF PHARMA LIMITED.

30 MAY 2019 / 1166

1. M/s. SWORD AND SHIELD PHARMA LTD
55, World Business House, Near Parimal Garden,
Ambawadi, Ahmedabad-380006.
 2. PRAVINBHAI MANEKLAL PATEL (Managing Director)
A-24, NANDANVAN BUNGLOWS,
NR, AUDA WATER TANK,
THALTEJ- HEBATPUR ROAD,
THALTEJ, AHMEDABAD, 380059
 3. KIRTIKUMAR SANKARLAL PATEL (CFO(KMP))
29, RADHE BUNGLOWS, NEAR NARAYAN SCHOOL,
AJWA ROAD, VADODARA-390019.
 4. ANKITABEN KANUBHAI LUNAGARIYA (Company Secretary)
TO. LAPALIYA, TA. AMRELI,
DIST. AMRELI-365601, Gujarat
-Respondents

Date of hearing- 20.05.2019.

Present

- | | |
|--|--|
| 1. Shri L. R. Meena, Registrar of Companies | Adjudicating Officer |
| 2. Shri Naresh Chandra, Senior Technical Assistant | Present staff |
| 3. Shri Anand Lavingia (PCS) | Company Secretary
(PCS) and authorised
representative of the
above respondents. |

ORDER

The above named company was incorporated on 28.02.1995 and as per record of this office presently the company is having its registered office situated at 55, World Business House, Near Parimal Garden, Ambawadi, Ahmedabad-380006.

WHEREAS M/s. SWORD & SHIELD PHARMA LIMITED (herein after referred to as "company") is a company having its Registered office at 55, World Business House, Near Parimal Garden, Ambawadi, Ahmedabad-380006 registered under the provisions of the Companies Act, 1956 (hereinafter referred to as "Act") in the state of Gujarat.

And whereas As per Section 12(1) of the Companies Act, 2013, a company shall, on and from the fifteenth day of its incorporation and at all times thereafter should have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

And Whereas the Regional Director (NWR) had issued Letter No. RD (NWR)/230-232/(244)/ 2018-19/180 dated 09.04.2019 to M/s. SWORD AND SHIELD PHARMA LTD on its above registered office of the Company in the matter of scheme of amalgamation, but the said letter was returned back by the Postal Authority with the remarks "Left".

And whereas, the Regional Director (NWR) vide letter No. RD (NWR)/230-232/(244)/2018-19/434 dated 25.04.2019 directed the undersigned that the subject company has not maintaining its registered office in compliance of section 12 of the Companies Act, 2013 and initiate necessary action for violation of section 12 of the Companies Act, 2013.

And whereas, in view of the above facts & observation, it appears that the company is not maintaining its registered office and the provision of section 12(1) of the Companies Act, 2013 has been contravened and the company and every officer of the company, who is in default shall be liable for action under section 12(8) of the Companies Act, 2013.

1. In view of the above facts, the undersigned has reasonable cause to believe that the provision of Section 12(1) of the Companies Act, 2013 not been complied with by the Company and its officers in default. Thus, the Company and its officers in default have rendered themselves liable to be penal action as provided in sub-section (8) of section 12 of the Companies Act, 2013. As

per provision of section 12 (8), there is provision for penalty for which the ROC is empowered to adjudicate the penalty under section 454 (3) of the Companies Act, 2013.


2. On the basis of adjudication application dated 02.05.2019, the office of the Registrar of Companies, Gujarat, Dadra and Nagar Haveli issued adjudication notice for violation of section 12(1) of the Companies Act, 2013 to the Company and its Respondents on 14.05.2019 by giving an opportunity of being heard in the matter before the undersigned on 22.05.2019.
3. That in response of the adjudication notice dated 22.05.2019, Shri Anand Lavingia (PCS) has visited to the office of the undersigned on 20.05.2019 and requested the undersigned to process and hear the matter of adjudication for violation of section 12(1) of the Companies Act, 2013 on 20.05.2019 in place of 22.05.2019. The adjudication office has grant the permission to Shri Anand Lavingia (PCS) appears on behalf of the respondents for hearing the matter on spot on 20.05.2019 instead of 22.05..2019 accordingly.
4. The undersigned in exercise of power conferred under sub section 3 of section 454 of the Companies Act, 2013 fixed the date of hearing on 20.05.2019 instead of 22.05.2019 for adjudicating penalty for violation of provision of section 12 (1) of the Companies Act, 2013.
5. In response to the adjudication notice dated 14.05.2019 issued by the undersigned, the Company and its officer in default vide Board Resolution and Memorandum of appearance dated 02.05.2019 have authorized Shri Anand Lavingia, Practicing Chartered Accountant to appear and represent before the adjudicating authority- Registrar of Companies, Gujarat on the above given date and time for oral and written submission and to all acts and things as may be necessary and incidentally in the matter.
6. During the hearing on 20.05.2019, Anand Lavingia, Practicing Chartered Accountant and Authorized representative of the Respondents reiterated submissions made in the adjudication notices. He tendered adjudication application dated 02.05.2019 before the members. He oral stated that due to leave of few staff members of the company on the day of delivery of letter calling for information by the office of the Regional Director, the office was closed for few hours by the operating staff, this very reason the notice

sent by the Regional Directorate was not received by the company and has been returned with the remarks "Left". He informed that violation on the part of the Respondents was absolutely unintentional and was committed inadvertently without any mala fide intention.

7. That keeping in mind all the relevant facts and after consideration of the oral submissions made by Anand Lavingia, Practicing Chartered Accountant and Authorized Representative of the Respondents, it is observed that the company and Respondent No. 2 to 4 have committed default under section 12 (1) of the Companies Act, 2013 for not maintaining of registered office. The submission made by the company appears to be satisfactory. However, as a matter of the fact that the notice sent by Directorate was undelivered as above stated, it is hereby ordered that sum of Rs. 3,000/- each to company and its 3 officers have been imposed as penalty and the matter stand disposed off.
8. The penalties imposed as under should be paid by the Respondents as per Law and submit the copies of Challan to this office. The company should file the INC 28 with attachment of this order and copy of aforesaid Challan.

Sr. No.	Name of the Respondents	Amount (In Rs.)
1.	M/s. SWORD AND SHIELD PHARMA LTD	3,000/-
2.	PRAVINBHAI MANEKLAL PATEL (Managing Director)	3,000/-
3.	KIRTIKUMAR SANKARLAL PATEL (CFO(KMP))	3,000/-
4.	ANKITABEN KANUBHAI LUNAGARIYA (Company Secretary)	3,000/-
	Total Rs.	12,000/-

The adjudication notice stands disposed of with this order.


(L. R. Meena)
Adjudicating officer,
Registrar of Companies,
Gujarat, Dadra and Nagar Haveli.

Signed this 20th day of May, 2019.

Copy to:

1. M/s. SWORD AND SHIELD PHARMA LTD
55, World Business House, Near Parimal Garden,
Ambawadi, Ahmedabad-380006.
2. PRAVINBHAI MANEKLAL PATEL (Managing Director)
A-24, NANDANVAN BUNGLOWS,
NR, AUDA WATER TANK,
THALTEJ- HEBATPUR ROAD,
THALTEJ, AHMEDABAD,380059
3. KIRTIKUMAR SANKARLAL PATEL (CFO(KMP))
29, RADHE BUNGLOWS, NEAR NARAYAN SCHOOL,
AJWA ROAD,VADODARA-390019.
4. ANKITABEN KANUBHAI LUNAGARIYA (Company Secretary)
TO. LAPALIYA, TA. AMRELI,
DIST. AMRELI-365601,Gujarat
5. Master File
6. Office Copy

NOTICES

Notice No.	20170104-19	Notice Date	04 Jan 2017
Category	Company related	Segment	Equity
Subject	Revocation of Suspension in trading of equity shares of Sword &Shield Pharma Ltd. (Scrip Code: 531637)		
Attachments	Annexure II.pdf ; Annexure I.pdf		

Content

Revocation of Suspension in trading of equity shares of Sword & Shield Pharma Ltd. (Scrip Code: 531637)

Trading Members of the Exchange are hereby informed that the suspension in trading of equity shares of the below mentioned company will be revoked w.e.f. January 12, 2017. Pursuant to SEBI Circular No. CIR/CFD/CMD/12/2015 dated November 30, 2015, trading in the securities of the company will be resumed in "XT" group.

Scrip Code	Name of the Company
531637	Sword & Shield Pharma Ltd.

Trading members may note that the entire promoter's shareholding i.e.3,40,000 equity shares are under lock-in as per the details given under:

No of Shares	Distinctive Nos	Date upto – under lock-in
1,22,600	As per Annexure II	30/05/2017
2,17,400	Demat	31/05/2017

A profile of the Company is also attached as Annexure I.

The Information Memorandum of the aforesaid company will be available on the Exchange's website under Corporates->Listed Corporates->Information Memorandum->Revocation.

Further the trading members may please note that the above mentioned scrip will be a part of Special Pre-open Session for IPO's & Relisted Scrips -Relist session on January 12, 2017.

For further information on SPOS, the trading members are requested to refer to the Exchange's notice no.20120216-29 on ***Enabling Special Pre-open Session for IPO's & Relisted Scrips.***

Trading Members are requested to take note of the same.

Arpita Joshi
Associate Manager
Listing Compliance

January 04, 2017

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No 121

Comp.Appl/19(AHM)2021 in CP(CAA) 103 of 2019
in CA(CAA) 152 of 2018

Order under Section 230-232

IN THE MATTER OF:

Praveg Communications Ltd
Sword & Shield Pharma Ltd

.....Applicant

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

Order delivered on ..20/09/2021

PRESENT:

For the Applicant : Mr. Amit Ladda, Advocate
For the Respondent : Mr. Navin Pahwa, Sr. Counsel

ORDER

Heard learned counsel for the BSE and learned counsel for the Respondent. It appears to us that the objections of BSE to the scheme have been complied with by the Petitioner, accordingly, the pursis is filed to accepting the same. In view of this, this application becomes infructuous and stands disposed of.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

EULOGIA INN PRIVATE LIMITED (Formerly EULOGIA INN LLP)								
Sr. No.	Tax Authority	F.Y.	Order Dated	Order No	Deamnd of Rs	Current Status		
						Appeal	Appeal Date	Remarks
1	INOCME TAX	2019-20	26-09-2022	Order U/s 143(3) of I.T.Act.	15987059	Form No. 35 is Filled	21-10-2022	Appeal filled by the Company. Form 35 attached herewith.

Acknowledgement Receipt of Income Tax Forms

(Other Than Income Tax Return)



e-Filing Acknowledgement Number / Quarterly Statement Receipt Number
741728480211022

Date of e-Filing
21-Oct-2022

Name	:	EULOGIA INN LLP
PAN/TAN	:	AAEFE9648J
Address	:	PLOT NO.54/3, T.P.NO.32.S.NO.93/1/2/2, B/H SILVER GARDENIA. S.G.HIGHWAY,NEAR GOTA FLYOVER, Gota, Gota B.O, GANDHI NAGAR, Gujarat, INDIA - 382481
Form No.	:	Form 35
Form Description	:	Appeal to the Commissioner of Income-tax (Appeals). This form is in compliance with rule 45
Assessment Year	:	2020-21
Financial Year	:	-
Month	:	-
Quarter	:	-
Filing Type	:	Original
Capacity	:	PTR
Verified By	:	ACSPP9592J

(This is a computer generated Acknowledgement Receipt and needs no signature)



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT



1.	PAN	AAEFE9648J
2.	Name of the assessee	EULOGIA INN LLP
3.	Address of the assessee	406 ABHISHREE AVENUE,, NEAR SBI ZONAL OFFICE, NEHRU NAGAR CIRCLE, AMBAWADI,, AHMEDABAD 380015, Gujarat, India
4.	Assessment Year	2020-21
5.	Status	FIRMS
6.	Residential Status	Resident
7.	Date of filing of Return of Income	27/01/2021
8.	Acknowledgement Number of Return of Income	228719581270121
9.	Date of processing u/s 143(1)(a) of the Income-tax Act.	03/11/2021
10.	Income Computed under section 143(1) of the Act	2,29,970
11.	Date of service of Notice under section 143(2) of the Income-tax Act	30/06/2021,30/06/2021
12.	Date(s) of issue of Notice(s) under section 142(1) of the Income-tax Act	15/11/2021,11/02/2022
13.	Order passed under section	143(3) read with section 144B of the Income-tax Act
14.	Returned Income	Rs. 0
15.	Date of Order	26/09/2022
16.	DIN	ITBA/AST/S/143(3)/2022-23/1045979851(1)

ASSESSMENT ORDER

1. Facts of the case in brief

The assessee is a Limited Liability Partnership(Firm) has filed its return of income for Assessment Year 2020-21 on 27-01-2021, declaring total income at Rs. NIL. Assessee is engaged in the business of hotel, restaurant and hospitality services. This case was selected for Limited Scrutiny under CASS System for verification of high creditors/ liabilities and unsecured loans. A notice u/s 143(2) of the Income-tax Act was issued on 29-06-2021 through e-mail portal, which was served to the assessee. Subsequently, the case was transferred to ReFAC.

2. Details of Opportunities Given:

Type of	Date of	Date of	Response	Date of	Response	Remarks
---------	---------	---------	----------	---------	----------	---------

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

notice / communication	notice / communication	compliance given	of the assessee received /not received	response if received	Type (Full/part/ adjourn- ment)	if any.
Notice 143(2)	u/s 29-06-2021	14-07-2021	Received	12-07-2021	Part	-
Notice 142(1)	u/s 15-11-2021	26-11-2021	Not received	-	-	-
Letter	02-12-2021	13-12-2021	Not received	-	-	-
Letter	02-02-2022	07-02-2022	Received	08-02-2022	Part	-
Notice 142(1)	u/s 11-02-2022	17-02-2022	Received	18-02-2022	Part	-
Letter	11-03-2022	16-03-2022	Received	21-03-2022	Part	-
Letter	24-08-2022	29-08-2022	Received	29-08-2022	Part	-
Letter	01-09-2022	06-09-2022	Received	05-09-2022	Part	-
Letter	10-09-2022	12-09-2022	Not Received	-	-	-
Show cause Notice	19-09-2022	23-09-2022	Not received	-	-	-

3. Cases where variation is not proposed: N/A

4. Cases where variation is proposed:

4.1 Complete description of issues (issue wise)

High creditors / Liabilities and Unsecured Loans

4.2 Synopsis of all submissions of the assessee relating to the issue and indicating the dates of submission:

In response to the notice u/s 143(2), the assessee submitted the reply with ITR filed, ITR-V, computation of income, Balance Sheet with schedule of accounts, Profit & Loss Account and Tax Audit Report.

In response to the letter dated 02.02.2022, the assessee requested adjournment for 15 days vide letter dated 08-02-2022.

In response to notice u/s 142(1) dated 11.02.2022, the assessee submitted reply on 18-02-2022 with 21 attachments containing statement of bank account of the assessee, GSTR-3B, ledger copy of sundry creditors, list and ledger copy of advance

from customers, confirmation of accounts with ITR-V of the party and bank account copy of corresponding page.

In response to the letter issued on 11-03-2022 requesting to submit the details of PAN, address, email ID of the sundry creditors and advance from customers for Rs.1lakh and above, the assessee submitted reply on 21.03.2022 with list of sundry customers and advance from customers.

In response to the letter issued on 24-08-2022 requesting to furnish the details including PAN and address etc on some of the sundry creditors, advance from customers etc, the assessee submitted the details on 29-08-2022 without having pan and address of some parties.

In response to the letter issued on 01.09.2022 requesting to furnish the PAN and address of the some of the parties, the assessee replied with details and ledgers having no pan and address for few parties.

Again letter issued on 10.09.2022, the assessee not responded.

For show-cause notice also not responded.

4.3 Summary of information/evidence collected which proposed to be used against it (attached documents if required) :

Inspite of repeated requests to the assessee, the assessee submitted the ledgers details but not containing the details of PAN, address and email-id in respect of the advance from two customers viz. M/s Kabir Enterprise and Kavya steel. Till date the assessee did neither reply nor responded to the show-cause notice issued by this unit on 19-09-2022 to show cause why the advance received from the customers M/s. Kabir Enterprise (Amount Rs. 1,20,00,000) and M/s. Kavya Steel (Amount Rs.35,00,000) totaling to Rs.1,55,00,000/- should not be treated as unexplained cash credits u/s 68 of the Income-tax Act, 1961 and added to the total income of the assessee and taxed u/s 115BBE of the Income-tax Act, 1961.

4.4 Variation proposed on the basis of inference drawn:

The assessee neither offered any explanation nor submitted any reply for the letter issued on 10.09.2022 and also the show cause notice issued on 19-09-2022 . The assessee failed to furnish details of PAN, Complete address and mail-id of the two customers mentioned above, the identity, genuineness and credit worthiness of the customers is doubtful and without having the details , the assessing officer could not be verify the facts. The onus is on the part of the assessee to prove the identity of the customers. Hence, the assessing officer is having no other option left with treat above transactions with M/s Kabir Enterprise and M/s. Kavya Steel to

the tune of Rs.1,55,00,000/- should be treated as unexplained cash credits u/s 68 of the Income-tax Act, 1961 and added to the total income of the assessee and taxed u/s 115BBE of the Income-tax Act, 1961.

Addition u/s 68 of the IT Act: Rs.1,55,00,000/-

4.5 Synopsis of the reply to SCN and additional SCN (if any):

No reply received in response to SCN

4.6 Summary of information evidence collected after SCN (if any):

NIL

4.7 Point-wise rebuttal of reply of the assessee including analysis of any case law relied upon:

Nil

4.8 Conclusion drawn

The assessee neither offered any explanation nor submitted any reply for the letter issued on 10.09.2022 and also the show cause notice issued on 19-09-2022. The assessee failed to furnish details of PAN, Complete address and mail-id of the two customers mentioned above, the identity, genuineness and credit worthiness of the customers is doubtful and without having the details, the assessing officer could not verify the facts. Hence, the assessing officer is having no other option left with treat above transactions with M/s Kabir Enterprise and M/s. Kavya Steel to the tune of Rs.1,55,00,000/- should be treated as unexplained cash credits u/s 68 of the Income-tax Act, 1961 and added to the total income of the assessee and taxed u/s 115BBE of the Income-tax Act, 1961.

5. Final Computation of taxable Income:

Sl. No	Description	Amount (in INR)
1	Income as per Return of income filed	NIL
2	Income as computed u/s 143(1)(a)	2,29,970
3	Variation in respect of issue of : Unexplained Cash credits u/s 68 of the IT Act, 1961 as discussed above.	1,55,00,000
4	Total Income/Loss Determined	1,57,29,970

6. Assessed under section 143(3) r.w.s. 144B of the Income-tax Act, 1961. Penalty

proceedings u/s 271AAC(1) and 272A(1)(d) of the Income-tax Act, 1961 have been initiated through notices separately. Computation of income and demand notice u/s 156 of the Act is attached.

Assessment Unit
Income Tax Department

Copy to:

Assessee



Assessment Unit
Income Tax Department



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT



To, EULOGIA INN LLP 406 ABHISHREE AVENUE,,NEAR SBI ZONAL OFFICE, NEHRU NAGAR CIRCLE,AMBAWADI, AHMEDABAD 380015,Gujarat India	
---	--

PAN: AAEFE9648J	Date: 26/09/2022	Status: FIRM	DIN & Notice No: ITBA/AST/S/156/2022- 23/1045979905(1)
---------------------------	----------------------------	------------------------	--

Subject: Notice of demand under section 156 of the Income-Tax Act, 1961

1. This is to give you notice that for the assessment year **2020-21** a sum of **Rs. 1,59,87,059**, details of which are given on the reverse, has been determined to be payable by you.
2. The amount should be paid to the Manager, authorised bank/State Bank of India within 30 days of the service of this notice. A challan is enclosed for the purpose of Payment.
3. If you do not pay the amount within the period specified above, you shall be liable to pay simple interest at one per cent for every month or part of a month from the date commencing after the end of the period aforesaid in accordance with section 220(2).
4. If you do not pay the amount of the tax within the period specified above, penalty (which may be as much as the amount of tax in arrear) may be imposed upon you after giving you a reasonable opportunity of being heard in accordance with section 221.
5. If you do not pay the amount within the period specified above, proceedings for the recovery thereof will be taken in accordance with sections 222 to 227, 229 and 232 of the Income-tax Act, 1961.
6. If you intend to appeal against the assessment, you may present an appeal under Part A of Chapter XX of the Income-tax Act, 1961, to the **NATIONAL FACELESS APPEAL CENTRE (NFAC)** within thirty days of the receipt of this notice, in Form No. 35, duly stamped and verified as laid down in that form.

Yours faithfully,

**Assessment Unit
Income Tax Department**

Praveg Limited									
Sr. No.	Tax Authority	Financial Year	Demand Order Dated	Demand Order No	Demand of Rs	Current Status			
						Final Order Dated	Final Order No.	Demand amount in Rs.	Remarks
1	Service Tax	2012-13 & 2013-14	03.06.2020	03/ADC/2020-21	1,06,37,604.00	10.04.2023	A/10844/2023	-	Appeal Order in Favour of Company so demand as per appel is Zero. Appeal order attached herewith.
2	Vat	2010-11			1,22,84,435.00	19.05.2018	2015-16/VAT/50/B-81/5/18	-	Appeal Order in Favour of Company so demand as per appel is Zero. Appeal order attached herewith.
3	TDS	2023-24						61,370.00	Intimation of Under Section 200A/206CB OF INCOEM TAX ACT,1961 Screenshot of TRACES attached herewith.
		2022-23						6,360.00	
		2021-22						720.00	
		2014-15						3,980.00	
		2013-14						2,810.00	
		2012-13						58,650.00	
		2010-11						1,710.00	
4	Income Tax	2020-21	18-12-2022	20222021371393 22010C	7,896.00			7,896.00	Income tax demand is Zero, but due to technical error Interest Amount is shown on income tax website.

For, PRAVEG LIMITED


DIRECTOR

PRAVEG LIMITED

(Formerly known as Praveg Communications (India) Limited)

Regd. Office: 214, Athena Avenue, Behind Jaguar Showroom, S. G. Highway, Gota, Ahmedabad-382481, INDIA

CIN: L24231GJ1995PLC024809 | Phone: +91 79 27496737 | Email: info@praveg.com | Website: www.praveg.com



TRACES

TDS Reconciliation Analysis and Correction Enabling System



Welcome PRAVEG LIMITED (AHMS07439F)

Login Date: 20-Nov-2023, 11:29 AM [Help](#)

Total Outstanding Demand

- Click on Processed Demand amount to view demand details and navigate to 'Default Summary'
- Click on Manual Demand amount to close via Tag Challan and navigate to 'Tag / Replace Challan'
- Click on 'Prior Years' hyperlink to view prior years demand details

Financial Year	Manual Demand (Justification available with AO)	Processed Demand (Justification available from CPC)
Prior Years	0.00	67150.00
2021-22	0.00	720.00
2022-23	0.00	6360.00
2023-24	0.00	61370.00

Financial Year	Manual Demand (Justification available with AO)	Processed Demand (Justification available from CPC)
2013-14	0.00	2810.00
2014-15	0.00	3980.00
2012-13	0.00	58650.00
2010-11	0.00	1710.00

વ્યાજમાં લીધું : (૧) મે. પ્રવેગ કોમ્યુનિકેશન્સ પ્રાઇવેટ લીમીટેડ કે જેઓ ગુજરાત મૂલ્યવર્ધિત વેરા અધિનિયમ, ૨૦૦૩ અન્વયે ટીન ૨૪૦૭૪૨૦૩૦૧૩ ધરાવે છે. તેમના કેસમાં સહાયક વાણિજ્યિક વેરા કમિશ્નર, ઘટક-૭, અમદાવાદે વર્ષ: ૨૦૧૦/૧૧ માટે સ્થાનિક કાયદા અન્વયેની આકારણી કરીને તા.૨૮/૦૩/૨૦૧૫ ના રોજ આદેશ પસાર કરેલ છે. જેની સામે વિવાદીએ તા.૧૭/૦૪/૨૦૧૫ ના રોજ કરેલ વિવાદ અરજી.

(૨) વર્ષ- ૨૦૧૦-૧૧ નું આકારણી દફતર
: ધંધાના વેરા સલાહકારશ્રી કલ્પેશ પટેલ



૪-૧૬/VAT/૫૦/બ - ૮૨
૫૧૪૬

ગુજરાત મૂલ્યવર્ધિત વેરા અધિનિયમ,
૨૦૦૩ની કલમ-૭૩ અન્વયે.

મ. ૩૫૬/૫૭

આદેશ

૨૧૫૫૪

મે. પ્રવેગ કોમ્યુનિકેશન્સ પ્રાઇવેટ લીમીટેડ. ઠે. ૧૦૨. શાંતિ આર્કેડ. આકાશ-III પાસે. ૧૩૨ ફીટ રીંગ રોડ. વારણપુરા. અમદાવાદ કે જેઓ ગુજરાત મૂલ્યવર્ધિત વેરા અધિનિયમ, ૨૦૦૧ અન્વયે ટીન ૨૪૦૭૪૨૦૩૦૧૩ ધરાવે છે. તેમના કેસમાં સહાયક વાણિજ્યિક વેરા કમિશ્નર, ઘટક-૭, અમદાવાદે વર્ષ: ૨૦૧૦/૧૧ માટેની આકારણી કરીને તા.૨૮/૦૩/૨૦૧૫ ના રોજ આકારણી આદેશ પસાર કરેલ છે. જે અન્વયે રૂ.૧,૨૨,૮૪,૪૩૫/-નું નાણાં ઉપસ્થિત કરેલ છે. આ આદેશ સામે વિવાદીએ અત્રે તા.૧૭/૦૪/૨૦૧૫ ના રોજ પ્રથમ વિવાદ અરજી રજૂ કરેલ છે. જે સમયસર છે. વિવાદીની રજૂઆત ધ્યાને લઈ વિવાદ અરજી વિનાભરણે નિયમિત સુનાવણીમાં લીધેલ છે.

વિવાદીની રજૂઆત છે કે,

- (૧) તેઓનો ધંધો વિવિધ પ્રકારના ઇવેન્ટ મેનેજમેન્ટ કરવાનો છે તેઓ જે તે ઇવેન્ટને અનુરૂપ Conceptualizing, Complete controlling, designing, execution and supervising કરવાની સેવા પુરી પાડે છે અને તે અંગે સર્વિસ ચાર્જ મેળવે છે તેના પર સર્વિસટેક્સ ભરપાઈ કરે છે. આમ છતાં અન્યાયી રીતે આકારણી અધિકારીએ તેમની સ્વર્ણિમ સંકલ્પ જ્યોત રથ તથા સ્વર્ણિમ કિસાન રથ અંગેની સેવાઓ પુરી પાડવાની આવકને રાઇટ ટુ યુઝ અન્વયેની આવક ગણી ડીમ્ડસેલ ઠરાવી અન્યાયી રીતે વેરો આકારેલ છે તે દૂર કરવો.
- (૨) વિવાદીની બીજી રજૂઆત છે કે, આકારણી અધિકારીએ આકારણી આદેશ તૈયાર કરતી વખતે તેઓનાં હિસાબો મુજબનાં ખરેખર વેરાપાત્ર વેચાણોના વેરાની રકમ અન્યાયી રીતે આકારણી આદેશમાં નકકી કરેલ વેરાપાત્ર ટર્ન ઓવરમાંથી બાદ કરી બાકીની રકમ પર વેરો ગણે છે તેથી હિસાબો મુજબનાં વેરાપાત્ર ટર્ન ઓવર પર બેવડો વેરો આકારેલ છે તે દૂર કરવો.
- (૩) વિવાદીની રજૂઆત છે કે, તેમના દ્વારા સ્વર્ણિમ સંકલ્પ જ્યોત રથ અને સ્વર્ણિમ કિસાન રથ અંગેની સેવા પુરી પાડેલ છે. હકીકતે આ રથ એ ટ્રોલીવાળા ટ્રેક્ટર છે. ટ્રેક્ટરની કે I.C.V પર કામચલાઉ ધોરણે ફોલ્ડિંગ સ્ટ્રક્ચર લગાડી તેના પર સરકારશ્રી દ્વારા તથા કોર્પોરેશન દ્વારા અપાયેલ બેનર લગાડી તેને લોકભોગ્ય નામ આપી 'રથ' તરીકે ઓળખાવેલ છે. જે હકીકતે ટ્રેક્ટર છે તેથી અધિકારીએ રથ તરીકે ૧૨.૫ તથા ૨.૫% ના દરે વેરો આકારેલ છે તે તદ્દન અસ્વીકાર્ય બાબત છે જેથી આકારાયેલ તમામ વેરો દૂર કરવો.

- (૪) વિવાદીની રજૂઆત છે કે, તેમની ઇવેન્ટ મેનેજમેન્ટની સર્વિસ દરમિયાન પૂરી પાડેલ ફોટોગ્રાફો માડાની આવક અંગે આકારાયેલ વેરો તથા વ્યાજ, દંડ દૂર કરવો.
- (૫) આકારણી અધિકારીએ અન્યાયી રીતે સર્વિસની આવકને વેરાપાત્ર ગણી તેનાપર વ્યાજ તથા દંડ આકારેલ છે તે તમામ દૂર કરવો.

વિવાદીની રજૂઆત છે કે, તેમનો ધંધો વિવિધ પ્રકારના ઇવેન્ટનું મેનેજમેન્ટ કરવાનો છે અને તે દરમિયાન તેઓએ વાયબ્રન્ટ ગુજરાત અંગે ઝોબલ ઇન્વેસ્ટર્સ સમીટ-૨૦૧૧, નવરાત્રી મહોત્સવ ૨૦૧૦ માં ફોટોગ્રેલેરી, GPC, પેવેલીયન સેટ એનર્જીએક્સ્પો ૨૦૧૦, બેટન રેલી અને ખેલમહાકુંભ, ગુજરાત સોલાર પાવર લોન્ચીંગ સેરેમની, GPC પેવેલીયન સેટ મેગા એકઝીબીશન VYAPAR-2011, સ્વર્ણિમ કિસાન જ્યોત, સ્વર્ણિમ કિસાન રથ, અને સ્વર્ણિમ સંકલ્પ જ્યોત રથ સહિત વિવિધ પ્રકારના ઇવેન્ટ મેનેજમેન્ટનું કામ કરેલ છે અને તે પેટે આવક મેળવેલ છે તેઓનું કામ જેતે ઇવેન્ટ અંગે Conceptualizing, Conceptual controlling, designing, execution and Supervising કરવાનું અને તે અંગે સેવા પુરી પાડવાનું છે. આ ધંધાકીય પ્રવૃત્તિ દરમિયાન તેઓએ રાજ્ય સરકાર દ્વારા પ્રેરણા પામેલ અને રાજ્યની સ્થાપના ૫૦-વર્ષની ઉજવણીના ભાગ રૂપે સ્વર્ણિમ સંકલ્પ જ્યોત રથ અને સ્વર્ણિમ કિસાન રથ અંગે કામ કરેલ છે અને તેનાથી



આ સ્વર્ણિમ સંકલ્પ જ્યોત રથ અને સ્વર્ણિમ કિસાન રથ એ કોઈ ખાસ પ્રકારનો રથ નથી પરંતુ ટ્રેક્ટરની ટ્રોલી પર ફોલ્ડિંગ ફેબ્રિકેશન સ્ટ્રક્ચર બનાવી આવા સ્ટ્રક્ચર પર જે તે એજન્સી દ્વારા આપેલ ટ્રેક્ટરને 'રથ' નામ આપવામાં આવેલ છે જેથી 'રથ' નામાભિધાન કરેલ એ કોઈ રથ નથી પરંતુ ટ્રેક્ટર જ છે. આમ છતાં, 'રથ' તરીકે ઉંચા દરે વેરો આકારાયેલ છે તે અન્યાયી છે. ખરેખર તો કોઈ જ રથ કે ટ્રેક્ટર આકારાયેલ નથી તેથી વેરો આકારવાનો પ્રશ્ન જ ઉભો થતો નથી.

વિવાદીની રજૂઆત છે કે, તેઓને રાજ્યની સ્થાપનાના ૫૦ મા વર્ષની ઉજવણી પ્રસંગે તેને આનુષંગિક રીતે ધી. કમિશનર ઓફ ઇન્ફર્મેશન ગાંધીનગર ગુજરાત દ્વારા રાજ્યના ૨૨૫-તાલુકા વિસ્તાર ૧૮,૦૦૦ ગામડાંઓમાંના લોકોને રાજ્યને દેશના બેસ્ટ રાજ્ય બનાવવા માટે સોગંધ લેવા મોર્દાવેદ કરવા તથા મોબાઇલ એકઝીબીશન દ્વારા રાજ્ય સરકારની વિવિધ યોજનાઓની માહિતી આપવા "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" ની સંકલ્પના પરિપૂર્ણ કરવા માહિતી કમિશનરશ્રી દ્વારા જાહેર કરાયેલ ટેન્ડર No. INF/FP/SSJR-CZ/T-1/1646 Date-23/11/2009 for SELECTION OF STRUCTURE FABRICATOR CUM EXHIBITING AGENCY for 'SWARNIM SANKALP JYOT RATH' બહાર પડાયેલ હતું. આ ટેન્ડર અંગે તેઓએ કરેલ દરખાસ્ત મંજૂર થતાં તે અનુસાર કરાર કરીને કામગીરી કરેલ છે તથા સરકારશ્રી દ્વારા નકકી કરાયા મુજબની ડીઝાઇન-ફેબ્રિકેશન કરાવી તે એપ્રુવ કરાવી તેવા ફેબ્રિકેશન-ડેકોરેશન વાળા ટ્રેક્ટરનો સરકારશ્રી દ્વારા નિયત કરાયેલ પ્રોગ્રામ મુજબના સમયે અલગ-અલગ સ્થળોએ પહોંચાડેલ છે અને સરકારશ્રી દ્વારા પુરાં પાડવામાં આવેલ બેનર તથા સંદેશાઓ પ્રદર્શિત કરવાની તેમજ તેઓની જાગૃતી લાવવાનો કાર્યવાહી કરેલ છે. સમગ્ર કાર્યક્રમ તેઓના પોતાના જ કર્મચારીઓ દ્વારા પૂર્ણ કરાયેલ છે. સમગ્ર કાર્યક્રમ દ્વારા નિયુક્ત કરાયેલ પદાધિકારીઓ-અધિકારીઓ દ્વારા સુપરવીઝન થતું રહે અને જરૂરી સલાહ મળતાં રહે પરંતુ તમામ કાર્યક્રમ તેઓએ તેમના પોતાના જ અને સંપૂર્ણ નિયંત્રણ હેઠળના કર્મચારીઓ દ્વારા

કરેલ છે. આ અંગે રથ- ટ્રેક્ટરનો સંપૂર્ણ કબજો તમામ સમય દરમિયાન તેમની પાસેજ રહેલ છે ક્યારેય બીજા સરકારશ્રીના પ્રતિનિધિ દ્વારા ટ્રેક્ટર-રથનો કબજો લેવાયેલ નથી કે તેમના દ્વારા કબજો અપાયેલ નથી.

આ બાબતે આ ટેન્ડરના INVITATION FOR BIDS (IFB)તેમજ ટેન્ડરના ARTICLE- ૨૧ મુજબના SCOPE OF WORK નો લાગુ પડતો ભાગ પરત્વે ધ્યાન દોરે છે જે નીચે મુજબ છે.

CO intends to appoint a STRUCTURE FABRICATOR CUM EXHIBITING AGENCY for the Swarnim Sankalp Jyot Rath who will fabricate the structure, prepare the exhibition panel by pasting the printed flex, assemble the Swarnim Sankalp Jyot Rath on tractor driven trailers or LCV and exhibiting the Swarnim Sankalp Jyot Rath in Taluka assigned in various parts of Gujarat during "Swarnim Mahotsav."

આમ. આ ટેન્ડરનો સ્કોપ ઓફ વર્કમાં સ્પષ્ટ પણે જણાવાયા મુજબ કમિશનર ઓફ ઇન્ફોર્મેશન એવી બજાસીને શેકવા માગે છે કે જે ટ્રેક્ટરની ટ્રોલી કે LCV પર ફેબ્રિકેશન કરી વિવિધ વિગતોવાળા ફ્લેક્સ બેનર બનાવવાથી રાજ્યના વિવિધ તાલુકાઓમાં તેનું પ્રદર્શન કરે. જેથી સ્પષ્ટ થાય છે કે પ્રદર્શન કરવાનું કામ જે તે બજાસીએ એટલે કે કોન્ટ્રાક્ટરે જ કરવાનું કે બનાવાયેલ રથનો કબજો ક્યારેય કમિશનર ઓફ ઇન્ફોર્મેશન ને કે તેમના અધિકૃત પ્રતિનિધિને સોંપવાનો નથી. આ ટેન્ડર અનુસંધાને કરાયેલ કરારમાં વિગતે જે તે બાબતોનો ઉલ્લેખ કરાયેલ છે તે પૈકી સદર એકઝીબીશન અંગે સરકારશ્રીના પ્રતિનિધિના માર્ગદર્શન અને દારવણી કોન્ટ્રાક્ટરે કામ કરવાનું છે. પરંતુ સદર રથનો હવાલો હંમેશાં કોન્ટ્રાક્ટર પાસે જ રહે છે તેથી

તેનો ઇન્ફેક્ટીવ કંટ્રોલ અને જનરલ કંટ્રોલ તમામ સમય માટે કોન્ટ્રાક્ટર પાસે રહે છે તેથી આવા રથ દ્વારા કામ કરવામાં આવેલ એકઝીબીશન અંગેની સેવા પેટે મળેલ આવક એ સર્વિસની આવક છે અને તેના પર લાગુ પડતા દરે સર્વિસટેક્સની જવાબદારી અદા કરાયેલ છે. સદર આવક એ Transfer of Right to use અંગેની નથી આવી આવક પર વેચાણો ઠરાવી વેરો આકારી શકાય નહીં. જેથી આકારણી અધિકારીએ સ્વર્ણિમ સંકલ્પ જ્યોત રથ અંગેની સેવા પુરી પાડવાની આવકને ટ્રાન્સફર ઓફ રાઇટ ટુ યુઝ તરીકેની ડીડ વેચાણની આવક ગણી વેરો તથા આનુષંગિક વ્યાજ અને દંડ આકારાયેલ છે તે દૂર કરવા રજૂઆત છે.

વિવાદીની વધુમાં રજૂઆત છે કે, તેઓએ રાજ્ય સરકારના ૫૦ મા સ્થાપના દિવસની ઉજવણીના ભાગરૂપે કમિશનર ઓફ ઇન્ફોર્મેશન દ્વારા બહાર પાડવામાં આવેલ ટેન્ડર અન્વયેનું કામ મેળવેલ છે અને કરેલ છે તેમાં "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" પુરો પાડેલ છે. રાજ્યની સ્થાપનાના ૫૦ મા વર્ષની ઉજવણીના ભાગ રૂપે અન્ય પ્રોગ્રામ અન્વયે ગુજરાત એગ્રો ઇન્ડસ્ટ્રીઝ કોર્પોરેશન લી. કે જે ISO 9001: 2000 સર્ટીફાઇડ મેનુફેક્ચરિંગ કંપની છે તેના દ્વારા "સ્વર્ણિમ કિસાન રથ" અંગેની કામગીરી સોંપાયેલ હતી. આ કામગીરીમાં પણ સ્વર્ણિમ સંકલ્પ જ્યોત રથ ની જેમ ટ્રેક્ટર ટ્રોલી-LCV પર સુચવાયા મુજબનું ફોલ્ડીંગ ફેબ્રિકેશન કરી તેના પર તેમના દ્વારા અપાયેલ સંદેશા અને યોજનાઓના પ્રદર્શનનું કાર્ય વિવિધ તાલુકા અને ગ્રામ્ય કક્ષાએ કરવાનું તથા ખેડૂતોને વિવિધ માહિતી આપવાનું કાર્ય કરવાનો કરાર મળેલ હતાં. સદર કરાર અંગે માહિતી કમિશનરશ્રી દ્વારા જાહેર કરાયેલ ટેન્ડરનો ઉલ્લેખ કરી તે મુજબની તમામ શરતો મુજબ "સ્વર્ણિમ કિસાન રથ" ની સંકલ્પના પરિપૂર્ણ કરવા માટેની કામગીરી સોંપાયેલ હતી. જે બાબતે ગુજરાત એગ્રો ઇન્ડસ્ટ્રીઝ કોર્પોરેશન લી. દ્વારા લખાયેલ તા.૧૨/૦૪/૨૦૧૦ ના પત્રની નકલ રજૂ કરે છે જેમાં સંદર્ભમાં માહિતી કમિશનરશ્રી દ્વારા અપાયેલ "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" અંગેના ટેન્ડરનો ઉલ્લેખ કરી કરેલ છે તથા



ત્યારબાદ તેને આનુષંગિક અન્ય પત્ર વ્યવહાર અંતે વિવાદીને "સ્વર્ણિમ કિસાન રથ" અંગેની કાર્યવાહી 'સ્વર્ણિમ મહોત્સવ' ના પ્રોગ્રામના ભાગરૂપે આપવામાં આવેલ છે.

આમ, "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" અને "સ્વર્ણિમ કિસાન રથ" માં લોકો સુધી પહોંચાડવાની માહિતી અલગ અલગ છે. "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" માં ગુજરાત રાજ્યને દેશનું બેસ્ટ રાજ્ય બનાવવાના ઉદ્દેશ્ય સાથે લેવાયેલા તથા વિવિધ સરકારી યોજનાઓની માહિતી આપવાનો હેતુ હતો જ્યારે "સ્વર્ણિમ કિસાન રથ" માં લોકોને ખેતી વિશેની માહિતી આપવાનો તથા જાગૃત કરવાનો હેતુ છે. બંને સંકલ્પનાઓમાં રથ કે જે ટ્રેક્ટરની ટ્રોલી પર કે I.C.V પર ફેબ્રિકેટ કરી તેના દ્વારા માહિતીનું પ્રદર્શન કરવાની કામગીરી વિવાદીને સોંપાયેલ છે અને તે માટે વિવાદીએ ટ્રેક્ટર-I.C.V પર જરૂરી ફેબ્રિકેશન કરી સરકારશ્રી/કંપની દ્વારા અપાયેલ માહિતી-પ્રદર્શન કરી સંદેશો લોકો સુધી પહોંચાડવાનું કાર્ય કરેલ છે. સમગ્ર કાર્યક્રમ દરમિયાન ટ્રેક્ટર રથનો વપરાશ કબજો કોન્ટ્રાક્ટર તરીકે વિવાદી પાસે રહેલ છે. સરકારશ્રી દ્વારા કે કંપની દ્વારા ક્યારેય પણ સદર રથનો ડાયરેક્ટ કે ઇનડાયરેક્ટ કબજો લેવાયેલ નથી આમ સમગ્ર કાર્યક્રમ દરમિયાન તમામ રથ અંગેની ઇફેક્ટીવ કંટ્રોલ અને જનરલ કંટ્રોલ કોન્ટ્રાક્ટ પાસેજ રહેલ હોય આવા પ્રદર્શનની સેવા પુરી પાડવામાટે માળખા કામ એ ટ્રેક્ટર-રથના ડીમ્ડસેલ તરીકે Transfer of Right to Use આવક નહીં પરંતુ પ્રદર્શનની સેવા પુરી પાડવાની હોય હોય તેનાપર વેરો આકારી શકાય નહીં. જેથી અધિકારીએ આકારેલ વેરો તથા આનુષંગિક વ્યાજ આવી દેડ ફરે કરવાની રજૂઆત છે.

આ બાબતે વિવાદીની બીજી રજૂઆત છે કે, આકારણી અધિકારીએ આકારણી આદેશમાં મુખ્ય આધાર તરીકે લીધેલ ચુકાદાઓ અત્રે લાગુ પડતા નથી.

મે.દિપકનાથ વિ.ONGC (2010) 31 VST 337 (GAP)ના કેસમાં ONGC તેમની વિવિધ પ્રકારની કામગીરી કરવામાટે ઓપરેટર સહિતની કેઇન ભાડે લેવા માગતા હતા અને તે માટે વિગતે ટેન્ડર નોટીસ બહાર પાડેલ હતી જે ટેન્ડર તથા ફરારની શરતો જોતાં સ્પષ્ટ થાય છે. આ ચુકાદામાં મા. કોર્ટે ટેન્ડરની તથા ફરારની વિવિધ શરતોનો અભ્યાસ કરી તેની વિગતે ચર્ચા કરેલ છે અને પારા નં.૧૮, ૧૯ માં તે બાબતે નિર્ણય કાઢેલ છે જે જોતાં સ્પષ્ટપણે ONGC માણસો સહિતની કેઇન ભાડે લેવાનો ઇરાદો ધરાવતા હતા તથા તેના કારણે દરમિયાન આ કેઇનો અંગેનો સંપૂર્ણ કબજો અને હક ધરાવતા હતા. આ કારણના સમય દરમિયાન ટેન્ડર નોટીસ the disposal of ONGC રહેલ છે તથા સમગ્ર સમય દરમિયાન ONGC ઇફેક્ટીવ કંટ્રોલ ધરાવે છે. જ્યારે વિવાદીના કેસમાં સ્વર્ણિમ સંકલ્પ જ્યોત રથ અંગે સરકાર તથા સ્વર્ણિમ કિસાન રથ અંગે કંપની ક્યારેય પણ ટ્રેક્ટર-રથ ભાડે લેવાનો ઇરાદો ધરાવતા ન હતા કે ક્યારેય પણ તેનો જનરલ કંટ્રોલ કે ઇફેક્ટીવ કંટ્રોલ ધરાવતા ન હતા પરંતુ સરકારશ્રીની યોજનાઓ માહિતીનું પ્રદર્શન કરવા માટેની સેવા લેવા માટેના કારણ કરેલ હતો. સરકારશ્રી/કંપની દ્વારા આપવામાં આવેલ સાહિત્ય તથા બેનર વગેરે સાચવવાની જવાબદારી પણ વિવાદીને સોંપાયેલ હતી. જે સાહિત્ય-બેનર વગેરે પ્રદર્શનની કામગીરી પૂર્ણ થયાબાદ સરકારશ્રીએ એજન્સીમાં પરત કરવાની જવાબદારી વિવાદીની હતી. આમ, સરકાર દ્વારા કે કંપની દ્વારા ક્યારેય પણ ટ્રેક્ટર ભાડે લેવાનો ઇરાદો રાખેલ ન હોય સદર ચુકાદાની હકીકત અત્રેના કેસથી અલગ હોય હોય તેના પાસે શકાય નહીં તેવી રજૂઆત છે.

મે બ્રહ્મપૂત્ર વેલી કન્સ્ટ્રક્શન એન્ડ સપ્લાયર્સ વિ. ONGC (2012) 53 VST 401 (GAU) નો કેસ મે. દિપકનાથ વિ. ONGC ના ચુકાદાને મળતી વિગતોનો હોઇ તે ચુકાદાના આધારે અપાયેલ છે. આ ચુકાદામાં પણ ONGC દ્વારા કેઇન ભાડે લેવાની સ્પષ્ટ બાબત છે. કરારના પ્રિએમ્બલમાં તથા વિગતોની ચકાસણી કરી ના. કોર્ટે દિપકનાથ વિ. ONGC ના ચુકાદાના પારા ૧૮ તથા ૧૯ સંપૂર્ણપણે નોંધીને તે આધારે આ કેસમાં પણ કેઇન ભાડે લેવાનો કરાર હોવાનું ઠરાવેલ તથા સમગ્ર કરારના સમય દરમિયાન કેન પરનો જનરલ કંટ્રોલ અને ઇફેક્ટીવ કંટ્રોલ ONGC નો રહેતો હોવાનું ઠરાવી આવી કેઇન ભાડાંની આવકને Transfer of Right to જાતની આવક ઠરાવી વેરાપાત્ર ઠરાવેલ છે. જ્યારે અત્રેના કેસમાં રાજ્ય સરકારે કંપની દ્વારા ક્યારેય પણ રથ કે ટ્રેક્ટરો ભાડે લેવાનો ઇરાદો ન હતો. પરંતુ તેઓ દ્વારા અપાયેલ પ્રોગ્રામના દિવસોએ જે તે ગામ કે ખાલુકા મથકે રથ દ્વારા કોન્ટ્રાક્ટરે સરકારશ્રીની/કંપનીની આપેલ સામગ્રીનું બેનર વગેરે દ્વારા માહિતીનું પ્રદર્શન કરવાની સેવા લેવાનો ઇરાદો હતો અને વિવાદીએ તે સેવા પોતાના માણસો મારફતે પુરી પાડેલ છે સદર કરાર એ ટ્રેક્ટર કે રથ ભાડે આપવાનો નહીં પરંતુ સરકાર-કંપની દ્વારા અપાયેલ માહિતી યોજનાઓની વિગતો લોકો સુધી પહોંચાડવાની સેવા પુરી પાડવા માટેનો કરાર છે. સદર સેવા પુરી પાડવા વાપરવાના ટ્રેક્ટરને કોલ્ડીંગ ડેબ્રીકેશનથી તથા પડદાથી સુશોભિત કરી તેને રથ જેવું લોક ભોગ્ય નામ આપેલ છે હકીકતે સરકારની યોજનાઓ માહિતીની જાણકારી લોકો સુધી પહોંચાડવાની સેવાનો કરાર હોઇ તથા રથ કે ટ્રેક્ટરનો ઇફેક્ટીવ કંટ્રોલ સરકારશ્રીને કે કંપનીને આપેલ નથી તેથી આ ચુકાદો અત્રે લાગુ પડતો નથી.

વિવાદીની રજૂઆત છે કે, મે. અગવાલ બ્રધર્સ વિ. હરીયાણા સ્ટેટ 113 SAT 317(SC) ના કેસમાં ભાડે આપવાની આવક પર વેરો આકારવા ઠરાવાયેલ હતો. આ કેસમાં શટરીંગનો ઇફેક્ટીવ કંટ્રોલ કંપની સોંપાયેલ હતો જ્યારે અત્રેના કેસમાં ટ્રેક્ટર કે રથનો કબજો ક્યારેય સોંપવામાં આવેલ નથી કે આપેલ પણ રથ કે ટ્રેક્ટર At the disposal of સરકાર/કંપની હસ્તક મુકવામાં આવેલ નથી. માત્ર સરકારશ્રીની માહિતી યોજનાઓના પ્રદર્શનની સેવા પુરી પાડેલ છે તેથી આ ચુકાદો અત્રે લાગુ પડતો નથી.

વિવાદી આ ઉપરાંત ગુજરાત વેટ ટ્રીબ્યુનલ દ્વારા અપાયેલ મે. કેપીપરીખના કેસ તા.૦૮/૦૧/૨૦૧૩. અખાન લોયડ લી. ઓફશોર લી. વિ. તામીલનાડુ (2012) 53 VST 89 (MAA) આંધ્રપ્રદેશ વિ. રાષ્ટ્રીય ઇસ્પાત નિગમ લી., ભારત સંચાર નિગમ લી. વિ. યુનીયન ઓફ ઇન્ડિયા તથા શ્રી નીલકંઠ ક્વોરી વર્ક્સ વિ. ગુજરાત રાજ્યનો ગુજરાત વેટ ટ્રીબ્યુનલનો ચુકાદો વગેરેનો ઉલ્લેખ કરી વિગતે રજૂઆત કરી તેમના કેસની હકીકત ધ્યાને લઇ વિવાદ કાર્યવાહી ચલાવવા રજૂઆત કરે છે. તેમની રજૂઆત છે કે તેમના કેસમાં ટેન્ડરના શબ્દો જ આપ્યા કરારનું હાર્દ રજૂ કરે છે જે ... COI intended to appoint the STRUCTURE FABRICATION EXHIBITING AGENCY છે જે સરકાર પ્રદર્શન કરનાર એજન્સીની નિમણુંક કરવા ઇચ્છે છે નહિં કે ટ્રેક્ટર કે રથ ભાડે લેવા માટે તે સ્પષ્ટ કરે છે.

આમ વિવાદીની વિગતો રજૂઆત કેસની હકીકત તથા વિગતો તેમજ વિવાદીના કરાર ટેન્ડરની વિગતો શરતો તથા આકારણી અધિકારીએ નોંધેલ ચૂકાદાઓ અને વિવાદી દ્વારા કરાયેલ તેની ચર્ચા તથા રજૂ કરાયેલ અન્ય ચુકાદાઓની વિગતો ધ્યાને લેતાં સ્પષ્ટપણે જણાય છે કે,

વિવાદીનો ધંધો વિવિધ પ્રકારના ઇવેન્ટનું મેનેજમેન્ટ કરવાનો છે અને અગાઉ દર્શાવ્યા મુજબના આશાબધા ઇવેન્ટ મેનેજ કરેલ છે. ગુજરાત રાજ્યની સ્થાપનાના ૫૦-વર્ષ પુરાયવા નિમિત્તે રાજ્ય સરકારશ્રી



દ્વારા સ્વર્ણિમ વર્ષની ઉજવણીના ભાગરૂપે "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" અને "સ્વર્ણિમ કિસાન રથ" ની પરિકલ્પના આકાર પામેલ છે. આ બંને પ્રકારના રથ એ ટ્રેક્ટરની ટ્રોલી કે I.C.V પર ફોલ્ડીંગ રીતે ફેલાઈકે કરેલ સ્ટકચર લગાડી તેના પર સરકારશ્રી/કંપની દ્વારા પુરા પાડવામાં આવેલ માહિતી, વિગતો દર્શાવતા બેનર પ્રદર્શિત કરી તેને ગામડાઓ તાલુકાઓ સુધી જ તે નિશ્ચિત સમયે દર્શાવવાના તથા લોકોને માહિતગાર કરવાનું કામ કરેલ છે. સમગ્ર કાર્યવાહી વિવાદીના કર્મચારીઓ દ્વારા પૂર્ણ કરાયેલ છે સરકારશ્રી કંપનીના અધિકારીઓ-કર્મચારીઓ તે અંગે સલાહ સુચન માર્ગદર્શન આપતા રહેલ છે. પરંતુ સમગ્ર પ્રકારના વિવાદી દ્વારા કરાયેલ છે. સમગ્ર પ્રદર્શન દરમ્યાન ટ્રેક્ટર-રથનો પ્રત્યક્ષ કે પરોક્ષ રીતે કબજો કે કચારેય સરકારશ્રી કે કંપનીના અધિકારીઓ દ્વારા લેવાયેલ નથી. પ્રદર્શન અંગેનો દિવસ દીઠ નહીં પરંતુ સમગ્ર પ્રદર્શન કાર્યવાહી કરવા અંગે રથ દીઠ સર્વિસ ચાર્જ ચુકવાયેલ છે. વિવાદીએ લાગુ પડતા દરે સર્વિસ ચાર્જ વસુલ કરી તેની જવાબદારી અદા કરેલ છે. સમગ્ર પ્રવૃત્તિમાં સરકારશ્રી કંપનીનો ઇરાદો રજૂ પાડેલે લેવાનો જણાતો નથી. પરંતુ વિવાદી પાસેથી પ્રદર્શન કરાવવાની સેવા મેળવવાનો રહેલ જણાય છે. સરકારશ્રી/કંપનીએ કચારેય પણ ટ્રેક્ટર કે રથનો ઇફેક્ટીવ કંટ્રોલ મેળવેલ નથી કે ધારણ કરેલ નથી આકારણી અધિકારીએ આકારણીમાં આધાર તરીકે લીધેલ મે. દિપકનાથ વિ. ONGC તથા મે. બાલપ્રસાદ વિ. કંટ્રોલશન એન્ડ સપ્લાયર્સ વિ. ONGC ના કેસમાં સ્પષ્ટપણે ONGC એ કેઇનો ભાડે લેવાનો કરાર કરેલ હતા તથા સદર કેઇનો અંગે કરારના સમગ્ર સમય દરમ્યાન ઇફેક્ટીવ કંટ્રોલ ધારણ રહેલ હતો તેથી તે કેસમાં કેઇનો અંગે ટ્રાન્સફર ઓફ રાઇટ ટુ ચુઝ થાય છે અને તે અંગેની આવક ને વેરાપાત્ર ગણેલ છે. પરંતુ અત્રેના કેસમાં સરકારશ્રી દ્વારા સ્વર્ણિમ સંકલ્પ જ્યોત રથ તથા મે. ગુજરાત એગ્રી ઇન્ડસ્ટ્રીઝ કોર્પોરેશન લો. દ્વારા સ્વર્ણિમ કિસાન રથ દ્વારા સરકારશ્રીની યોજનાઓની માહિતી પ્રદર્શિત કરવાની, લોકોને જાગૃત કરવાના તથા તેની વિવિધ ટેકનોલોજીઓની માહિતી આપી તે દ્વારા માર્ગદર્શન કરવા માટેની સેવા વિવાદી દ્વારા લેવાયેલ છે. આમાટે રથની સંકલ્પના કરાયેલ છે અને તે દ્વારા માહિતી યોજનાઓનું પ્રદર્શન કરાયેલ છે. સદર સેવા માટેના ટ્રેક્ટર કે રથનો પ્રત્યક્ષ કે પરોક્ષ કબજો સરકારશ્રી દ્વારા કે કંપની દ્વારા લેવાયેલ નથી. આમ, અત્રેના કેસની હકીકત જુદી પડે છે. અત્રેના કેસમાં વિવાદીએ સરકારશ્રી તથા કંપની દ્વારા પુરી પાડવામાં આવેલ માહિતીના ફોલ્ડ બેનર વગેરે પ્રદર્શિત કરવાની સેવા પુરી પાડેલ છે રથ કે ટ્રેક્ટરનો તે માટે ઉપયોગ કરેલ છે અને તે અંગે રથ દીઠ રકમ મેળવેલ છે. સદર કાર્યક્રમમાં પ્રદર્શિત કરવાયેલ માહિતી બેનર વગેરે જાળવવાની તથા યોગ્ય રીતે પ્રદર્શિત કરવાની જવાબદારી વિવાદીની છે તેમજ તરફ માર્ગદર્શન પૂર્ણ તથા સરકારશ્રી દ્વારા પ્રદર્શિત કરવા માટે અપાયેલ સામગ્રી પરત કરવા બાબતે પણ કરારમાં સ્પષ્ટ ઉલ્લેખ છે તે બાબત જ સ્પષ્ટ કરે છે કે, સમગ્ર કાર્યક્રમ દરમ્યાન રથ કે ટ્રેક્ટરનો હવાલો અને સરકારશ્રી દ્વારા પુરી પાડવામાં આવેલ પ્રદર્શન માટેની સામગ્રી સહિત વિવાદી પાસે રહે છે. આમ, વિવાદીએ સરકાર / કંપની દ્વારા અપાયેલ માહિતી પ્રદર્શિત કરવાની સેવા પુરી પાડેલ હોઇ તેમજ રથ કે ટ્રેક્ટરનો ઇફેક્ટીવ કંટ્રોલ સરકાર કે કંપનીને આપેલ નથી. તેમજ સદર રથ કે ટ્રેક્ટર At the disposal of the Govt. Or company કચારેય મુકેલ નથી. આ અંગે વિવાદીએ સર્વિસ ટેક્ષ પણ ભરેલ છે. જે તમામ બાબતો ધ્યાને લેતા સ્પષ્ટ થાય છે કે, વિવાદીએ પ્રદર્શન અંગેની સેવા પુરી પાડેલ છે અને રથ કે ટ્રેક્ટર ભાડે આપવા અંગેની બાબત મેળવેલ નથી. સરકાર / કંપનીનો ઇરાદો ટ્રેક્ટર રથ ભાડે મેળવવાનો નહીં પરંતુ પોતાની યોજનાઓ ની



માહિતીનું પ્રદર્શન કરાવવાનો હેતુ હોય તે માટે સેવા પૂરી પાડવા વિવાદી સાથે કરાર કરેલ છે. ટેન્ડરમાં તથા સ્કીપ બોફ વર્કની વિગતો ધ્યાને લેતાં પણ સ્પષ્ટપણે જણાય છે કે, COI intends to appoint the STRUCTURE FABRICATOR CUM EXHIBITING AGENCY એટલે કે, સરકાર તથા કંપનીએ રથ ભાડે લેવા માટે નહીં પરંતુ, સરકારશ્રીની યોજનાઓ-માહિતીનું પ્રદર્શન કરનાર એજન્સીની જરૂર છે અને તે અન્વયે કરાર કરી વિવાદીને કામ સોંપાયેલ છે. જે અન્વયે વિવાદીએ સેવા પૂરી પાડેલ છે અને સેવા તરીકે આવક મેળાવેલ છે તથા સર્વિસટેક્સ પણ ભરપાઈ કરેલ છે.

આમ, વિવાદીએ સરકારને તથા કંપનીને પૂરી પાડેલ "સ્વર્ણિમ સંકલ્પ જયોત રથ" તથા "સ્વર્ણિમ કિસાન રથ" એ કોઈ ખાસ પ્રકારના રથ નથી પરંતુ માત્ર ટ્રેક્ટર કે LCV જ છે અને વિવાદીએ ટ્રેક્ટર કે રથ બોફ સહકાર કે કંપનીને ક્યારેય ટ્રાન્સફર બોફ રાઇટ ટુ યુઝ અન્વયે કબજો કે કન્ટ્રોલ તબદીલ કરેલ નથી કે ક્યારેય પણ રથ કે ટ્રેક્ટર At the disposal of Government Or Company મૂકેલ નથી કે ક્યારે પણ સરકારશ્રીનો કે કંપનીનો આવો છરાદો પણ ન હતો જે ધ્યાને લેતાં વિવાદીની રજૂઆત યોગ્ય રાખવાપાત્ર જણાય છે. તેથી આકારણી અધિકારીએ "સ્વર્ણિમ સંકલ્પ જયોત રથ" તથા "સ્વર્ણિમ કિસાન રથ" અંગેની પ્રદર્શન સેવા પૂરી પાડવાની મેળાવેલ આવકને Transfer of Right to use અંગેની આવક ગણી તેને ડીડ્સ મેળાવતી તરીકે ઠરાવી વેરો આકારેલ છે તે દૂર કરવાપાત્ર જણાય છે.

વિવાદીની આકારણી આદેશના ભાગ-૨ માં આકારણી અધિકારીએ ગણેલ વેરાપાત્ર ટર્ન ઓવર રજૂઆત તરીકે ધ્યાને લેવાની સાથોસાથ અન્ય રજૂઆત ધ્યાને લઈ વિવાદ અનુસાર વેરાપાત્ર નકકી કરેલ છે અને આકારણી તબક્કે વેરાપાત્ર ટર્ન ઓવર નકકી કરતી વખતે હિસાબો મુજબ વેરો બાદ કરી વેરો આકારવાની કરેલ ભૂલ અંગેની ગણતરી સુધારવા પાત્ર જણાય છે.

વધુમાં, વિવાદી વતી સલાહકારશ્રી કલ્પેશભાઈ પટેલ હાજર રહી ગુજરાત એગ્રો. ઇન્ડ. કોર્પો. લી. (GAI) નું સર્ટીફિકેટ રજૂ કરેલ છે. જે સર્ટીફિકેટ મુજબ મે. પ્રવેગ કોમ્યુનિકેશન લી. એ તા.૧૬/૦૫/૨૦૧૦ થી તા.૧૪/૦૬/૨૦૧૦ સુધીમાં ૨૨૩ ટ્રેક્ટર તથા ટ્રોલી (સ્વર્ણિમ કિસાન રથ) તેમજ ૧૫ L.C.V (Tata 407) (સ્વર્ણિમ કિસાન રથ) તરીકે પ્રદર્શિત કરવામાં આવેલ તેમજ GAI દ્વારા પ્રવાસ કાર્યક્રમની વિગતો મુજબ સ્વર્ણિમ રથ ગુજરાતના કયા તાલુકામાં પ્રવાસ કરશે તે દર્શાવેલ હતું. જે મુજબ પ્રવેગ કોમ્યુનિકેશન લી. એ હાડેશી મેળાવેલ વાહનો, સ્વર્ણિમ કિસાન રથના ડ્રાઇવર, હેલ્પર કલીનર્સ પર આધિપત્ય અને કંટ્રોલ તેઓએ મેનના જાણ નિયુક્ત કરેલ વ્યક્તિનું રહેલ હતું. તેમજ GAI.C કે ગુજરાત સરકારે કોઈપણ વાહન આપેલ નથી કે મેનપાવર એટલે કે ડ્રાઇવર, કલીનર કે હેલ્પર પૂરા પાડેલ નથી. વિવાદીએ આ બાબતની ખરાઈ માટે GAI (Gujarat Agro Industries Corp. (A Government of Gujarat enterprise)) નું સર્ટીફિકેટ રજૂ કરેલ છે. વિવાદીએ આવા ટ્રેક્ટર તથા ટ્રોલી ભાડે રાખવા માટે ટ્રેક્ટર તથા ટ્રોલીના માલિક સાથે કરાર કરેલ કયા જની વિગતો નીચે મુજબ છે.

(૧) શ્રી લાલજીભાઈ.બી.દેસાઈ અને મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. વતી પારસકુમાર પટેલ વચ્ચે કુષિ મહોત્સવ-૨૦૧૦ દરમિયાન કિસાન રથ માટેના કોન્ટ્રાક્ટ માટેના સમજુતી કરાર મુજબ લાલજીભાઈ બી. દેસાઈએ મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. ને તા. ૮મી મે, ૨૦૧૦ થી ૧૬મી જુન, ૨૦૧૦ સુધીના સમયગાળા માટે ૨૨૩ ટ્રેક્ટર, ટ્રોલી (રથ) સાથે ભાડે આપેલ તેમજ કરારમાં શરતો પણ સામેલ છે.

(૨) શ્રી સંજય નારણભાઈ પટેલ અને મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. વતી નલીનભાઈ ભાવસાર વચ્ચે કુષિ મહોત્સવ-૨૦૧૦ દરમ્યાન કિસાન રથ માટે L.C.V.(TATA 407) કોન્ટ્રાક્ટ માટેના સમજૂતી કરાર મુજબ શ્રી સંજય નારણભાઈ પટેલએ મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. ને તા.૮મી મે, ૨૦૧૦ થી ૧૫મી જૂન, ૨૦૧૦ સુધી ના સમયગાળા માટે ૧૫ L.C.V (TATA 407) સાથે ભાડે આપેલ તેમજ કરારમાં શરતો પણ સામેલ છે.

વિવાદી વતી સલાહકારશ્રી કલ્પેશભાઈ પટેલ હાજર રહી કમિશનર ઓફ ઇન્ફર્મેશન (ફિલ્મ પ્રોટેક્શન બ્રાન્ચ (COI)), ગાંધીનગરનું સર્ટીફિકેટ રજૂ કરેલ છે. જે સર્ટીફિકેટ મુજબ મે. પ્રવેગ કોમ્યુનિકેશન લી. એ તા.૧લી ફેબ્રુઆરી, ૨૦૧૦ થી તા.૧૫ એપ્રિલ, ૨૦૧૦ સુધીના સુધીમાં ૨૨૪ ટ્રેક્ટર તથા ટ્રોલી (સ્વર્ણિમ કિસાન રથ) તરીકે પ્રદર્શિત કરવામાં આવેલ તેમજ COI દ્વારા પ્રવાસ કાર્યક્રમની વિગતો મુજબ સ્વર્ણિમ રથ ગુજરાતના કયા તાલુકામાં પ્રવાસ કરશે તે દર્શાવેલ હતું. જે મુજબ પ્રવેગ કોમ્યુનિકેશન લી. એ ભાડેથી ખરીદ કરેલ વાહનો, સ્વર્ણિમ કિસાન રથના ફાઇવર, હેલ્પર ક્લીનર્સ પર આધિપત્ય અને કંટ્રોલ તેઓએ તેમના દ્વારા નિયુક્ત કરેલ વ્યક્તિનું રહેલ હતું. તેમજ C.O.I કે ગુજરાત સરકારે કોઇપણ વાહન આપેલ નથી કે મેનપાવર એટલે કે ફાઇવર, સફાઇ કામદાર કે હેલ્પર પૂરા પાડેલ નથી. ઉપરોક્ત C.O.I નું સર્ટીફિકેટ રજૂ કરેલ છે. તેમજ તેઓએ આવા ટ્રેક્ટર તથા ટ્રોલી ભાડે રાખવા માટે તેઓના માલિક સાથે કરેલ કરારની વિગતો બીજી



શ્રી એમ બી સરન (મે. એમ બી સરન, પ્રોપ. પેઢીના માલિક) અને મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. વતી પારસ પટેલ વચ્ચે સ્વર્ણિમ સંકલ્પ જ્યોત રથ માટે ટ્રેક્ટર પૂરો પાડવા માટેનો કોન્ટ્રાક્ટ માટેના સમજૂતી કરાર મુજબ શ્રી એમ બી સરનએ મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. ને તા.૧લી ફેબ્રુઆરી, ૨૦૧૦ થી ૧૫ એપ્રિલ, ૨૦૧૦ સુધીના સમયગાળા માટે ૨૧૧ ટ્રેક્ટર તથા ટ્રોલી (રથ) સાથે ભાડે આપેલ તેમજ કરારમાં શરતો પણ સામેલ છે.

(૨) શ્રી દલપતભાઈ મનજીભાઈ પટેલ અને મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. વતી શ્રી નલીનભાઈ ભાવસાર વચ્ચે સ્વર્ણિમ સંકલ્પ જ્યોત રથ માટે ટ્રેક્ટર પૂરો પાડવા માટેનો કોન્ટ્રાક્ટ માટેના સમજૂતી કરાર મુજબ શ્રી દલપતભાઈ મનજીભાઈ પટેલએ મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. ને તા. ૬ ફેબ્રુઆરી, ૨૦૧૦ થી તા. ૧૫ એપ્રિલ, ૨૦૧૦ સુધીના સમયગાળા માટે ૧૧ નંગ LCV.(TATA 407) સાથે ભાડે આપેલ તેમજ કરારમાં શરતો પણ સામેલ છે.

વિવાદીના કેસમાં સરકાર પક્ષ તરફથી મળેલ રજૂઆતના મુદ્દા-૩ મુજબ નાથબ માહિતી નિયમનના પત્રને ધ્યાને લઈ જો ટેન્ડરમાં વેટની રકમ અગાઉથી દર્શાવેલ હોય તો આવો ભરેલ ફેરો ફોરફીટ કરવા અંગે રજૂઆત મળેલ છે.

ઉક્ત રજૂઆતની પૂર્તતા અન્વયે ફાઇલ ચકાસતાં વિવાદ ફાઇલના પાના નં. સી/૧૭૩ પર નાથબ માહિતી નિયમક, માહિતી ખાતા સાથે ટેન્ડરરો (બીડર) દ્વારા થયેલ પ્રી-બીડ મિટિંગની ચર્ચા માર્ગદર્શન અન્વયેની કાર્યવાહી નોંધ છે. આ માત્ર માર્ગદર્શન અંગેની કાર્યવાહી નોંધ છે, અંતિમ દસ્તાવેજ નથી. અમુક વિવાદીને જોઇન્ટ ડાયરેક્ટર ઓફ ઇન્ફર્મેશન દ્વારા તા.૨૪-૧૨-૨૦૦૯ના રોજ લખાયેલ પત્રમાં માત્ર ૪% સર્વિસ

દેક્ષનો ઉલ્લેખ છે, આથી ઉક્ત કરારમાં વેટનો સમાવેશ કરવામાં આવેલ નથી. જેના પુરાવા રૂપે બીલની નકલ મેળવી છે. તેમાં સર્વિસ ટેક્ષનો સમાવેશ થયેલ છે. પરંતુ વેટનો સમાવેશ થયેલ નથી.

વિવાદીની સ્વર્ણિમ સંકલ્પ જ્યોત રથ અને સ્વર્ણિમ કિસાન રથ અંગેની સેવા પુરી પાડવાની આવકને માન્યતા અંગેની આવક ન ગણવાની રજૂઆત માન્ય રાખવાપાત્ર હોઈ આ રથ એ રથ નથી પરંતુ ટ્રેક્ટર છે તે ધ્યાને લઈ, વેરાપાત્ર વ્યવહાર બનતો ન હોઈ વેરાના દર બાબતે નિર્ણય લેવાનો રહેતો નથી.

વિવાદીએ ઇવેન્ટ મેનેજમેન્ટની સેવા દરમિયાન પુરા પાડેલ ફર્નિચરની ભાડાની આવક બાદ આપવા અંગેની રજૂઆત પુરાવાના અભાવે અસ્વીકાર્ય ગણેલ છે. વિવાદીના સલાહકારની રજૂઆત ધ્યાને લઈ બીજીની C/A વેરાશાખ યથાવત રાખેલ છે.

વિવાદીની રજૂઆત અંશતઃ માન્ય રહેતાં આકારેલ વેરાને આનુષંગિક પણે આકારેલ વ્યાજ તથા દંડ આપોઆપ દૂર કરવા પાત્ર થાય છે. ભાગવાર આંકડાની પરિસ્થિતિનું પત્રક નીચે મુજબ છે.

વિગત	આકારણી મુજબ			વિવાદ મુજબ		
	ભાગ-૧ અને ૨					
વેરાણી	૧૪,૯૭,૮૪,૧૭૬			૧૪,૯૭,૮૪,૧૭૬		
વેરા અને સર્વિસ ચાર્જની	૧૦,૭૨,૨૩,૧૭૬			૧૪,૫૯,૪૯,૦૦૭		
વેરા	૪,૨૫,૬૧,૦૦૦			૩૮,૩૫,૭૦૯		
વેરા ઓવર	નેટ	ટેક્સ	એડી. ટેક્સ	નેટ	ટેક્સ	એડી. ટેક્સ
વેરા ઓવર				વેરા ઓવર		
૩,૮૯,૬૮,૨૯૧	૪૮,૭૧,૦૩૬	૮,૭૪,૨૦૭	૨૧૧,૩૦૪	૨૬,૪૧૩	૫,૨૮૩	
૮,૭૬,૮૪૦	૩૫,૦૭૩	૮,૭૬૯	૮,૭૬,૮૪૦	૩૫,૦૭૩	૮,૭૬૯	
૨૩,૨૩,૨૨૫	૨,૯૦,૪૦૨	૫૮,૪૦૦	૨૩,૨૩,૨૨૫	૨,૯૦,૪૦૨	૫૮,૪૦૦	
૪,૨૧,૬૮,૩૫૬	૫૧,૯૬,૫૧૧	૧૦,૪૧,૩૭૬	૩૪,૧૧,૩૬૯	૩,૫૧,૮૮૮	૭૨,૪૫૨	
ભાગ- ૩ / ૪ યથાવત						



ભરેલ	--	
બાકી	૧,૨૨,૮૪,૪૩૫	૧,૩૪,૧૨૨

વિવાદમાં સંભવિત રાહત રૂ.૧,૨૧,૫૦,૩૧૩/-



-સહી-

(એ જી દફતરી)

નાયબ રાજ્ય વેરા કમિશનર,
વિવાદ-૧, અમદાવાદ.

પ્રતિ,

✓ મે. પ્રવેગ કોમ્યુનિકેશન્સ પ્રાઇવેટ લીમીટેડ,
ઠે. ૧૦૨, શાંતિ આર્કેડ, આકાશ-III પાસે,
૧૩૨ ફીટ રીંગ રોડ, નારણપુરા, અમદાવાદ.

નકલ રવાના :

- સહાયક રાજ્યવેરા કમિશનરશ્રી, ઘટક-૭, અમદાવાદને ભરેલ રકમના ચલનની ખરાબ કર્યા બાદ જે માંગણાં / રીફંડ ની કાર્યવાહી કરવા સારું.

નકલ સવિનય રવાના -

- મે. સંયુક્ત રાજ્ય વેરા કમિશનરશ્રી. વિભાગ-૧. અમદાવાદને જાણ સારું.

ખરી નકલ

(એ.જી.દફતરી)

નાયબ રાજ્ય વેરા કમિશનર,
વિવાદ-૧, અમદાવાદ.

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10005 of 2022-DB

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-APP-011-2021-22 dated 23.06.2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Praveg Communications India Limited

.... Appellant

Formerly Known As Ms Praveg Communications Ltd
210-214 Athena Avenue Nr Eulogia Hotel Gota
Ahmedabad, Gujarat - 382481

VERSUS

Commissioner of Central Excise & ST, Ahmedabad

.... Respondent

7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

APPEARANCE :

Shri Jigar Shah, Advocate for the Appellant
Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 16.03.2023

DATE OF DECISION: 10.04.2023

FINAL ORDER NO. A/10844 / 2023

RAMESH NAIR :

The brief facts of the case are that the appellant are engaged in providing exhibition service, event management service, advertisement service, works contract service etc. They have carried out the activity of conceptualizing, designing and execution of stalls as per the customer's requirement and for the same, the appellant were assigned work orders from the customers viz. Tourism Corporation of Gujarat Limited, Sports Youth and Cultural Activities Department, All India Conference on livestock and Dairy Development etc. The appellant classified the said activity as works contract under Section 65 (105)(zzzza) of the Finance Act, 1994 and availed the benefit of concessional rate of tax under Rule 3(1) of the Works Contract Rules, 2007 and paid service tax at the rate of 4 / 8%. An audit

was conducted by CERA audit team whereby it was alleged that the appellant classified the services as works contract services however, there was no sale of goods therefore service cannot be classified under works contract service and service tax @ 12.36% should have been paid by the appellant. The investigation and enquiry culminated into the issuance of show cause notice dated 15.11.2017 wherein it was proposed to demand service tax amounting to Rs. 1,06,37,604/- under Section 73(1) of the Finance Act, 1994 along with interest and penalty under Section 75, 76, 77(2) and Section 78 of the Finance Act, 1994 respectively. After considering the reply filed by appellant the learned Commissioner, CGST and CE, Ahmedabad vide order-in-original No. 03/ADC/2020-21 MLM dated 03.06.2020 confirmed the demand of service tax amounting to Rs. 1,06,37,604/- along with interest for delay in making payment of service tax and penalty. Aggrieved by the order-in-original dated 03.06.2020, the appellant preferred the appeal before learned Commissioner (Appeals) however, the learned Commissioner (Appeals) upheld the order-in-original and confirmed the demand along with interest and penalty and rejected the appeal filed by the appellant. Being aggrieved by the said impugned order dated 23.06.2021 the appellant preferred the present appeal before this Tribunal.

2. Shri Jigar Shah, learned Counsel appearing on behalf of the appellant submits that the setting up of exhibition stall is a turnkey project assigned to the appellant which is rightly classified under works contract service and service tax is rightly paid under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. He submits that turnkey projects were assigned by the customers for designing, making layouts, execution and supervision of temporary structures in compliance of the terms of the

agreement. The terms of the agreement made it clear that the appellant have to undertake all the activities mentioned therein under instructions of the Professional Advisor and the Director General, SAG representative. It was a consolidated work undertaken by the appellant which was inclusive of service as well as the materials required for the preparation of the stall. The materials such as cloth, plywood, nut, bolts, flags etc. which are used in the setup of the stall are subject to the approval of the Director General, SAG Engineer. The property in goods of the material gets transferred to the customers. Hence, the appellant has rightly classified the activity under 'works contract service'. The VAT returns filed by the appellant during the impugned period also makes it abundantly clear that there is supply of both service and goods in the present case. He further submits that it is settled law that a contract that provide for the supply of goods as well as labour would a works contract and to the extent the property in goods actually passes from the contractor to the principal, the transaction would come within the purview of the extended definition of sale namely transfer of property in goods whether as goods or in some other form. This is the position after the Constitution (46th Amendment) Act, 1982 whereby the legislatures of the States were empowered to levy sales tax on certain transactions described in Article 366 (29A) of the Constitution of India. This position has been confirmed by Hon'ble Supreme Court in the case of *Bharat Sanchar Nigam Limited vs. UOI* – 2006 (3) SCC 1 wherein it was held by the Hon'ble Apex Court that the bifurcation of an activity into sale and service is permissible in the case of works contracts.

2.1 He further submits that Works Contract Composition Scheme Rules, 2007 were notified by the Legislature vide Notification No. 32/2007-ST dated 22.05.2007 providing the option to a taxable person towards determination

and payment of its liability for works contract service on composition basis. He submits that the appellant have opted for the composition scheme prior to payment of service tax and benefit of composition scheme was availed throughout the period of ongoing contract and in terms of Rule 3(3), the composition scheme granted the option to pay service tax at the rate of 2% upto 28.02.2008 and from 01.03.2008 onwards, at the rate of 4% on the total value of the works contract. However, the condition was that the appellant must not have paid the service tax under other category. He submits that in terms of Rule 3(1) of Works Contract Rules, 2007 which is over-riding effect of the provisions of Section 67 of the Act and Rule 2A of the Determination of Value Rules. Therefore, for the same reason they availed the benefit of Composition Scheme. He placed reliance on the Hon'ble Apex Court judgment in the case of *CCE vs. Larsen & Toubro Limited - 2015 (39) STR 913 (SC)*. He submits that learned Commissioner (Appeals) rejected the classification as 'works contract service' on the grounds that mere production of purchase bill does not support the ownership of the said goods were transferred. He submits that Commissioner has not considered the VAT returns submitted by the appellant towards sale of goods used in execution of works contract. He submits that show cause notice as well as the impugned order accepted that on or before 01.07.2012 the activity carried out by the appellant shall qualify under works contract service but after the period 01.07.2012 the activity carried out by the appellant shall fall under interior decorator despite the fact that appellant have not changed their scope of work then how the activity carried out by the appellant can change.

2.2 He further submits that demand of service tax under the category of taxable service under Section 65B(41) of the Finance Act, 1994 @ 12.36% is

bad in law as the appellant is not engaged in providing service simpliciter in terms of Finance Act, 1994. It is his submission that pursuant to enactment of the Negative List regime with effect from 01.07.2012, all services provided from one person to another against consideration except those covered under Negative List, exclusion or exemption, were leviable to service tax. Under the Negative List regime, the service portion in execution of works contract has been listed as a declared service under Section 66E of Finance Act, 1994. He submits that the appellant are engaged in providing works contract service to their customers. The nature of their service has remained unchanged in the Negative List regime as per amended Rule 2A of Service Tax Rules, 2006. The appellant have been discharging service tax at the applicable rates (i.e. 12.36% on 40% of taxable value of the contract) since 01.07.2012 onwards.

2.3 Learned Counsel further submits that demand of service tax under 'Interior Decorator Service' is wholly incorrect and bad in law. He submits that in the present case, the ingredients provided for defining Interior Decorator service are not satisfied inasmuch as the primary ingredient of 'Interior Decorator Service' is the provision of service by way of advice, consultancy, technical assistance or in any other manner to the service recipients coupled with planning, designing or beautification of spaces. He submits that setting-up of stalls for exhibition or events cannot be considered to classify 'Interior Decorator Service'. The work undertaken by the appellant, by no stretch of imagination can be considered to be 'Interior Decorator Service'. It is merely a setup of stall as per the design and approval of the customers. There is neither any element of beautification of space involved nor any provision of advice, consultancy that is provided by the appellant. Every pattern and design for a stall is as per the layout which

is provided by the customer to the appellant. The activity undertaken by the appellant is simply a works contract service since there is both labour and use of material as part of the contract and the property in goods gets transferred in favour of the customers. He placed reliance on the judgment in the case of R Nagendra Rao vs. CCE – 2018-TIOL-3280-CESTAT-MAD.

2.4 As regards the allegation in the show cause notice as to provision of tangible goods service he submits that it is supply of tangible goods service is completely baseless and not sustainable in law. There is no substantial basis to conclude that the appellant provided supply of tangible goods service. It has been arbitrarily concluded merely on the basis of the nomenclature used in the invoices issued by the appellant that the appellant are mainly providing Interior Decorator Service as the main service and the supply of tangible goods service is incidental or ancillary service. He submits that certain conditions are required to be satisfied in order to determine whether a transaction amounts to a 'transfer of right to use goods' which has not been satisfied. Therefore, classification 'supply of tangible goods service' is devoid of legal merits. He further submits that principle of bundled service has been incorrectly invoked in the present case. Without prejudice, he further submits that the demand under a wrong heading of service itself vitiates the proceedings and the impugned order. Since the service is not classifiable as 'Interior Decorator's Service' even if the service is not classifiable as Works Contract, the demand cannot be sustained as held in the following judgment:-

(a) AT & Co. vs. CCE - 2017 (49) STR 574 (T)

(b) CCE vs. H.M. Satyanarayan Engineers and Contractors - 2018 TIOL 2676-CESTAT MUM

(c) CCE vs. Zenith Punjab Rollers Pvt. Limited - 2018-TIOL-2524-CESTAT CHD

(d) Crescent Organics Pvt. Limited vs. CCE - 2016 (46) S.T.R. 470 (T)

(e) DSP Merrill Lynch Limited vs. CST, 2016 (44) S.T.R. 436 (T)

2.5 Without prejudice he also submits that the demand of service tax Interior Decorator Service is not sustainable as there is mechanism to ascertain the value of service component in the facts of the present case. He takes support of the following judgments:-

(a) Commissioner of Central Excise & Customs, Kerala & Ors vs. Larsen & Toubro Limited & Ors – 2015 (39) STR 913 (SC)

(b) Suresh Kumar Bansal vs. UOI – 2016 (43) STR 3 (Del.)

He further submits that the demand was raised on the basis of definition of services in erstwhile regime which are not relevant in negative list based service tax regime. For this reason also service tax demand on the classification of service under Interior Decorator's Service is not sustainable.

2.6 He also submits that there is no suppression of facts since the department was well aware of the facts hence invocation of extended period of limitation is wholly incorrect. He relied upon following decisions:-

(a) CCE vs. Vineet Electrical, 2002 (144) ELT A292 (SC)

(b) CCE vs. Raptakos Brett, 2006 (194) ELT 101 (T)

(c) CCE vs. Rishabh Velveleen, 1999 (114) ELT 839 (T)

(d) Pee Jay Apparels vs. CCE, 2001 (135) ELT 842 (T)

(e) Cosmic Dye Chemical vs. CCE, 1995 (75) ELT 721 (SC)

He further submits that extended period of limitation was also not applicable since the issue involves interpretation of law. He takes support of the following judgments:-

(a) Ispat Industries Limited vs. CCE - 2006 (199) ELT 509 (Tri.-Mum)

(b) NIRC Limited vs. CCE - 2007 (209) ELT 22 (Tri.-Del.)

(c) Chemicals & Fibres of India Limited vs. CCE 1988 (33) ELT 551 (Tri.)

(d) Homa Engineering Works vs. Commissioner of C. Ex., Mumbai - 2007 (7) STR 546 (Tri-Mum)

(e) Jaihind Projects Limited vs. CCE - [2010] 25 STT 196 (Tri-Ahmedabad)

3. Shri Prakash Kumar Singh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that Adjudicating Authority has confirmed the demand of service tax on the activity of the appellant treating as 'Interior Decorator's Service'. For ease of reference, definition of 'Interior Decorator's Service' which was prevailing prior to 01.07.2012 under Section 65(59) of the Finance Act, 1994 reads as under:-

“‘Interior Decorator’ means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of spaces, whether man-made or otherwise and includes a landscape designer.”

Section 65(105)(q) of the erstwhile Finance Act, 1994 defines taxable service of 'Interior Decorator's Service' as under:-

“(q) “taxable service” means any service provided or to be provided to any person, by an interior decorator in relation to planning, design or beautification of spaces, whether man-made or otherwise, in any manner.”

In order to classify the service under Interior Decorator service the following ingredients are to be satisfied:-

- (i) Providing by way of advice, consultancy, technical assistance or in any other manner.
- (ii) Services related to planning, design or beautification of spaces

- (iii) whether man-made or otherwise
- (iv) includes a landscape designer

As stated above, the primary ingredient of Interior Decorator's service is the provision of service by way of advice, consultancy and technical assistance or in any other manner to the service recipients coupled with planning, designing or beautification of spaces.

5. In the present case, the appellant's activity being of setting-up of stalls for exhibition or events cannot be considered to be classified under Interior Decorator's service for the reason that there is neither any element of beautification of space nor any provision of advice or consultancy is provided by the appellant. The pattern and design for a stall is as per the layout provided by the customers to the appellant. Therefore, the ingredient to classify the service under Interior Decorator's service, in the present case is not satisfied hence, the service cannot be classified under Interior Decorator's service. Moreover, the post Negative List regime, with effect from 01.07.2007, the definition of service was done away and there is only service portion in execution of works contract is listed as a declared service for the purpose of levy of service tax. The appellant's strong claim is that their service is nothing but Works Contract service. In this regard post 01.07.2012, the Works Contract service has been specified as declared service under Section 66E as under:-

"66E. The following shall constitute declared services, namely:

.....

(h) service portion in the execution of a works contract;

....."

The Works Contract Composition Scheme Rules, 2007 were notified vide Notification No. 32/2007-ST dated 22.05.2007 providing the option to a

taxable person towards determination and payment its liability for works contract service on composition basis. The said Notification No. 32/3007-ST dated 22.05.2007 reads as under:-

Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007

In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely :-

1. **Short title and commencement.** - (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

(2) They shall come into force with effect from the 1st day of June, 2007.

2. **Definitions.** - In these rules, unless the context otherwise requires, -

(a) “Act” means the Finance Act, 1994 (32 of 1994);

(b) “section” means the section of the Act;

(c) “works contract service” means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;

(d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3.(1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent. of the gross amount charged for the works contract.

Explanation. - For the purposes of this rule, gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

(2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

[Notification No. 32/2007-S.T., dated 22-5-2007]

6. It is settled law, as per Section 65B of the Finance Act, 1994, Works Contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. In the present case, admittedly the appellant have installed stalls in the exhibition along with material. In this regard the appellant have submitted invoices of the material purchased for use in the execution of contract. Some sample invoices are scanned below:-

21/11/14

SHREE HARI
★ INTERIORS ★
14, SAMPAN COMPLX, OPP. HAVMOR RESTAURANT
B/H, NVRANGPURA STAND, NVRANGPURA, A' BAD-9
Phone : 26564317, MOBILE : 9825005102

63

TAX INVOICE

To,
PRAVEG COMMUNICATIONS PVT.LTD.
102, SHANTI ARCADE,
132' RING ROAD,
NARANPURA,
AHMEDABAD-13
TIN No. : 24074203013
Transport : GOTA
L.R. No. :
From : AHMEDABAD To :

Invoice No. : T/0334
Invoice Date : 18-11-2013
Challan No. : S/217
Challan Date : 17-11-2013
Due Date : 18-11-2013
HSN Code :

SR. NO.	DESCRIPTION	QUANTITY	RATE	AMOUNT
1	NONWOVEN FABRIC RED 3.05MTR	1366.400	74.00	101113.60

carpet for

CASH / CHEQUE
Che.No.: 225448
Date: 22/11/14
Amt.: 10,81,678

APPROVED BY
Name: Jyoti Patel
Signature: [Signature]

Bank's Detail :
INTERIORS
State Bank of India, C.G.Road.
A/c.No.: 56399001946

Basic Amount : 101113.60
Disc. % :
Packing : 1300.00
VAT. 4.00 % : 4096.54
ADD.TAX 1.00 % : 1024.14
CST. % :
Round off : 0.28
Total : 107534.00

RS. : One Lakhs Seven Thousand Five Hundred Thirty Four Only.

Type of Sale : VAT 4%
Form to be collect :
TIN No. : 24073403073
CST.No. : 24573403073

For, INTERIORS
Dt. 01-10-2005
Dt. 01-10-2005 [Authorised Signatory]

Terms and conditions :
1. Subject to Ahmedabad Jurisdiction only.
2. Interest 24% P.A. will be charged for late payment.
3. Goods once sold will not be taken back or exchanged.

65

36

V

VIJAY FASTENERS

1495/35/2, Swaminarayan Godown, Bardolpura Road, Dariyapur, Ahmedabad-380004.

Ph : 22171810, 22122353 Fax : 22122352 (A/c) 22134935 E-mail : vijay.vijayfasteners@yahoo.in www.vijayfasteners.com

STOCKIST : M.S. & HIGH TENSILE BOLTS, NUTS & WASHER & ALL TYPE OF S.S. BRASS BOLTS, NUTS & WASHER

Authorized Distributors

capara

FASTENERS

TAX INVOICE

ORIGINAL COPY

M/S. PRAVEG COMMUNICATION PVT LTD.

GOTA,

AHMEDABAD.

Invoice No.: T-2676

Date: 30/11/2013

Challan No.: 3276

Challan Dt.: 30/11/2013

Order No.:

Date:

Transport.:

L.R.No.:

Delivery At:

Site:

SP.	DC NO	Product Description	Quantity	Rate	Per	DIS%	Amount
1	3276	HEX PIN 7/16X4	90.00	72.00	KG		6480.00
2	3276	HEX PIN 1/4X4	50.00	72.00	KG		3600.00
3	3276	HEX PIN 1/2X4	100.00	66.00	KG		6600.00
4	3276	HEX PIN 1/2X2.1/2	100.00	66.00	KG		6600.00
5	3276	HEX PIN 14X50	100.00	83.00	KG		8300.00
6	3276	HEX NUT 1/4	50.00	76.00	KG		3800.00
7	3277	HEX NUT 7/16	50.00	76.00	KG		3800.00
8	3277	HEX NUT 1/2	100.00	72.00	KG		7200.00
9	3277	HEX NUT 14MM	50.00	83.00	KG		4150.00
10	3277	WASHER 1/4	10.00	65.00	KG		650.00
11	3277	WASHER 1/2	10.00	65.00	KG		650.00
12	3277	FIX PANA 3/8X7/16	2.00	55.00	PCS		110.00
13	3278	FIX PANA 20X22	2.00	55.00	PCS		110.00
14	3278	RING PANA 3/8X7/16	2.00	118.00	PCS		236.00
15	3278	RING PANA 20X22	2.00	118.00	PCS		236.00

CASH / CHEQUE

Che.No.: 716679

Date: 4/12/13

Amnt: 55148

SALES AGAINST FORM :

Payment Within 0 Days&Due on:30/11/2013

GST Tin:24070200789 DT:01/07/2002

CST Tin:24570200789 DT:12/11/1982

₹ Fifty Five Thousand One Hundred Forty Eight Only.

Basic Amount.....

VAT @ 4.00%

Additional Tax@ 1.00%

Round Off.....

NET AMOUNT ₹

52522.00

2100.88

525.22

-0.10

55148.00

Terms & Conditions:

* Subject to AHMEDABAD Jurisdiction.

* Goods once sold will not be taken back.

* Complain in any quantity, quality etc. should be made within 24 hours of receipt of goods.

* Interest on delayed payment will be charged @ 18% p.a. for the period of default.

* E. & O. E.

FOR VIJAY FASTENERS

AUTHORISED SIGNATORY

APPROVED BY

Name: Bhishesh Patel


Signature: Bhishesh


In respect of bought-out material used for execution of the contract, the appellant have also discharged State VAT. The sample copies of receipt of VAT payment are scanned below:-

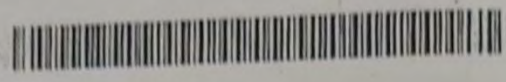
12/2 530 18

<https://www.commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewAckReceipt>

Annexure - 3
68




999131425103865



Type of Act
VAT

Acknowledgement No 999131425103865
Acknowledgement Date 13/01/2014
Receipt Date 13/01/2014

UNIT Ghatak 7 (ABD)

Range Range 2 (ABD)

Division Division 1 (ABD)

Dealer's Name/Firm Name PRAVEG COMMUNICATIONS PVT. LTD.

officer --

Type of Return Yearly

Period From 01/04/2012

Period To 31/03/2013

Registration No 24074203013

Status Regular

Branch Status PRPL

Branch Name 102,
Ghatlodia,Ahmedabad

Details Of Return	
VAT Form205,VAT Form205A	
Date of Submission	13/01/2014
Tax Payable	197670
Penalty Payable	2000
Interest Payable	8994
Total Amount Payable	208664

Nature Of Default					
Month	Tax	Penalty	Interest	Total Amount Payable	Total Amount Paid
01/04/2012					
31/03/2013	197670	2000	8994	208664	null

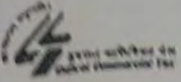
[/www.commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewAckReceipt](https://www.commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewAckReceipt)

12


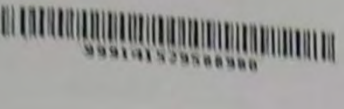
10/01/2015

<https://www.commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewAckReceipt>

69
78



999141529588980



Type of Act
VAT

Acknowledgement No 999141529588980
Acknowledgement Date 10/01/2015
Receipt Date 10/01/2015

UNIT Ghatak 7 (ABD)
Dealer's Name/Firm Name PRAVEG COMMUNICATIONS PVT. LTD.
Type of Return Yearly
Registration No 24074203013
Branch Status PRPL

Range Range 2 (ABD)
Period From 01/04/2013
Status Regular
Branch Name 102,
Ghatlodia,Ahmedabad

Division Division 1 (ABD)
officer --
Period To 31/03/2014

Details Of Return	
VAT Form205,VAT Form205A	
Date of Submission	10/01/2015
Tax Payable	122891
Penalty Payable	0
Interest Payable	2150
Total Amount Payable	125041

Nature Of Default					
Month	Tax	Penalty	Interest	Total Amount Payable	Total Amount Paid
01/04/2013	122891	0	2150	125041	null
31/03/2014					

<https://www.commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewAckReceipt>

1/2

With regard to the payment of VAT, the appellant have also submitted VAT return in Form-205 under Section 33 of Gujarat VAT Act, 2003. One sample copy of such Form-205 is scanned below:-

67

FORM 205
[See sub-rule(2) of rule 20]

(SELF ASSESSMENT UNDER SECTION 33 OF THE GUJARAT VALUE ADDED TAX ACT, 2003)
FOR THE YEAR 2012 - 2013

Original / Revised ORIGINAL
If Revised, Date of original return
Acknowledgement No. (Attach a note explaining the revisions)

Registration No.	24074203013		
PAN			
Tax Period	From	01/04/2012	To 31/03/2013
Name of the Registered Dealer	PRAVEG COMMUNICATIONS PVT. LTD		
Address			
Room/Block/Flat No.	102		
Municipal No & Name of Building	SHANTI ARCADE		
Road/Street/Land	NR. AKASH-III	Area	132 FT RING ROAD
Post Office	NARANPURA	Taluka	AHMEDABAD
Village/Town/City	AHMEDABAD	District	AHMEDABAD
Pin Code No.	380013		

PART I - TURNOVER OF SALES AND PURCHASES

Description	Sales	Purchase
01. Total Turnover	163140936	116886289
02. Deduct :		
02.1 Exempted from tax under section 5(1)	0	0
02.2 Exempted from tax under section 5(2)	0	1016197
02.3 Branch transfer or consignment to and from outside the state.		
(a) of the goods manufactured	0	
(b) other than (a) above	0	0
02.4 Purchases not qualifying for tax credit as per section 11(8) read with section 11(5)		61270250
02.5 Reduction as per item 37 of Annexure III	0	1539860
02.6 Charges towards labour, service and other charges referred to in sub-clause (c) of clause (30) of section 2	160279790	49449572
Total of (02.1) to (02.6)	160279790	113275879
03. Net Taxable Turnover (01 - 02)	2861146	3410410

PART II - OUTPUT TAX

Rate of Tax	Commodity	HSN Code	Turnover excluding Tax	Tax	Additional Tax	Total Turnover including tax
1%			0	0	0	0
4%			150860	6034	1508	158402
12.5%			2350213	293776	58755	2702744
Other			0	0	0	0
Total			2501073	299810	60263	2861146
04.1	Total Tax					360073

Tax payable on the purchases of taxable goods under section 9 (Including Tax)

Rate of Tax	Commodity	HSN Code	Turnover of purchase	Tax	Additional Tax	
1	2	3	4	5	6	
1%			0	0	0	
4%			0	0	0	
12.5%			0	0	0	
Other			0	0	0	
Total			0	0	0	
Total Tax (col.5 + col.6)						0

04.2

PART III INPUT TAX

Description	Value of Goods (Rs.)
05. Purchases of Capital goods from Registered Dealer	0
06. Purchases of Taxable goods other than capital goods from Registered Dealer	3410410
07. Purchases of Taxable goods from a person other than Registered Dealer	0
Total	3410410

Calculation of Input Tax Credit (Including Tax)

Rate of Tax	Commodity	HSN Code	Turnover of Purchase	Tax	Additional Tax
1	2	3	4	5	6
1%			0	0	0
4%			3410410	129922	32481
12.5%			0	0	0
Other			0	0	0
Total (Col. 5 + Col. 6)					162403
Tax payable on the purchases of taxable goods under section 9					0
Tax paid under the Gujarat Tax on Entry of Specified Goods into Local Areas Act, 2001 (Guj. 22 of 2001)					0
Total					162403

PART IV TAX CREDIT

Description	Amount (Rs.)
09. Tax credit brought forward from previous tax period	0
10. Tax credit as per 8	162403
Total (9 + 10)	162403
Adjustment of tax on purchase as per Annexure II (±)	0
11. Gross Tax Credit	162403
12. Reduction in tax credit	
12.1 Under section 11(3)(b)(i) (other than 12.2 below)	0
12.2 Under section 11(3)(b)(ii) (of the goods manufactured)	0
12.3 Under section 11(3)(b)(ii) (of fuels used for mfg. of goods)	0
12.4 Under section 11(5) (for use in manufacture of goods exempted from tax under section 5(1) and 5(2))	0
12.5 Other reason	0
TOTAL : [12.1 + 12.2 + 12.3 + 12.4 + 12.5]	0
13. Net tax credit admissible (11 - 12)	162403

71

PART V - NET TAX PAYABLE	
Description	Amount (Rs.)
14. The amount of tax payable as per 04.1	
15. Tax payable on the purchases of taxable goods u/s 9 as per 04.2	365073
16. Total Tax	0
17. LESS :	365073
17.1 Adjustment of tax on sale as per Annexure I (1)	
17.2 Remission under section 41	0
17.3 Credit u/s 69B(9) of the amount of tax deducted at source (enclose Form-703)	0
17.4 Adjustment of the amount deposited under section 22	0
17.5 Net tax credit as per 13	0
Total	162403
18. Net tax payable (16 - 17)	162403
19. Excess Amount of tax credit (18 - 17)	197670
20. Excess Amount of tax credit adjusted against CST	0
21. Excess Amount of tax credit claimed as refund	0
22. Amount of tax credit carried forward to the next tax period [19-(20+21)]	0

PART VI - PAYMENT OF TAX			
Description	Amount (Rs.)		
23. Amount payable			
23.1 Amount of tax payable as per 18	197670		
23.2 Amount of interest	8994		
23.3 Amount of penalty	2000		
Total :	208664		
24. Amount paid	208664		
25. Amount outstanding	0		
26. Amount paid in excess	0		
Challan No.	Date of Payment	Bank / treasury in which amount paid	Amount
4476874	09/10/2012	STATE BANK OF INDIA	166326
4476895	02/11/2012	STATE BANK OF INDIA	19700
4221939	31/05/2013	STATE BANK OF INDIA	7210
3830725	20/09/2013	STATE BANK OF INDIA	15428
TOTAL AMOUNT			208664

ANNEXURE II		(In Rupees)	
Adjustment in sale as per	Increase	Decrease	
27. Sub-section (1) of section 8			
27.1 Sub-clause (a) (Sale cancelled)			
27.2 Sub-clause (b) (alteration in consideration of sale)			
27.3 Sub-clause (c) (goods returned)			
28. Sub-rule (7) of rule 17 (pertains to transactions through commission agent)			
Total :			
29. Net of Sale			
Adjustment in tax on sale			

72

(In Rupees)

ANNEXURE II

	Increase	Decrease
Adjustment in Purchase		
30. On account of credit note / debit note		
31. On account of goods on which right to use such goods is transferred as defined under sub-clause (d) of clause(23) of section2		
Total		
32. Net of Purchase		
Adjustment in tax on purchase		

(In Rupees)

ANNEXURE III

Reduction	Sales	Purchase
33. Sales / Purchases as specified in sub-section (2) of section 5 of the Central Act. (By way of transfer of documents of title)	0	0
34. In the courseof export/import out of country	0	0
35. Sales/purchases as specified in sub-section (3) of section 5 of te Central Act.	0	0
36. In the course of Interstate trade and commerce other than branch transfer or consignment.	0	1539860
37. Total	0	1539860

ANNEXURE IV

Description of top 3 commodities dealt in during the tax period.

1	4% COMMODITY
2	
3	

Tax Invoice Issued in the Period	From No.		To	
Retail Invoice Issued in the Period	From No.		To	

PART VII - PAYMENT OF TAX

Month	Amount Paid under Gujarat Value Added Tax, 2003	Date of Payment	Amount Paid under Central Sales Tax, 1956	Date of Payment	Total Payment
APRIL	166326	09/10/2012			166326
MAY					
JUNE					
JULY	19700	02/11/2012			19700
AUGUST					
SEPTEMBER					
OCTOBER					
NOVEMBER					
DECEMBER					
JANUARY	22638	20/09/2013			22638
FEBRUARY					
MARCH					
Others					
Other :					
Total	208664		0		208664

69
73

DECLARATION

I, PARASKUMAR MANEKLAL PATEL
Declare that the information given is true and complete. (Designation) DIRECTOR

Full Signature of authorized signatory

Place AHMEDABAD

Date 10/10/2013

Name PARASKUMAR MANEKLAL PATEL

Status DIRECTOR

FOR OFFICE USE

Return received by _____	Date _____
CTO Code No. _____	_____
Entry No. in office record _____	Date _____

The appellant have also submitted VAT assessment order. The copy of the same is scanned below:-

Commercial Tax Gujarat

Page 1 of 5

ANNEXURE-3-c

FORM-304

[See sub-rule (2) of 29, sub-rule (2) of rule 31 and sub-rule(2) of 32]
Assessment Order

(under section 32/34/35 of Gujarat Value Added Tax Act, 2003)

Name of the Dealer :	PRAVEG COMMUNICATIONS LIMITED
RC No. :	24074203013
Address :	102, SHANTI ARCADE, 132 RING ROAD, NARANPURA, AHMEDABAD, AHMEDABAD-380061
Assessment Year :	2017-2018
Period of assessment :	01/04/2013 - 31/03/2014
Date of service of notice in form :	09/01/2018

PART I

Turnover of sales and purchases		(Rupees)			
Description	Sales		Purchases		
	As per Return	As per Assessment	As per Return	As per Assessment	
01. Total turnover	250347679	250347679	163814912	163814912	
02.1 Exempted from tax under section 5(1)		0		2184037	
02.2 Exempted from tax under section 5(2)		0	2184037	0	
02.3 Branch transfer or consignment to and from outside the state		0		0	
(a) of the goods manufactured		0			
(b) other than (a) above		0		0	
02.4 Purchases not qualifying for tax credit as per section 11(8) read with Section 11(5)			72822268	159054556	
02.5 Reduction as per item 37 of annexure-III		0	945062	945062	
02.6 Charges towards labour, service and other charges referred to in sub-clause (c) of clause (30) of section 2	247136149	247136149			
Total of (02.1) to (02.6)	247136149	247136149	162183655	162183655	
03. Net Taxable Turnover (01-02)	3211530	3211530	1631257	1631257	

PART II

Output Tax						
As per Return						
Rate of tax	Commodity Name	Commodity Code	Turnover excluding tax	Tax payable	Additional tax	Total Turnover including tax

Commercial Tax Gujarat

82

Page 2 of 5

12.5	Not Available	99998	623700	77963	15592	717255
4	4 %	ITM04	2375500	95020	23755	2494275
TOTAL			2999200	172983	39347	3211530
04.1 Total Output Tax						212330
04.2 Total Tax Payable on Purchase of taxable goods under section 9						0
Tax Liability(04.1+04.2)						212330

As per Assessment

Rate of tax	Commodity Name	Commodity Code	Turnover excluding tax	Tax payable	Additional tax	Total Turnover including tax
4	Others	99999	2375500	95020	23755	2494275
12.5	Others	99999	623700	77963	15593	717255
TOTAL			2999200	172983	39348	3211530
04.1 Total Output Tax						212330
04.2 Total Tax Payable on Purchase of taxable goods under section 9						0
Tax Liability(04.1+04.2)						212330

PART III

Input tax

Description	Value of goods (Rupees)	
	As per Return	As per Assessment
05. Purchase of capital goods from registered dealers	0	0
06. Purchases of taxable goods other than capital goods from registered dealers	1631257	1631257
07. Purchases of taxable goods from a person other than registered dealer	0	0
Total	1631257	1631257

Calculation of Input Tax - As per Return

Rate of tax	Commodity Name	Commodity Code	Turnover of purchase	Tax charged in respect of item 7 & 8	Additional tax
4	4 %	ITM04	1489255	56734	14183
12.5	12.5 %	ITM16	142002	15435	3087
Total(Col.5+Col.6)					89439
Total Tax Payable on Purchase of taxable goods under section 9					0
Tax paid under the Gujarat Tax on entry of specified goods into Local Areas Act, 2001 (Guj. 22 of 2001)					89439
Total(Input Tax Credit)					

Calculation of Input Tax - As per Assessment

				Tax charged

Commercial Tax Gujarat

Rate of tax	Commodity Name	Commodity Code	Turnover of purchase	in respect of Item 7 & 8	Additional tax
4	Others	99999	1418348	56734	14183
12.5	Others	99999	123480	15435	3087
Total (Col.5+Col.6)					89439
Total Tax Payable on Purchase of taxable goods under section 9					0
Tax paid under the Gujarat Tax on entry of specified goods into Local Areas Act, 2001 (Guj. 22 of 2001)					0
08. Total (Input Tax Credit)					89439

PART IV

Tax credit		
Description	Admissible tax credit (Rupees)	
	As per Return	As per Assessment
09. Tax credit brought forward from previous tax period		0
10. Tax credit as per 08	89439	89439
Total (09 + 10)	89439	89439
Adjustment of tax on purchase as per Annexure II		0
11. Gross tax credit	89439	89439
12. Reduction in Tax Credit		
12.1 Under section 11(3)(i)(a) (other than 12.2 below)		0
12.2 Under section 11(3)(a)(ii) for the goods manufactured (as per illustration given in the instructions)		0
12.3 Under section 11(3)(b)(iii) of fuels used for manufacture of goods		0
12.4 Under section 11(5) for use in manufacture of goods exempted from tax under sections 5(1) and 5(2)		0
12.5 Other reason		0
Total: [12.1 + 12.2 + 12.3 + 12.4 + 12.5]	0	0
13. Net tax credit admissible (11 - 12)	89439	89439

PART V

Net tax payable		
Description	(Rupees)	
	As per Return	As per Assessment
14. The amount of tax payable as per 04.1	212330	212250
15. Tax payable on the purchases of taxable goods under section 9 as per 04.2	0	0
16. Total tax	212330	212250
17. Less:		
17.1 Adjustment of tax on sale as per Annexure I	0	0

Commercial Tax Gujarat

85

Page 4 of 5

17.2 Remission under section 41		
17.3 Credit u/s 57B(9) of the amount of tax deducted at source (enclose Form-41)	0	0
17.4 Adjustment of the amount deposited under section 22	0	0
17.5 Net tax credit as per 1.3	0	0
Total	89439	89439
18. Net tax payable (16-17)	89439	89439
19. Excess amount of tax credit (18-17)	122891	122891
20. Amount of tax credit adjusted against CST	0	0
21. Excess Amount of tax credit claimed as refund	0	0
22. Amount of tax credit carried forward to the next tax period [18-(20+21)]	0	0

PART VI

Payment of tax		
Description	(Rupees)	
	As per Return	As per Assessment
23. Amount payable		
23.1 Amount of tax payable as per 19	122891	122891
23.2 Amount of interest	2150	2150
23.3 Amount of penalty		0
Total	125041	125041
24. Amount paid	125041	125041
25. Amount outstanding		0
26. Excess amount payable		0
26.1 Refund already given		0
26.2 Excess amount of refund adjusted against CST		0
26.3 Interest on Refund		0
26.4 Net Refund Payable (Refund + Interest)		0

Annexure I		(Rupees)		
Adjustment in sale	Increase		Decrease	
	As per Return	As per Assessment	As per Return	As per Assessment
27. sub-section (1) of section 8		0		0
27.1 Sub-clause (a) (sale cancelled)				0
27.2 Sub-clause (b) (alteration in consideration of sale)		0		0
27.3 Sub-clause (c) (goods returned)				0
28. sub-rule(7) of rule 17 (pertains to transactions through commission agent)		0		0
Total :	0	0	0	0

Commercial Tax Gujarat

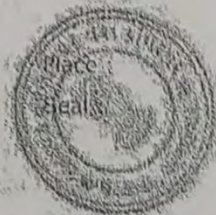
29. Net of sale	0	0
Annexure II		
Adjustment in purchase	(Rupees)	
	Increase	Decrease
	As per Return	As per Assessment
30. on account of credit note/debit note		0
31. on account of goods on which right to use such goods is transferred as defined under sub-clause (d) of clause (23) of section 2		0
Total :	0	0
32. Net of purchase	0	0

Annexure III		(Rupees)	
Reduction	Sales		Purchases
	As per Return	As per Assessment	As per Return
33. Sales/purchases as specified in sub-section (2) of section 5 of the Central Act (By way of transfer of documents of title)		0	0
34. In the course of export/import out of country		0	0
35. Sales/purchases as specified in the sub-section (3) of section 5 of the Central Act		0	0
36. In the course of interstate trade and commerce other than through consignment		0	945062
37. Total :	0	0	945062

Remarks

નમુના-૩૦૨ની નોટીસ અન્વયે વેપારીશ્રી યતી તેઓશ્રીના સી.ટી.વી. શ્રી, તેજસ મહેતા સબ-૨૦૧૩/૧૪ ની આકારણીના તમામ હિસાબી સાહિત્ય સાથે હાજર રહ્યા. વેપારીશ્રીનો ધંધો ઇલેક્ટ્રોનિક મેનુફેચર, સાઇબા પોર્ટ, હોડીંગરા, રીફલેક્ટીવ બોર્ડ, ફ્લીયર ની છે. આકારણી સમયના કુલ વેચાણો રૂ. ૨૫,૦૬,૪૭,૬૭૯/- છે તેમજ ચાલીસનો રૂ. ૨૪,૭૧,૩૬,૧૪૯/- પુરાવા આધારિત ચકાસી બાદ કરતાં કુલ વેચાણ વેચાણો રૂ. ૩૨,૧૧,૫૩૦/- રહે છે જેના ઉપર ભાગ-૨ મુજબ કુલ વેરો રૂ. ૨,૧૨,૩૩૦/- આકારણ છે. સંજ. ૨૦૧૩/૧૪ માં કુલ ખરીદી રૂ. ૧૬,૩૯,૧૪,૯૧૨/- છે. જેમાંથી માત્રી બોધની ખરીદી રૂ. ૨૧,૮૪,૦૩૭/- તથા વેરાશાખને પાત્ર ન હોય તેવી ખરીદી રૂ. ૭,૨૮,૨૨,૨૮૮/- તેમજ ઓ.જી.એસ ખરીદી રૂ. ૯,૪૫,૦૬૨/- તેમજ ભેખર ચાલીસની રૂ. ૮,૯૨,૩૨,૨૮૮/- મળી કુલ કપાત રૂ. ૧૬,૨૧,૮૩,૨૫૫/- બાદ આપતા કુલ વેચાણ ખરીદી રૂ. ૧૬,૩૧,૨૫૭/- રહે છે. જેના ઉપર ભાગ-૩ મુજબ કુલ વેરાશાખ રૂ. ૮૯,૪૩૯/- થાય છે. B.F વેરાશાખ રૂ. શૂન્ય છે. જેમાં ચાલુ વર્ષની વેરાશાખ રૂ. ૮૯,૪૩૯/- ઉમેરતા કુલ વેરાશાખ રૂ. ૮૯,૪૩૯/- થાય છે. વેપારીશ્રીને ભરવાપાત્ર વેરો રૂ. ૨,૧૨,૩૩૦/- થાય છે. જેમાંથી રૂ. ૮૯,૪૩૯/- વેરાશાખ બાદ કરતા કુલ ભરવાપાત્ર વેરો રૂ. ૧,૨૨,૮૯૧/- રહે છે. જેમાં વેરો વેગેનું સ્વાજ રૂ. ૨,૧૫૦/- ઉમેરતાં વેરો ભરવાપાત્ર વેરો રૂ. ૧,૨૫,૦૪૧/- થાય છે. જેની સામે વેપારીશ્રીએ ભરેલ રકમ રૂ. ૧,૨૫,૦૪૧/- મજરે આપતા કોઈ રકમ ભરવાની રહેતી નથી. જે અંગે વેપારીશ્રીને જાણ કરવા.

Signature _____
Commercial Tax Officer (S)
Date : 09-01-2018, Ahmedabad.



True copy

Comm. 18/1/18
13

The appellant have also submitted Chartered Accountant certificate showing purchase of material and sale thereof:-

V.V. Patel & Co.
Chartered Accountants

HEAD OFFICE :
B/2, 9th Floor, Palladium, B/h. Divya Bhaskar Press Office,
Off. S. G. Highway, Corporate Road,
Makarba, Ahmedabad-380 051
Tele-fax : 079-27430594 / 95, 26935400, 99251 71083, 99090 18394
Website : www.vvpatelcompany.com
E-mail : info@vvpatelcompany.com

ANNEXURE- 3 F 121

TO WHOMEVER IT MAY CONCERN


This is to certify that M/s. Praveg Communications Limited are work as Event management, Business Exhibition services, Advertisement and Works Contract Services at 102,1st Floor shanti arcade, Nr. Akash-III, 132 fit ring road, Naranpura, Ahmedabad. Following are the purchases and sales data are certified by us.

PARTICULARS	F.Y. 2012-13	F.Y. 2013-14
TOTAL PURCHASE (RS.)	116686289/-	163814912/-
• LABOUR CHARGES	49449572/-	86232288/-
• MATERIAL PURCHASES	67236717/-	77582624/-
TOTAL SALES (RS.)	163148079/-	250347679/-
• WORKS CONTRACT SERVICES	77698819/-	66006973/-
• OTHER SERVICES	82588114/-	181129176/-
• TRADING OF GOODS	2861146/-	3211530/-

This certificate issued on specific request by party.

Place: Ahmedabad

Date: 11.08.2020



For, V.V.PATEL & CO.
Partner

OFFICES

3, Ground Floor, Ruty Business Park,
Vijaynagar Bus Terminal, Thane (West), Mumbai-400 601

1208, Nirmal Tower, 26, Barakhamba Road, New Delhi-110 001

Surat: 18, Shanti Vihar Society, Magob, Parvat Pattiya, Surat-395 010

Rajkot: 202, Shreeji Complex, Opp. Imperial Heights, Nr. Big Bazar,
150 ft. Ring Road, Rajkot-360 005

7. From the above documents which are undisputed it is absolutely clear that the appellant have purchased goods and used the same in execution of Works Contract for installation of stalls at exhibition centers. The appellant have also discharged VAT in respect of goods used in execution of Works Contract. In these undisputed facts, the entire activity of the appellant clearly falls under Works Contract service. Accordingly, the service tax at concessional rates discharged as per the Rule 3(1) of Works Contract Rules, 2007 is absolutely correct and legal. Therefore, no demand exists. This issue has been considered by the Hon'ble Supreme Court in the case of Total Environment Building Systems Pvt. Limited which is affirmed by Hon'ble Supreme Court in the case of *CCE vs. Larsen & Toubro Limited – 2015 (39) STR 913 (SC)*. The Hon'ble Supreme Court in the case of Total Environment Building Systems Pvt. Limited (*supra*) decided the matter as under:-

“19. Before proceeding to consider the aforesaid rival contentions, it would be useful to discuss the evolution, meaning and content of the expression works contract in the context of sales tax law and as well as under the service tax regime. This is, having regard to the definition of works contract being inserted w.e.f. 1st June, 2007 to the Finance Act, 1994 which seeks to impose service tax on the service aspect of a works contract. The reason for this exercise is because works contract by itself is not taxable. A works contract as defined by the amendment has two components, namely, a sale component and a service component. It is only when both the components are satisfied and co-exist that a contract becomes a works contract as defined. Further, it is only on the service component of the works contract that the service tax is leviable w.e.f. 1st June, 2007. As far as the sale component in a works contract is concerned, the Sales Tax laws of the respective States would apply. It is also necessary to state that after the enforcement of the Central Goods and Services Tax Act (CGST), 2017 regime the matter is covered under that Act. Therefore, it is necessary to gather the meaning of works contract from judicial precedent in order to answer the rival submissions in the instant case.

Section 65(105)(zzzza) of the Finance Act, 1994 as amended by the Finance Act, 2007 which defines work contract, has been extracted as under, for ease of reference :

“ ‘Works contract’ means a contract wherein, -

transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

such contract is for the purposes of (ii) carrying out, -

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and

electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.”

A reading of the aforesaid definition would indicate that two requisites must be satisfied before service tax on works contract could be levied. In other words, a contract in order to be works contract must involve :

“(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, *and*

(ii) such contract is for the purposes of carrying out, -

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.”

Thus, works contract has two essential components: firstly, sale of goods involved in the execution of such contracts which would attract Sales Tax or Value Added Tax (VAT) as the case may be, i.e., prior to the enforcement of the Goods and Services Tax regime and secondly, a service component which is specified in clause (ii)(a)-(e) of the definition of works contract which would attract Service Tax under the provisions of the Finance Act, 1994 as amended in the year 2007. If both the above requisites are present, then Service Tax on works contract is leviable on the service component. This is clear from the use of the word “and” between components (i) and (ii) of the definition of works contract under Clause (zzzza) of Section 65 of the Finance Act, 1994 which is as per the amendment in the year 2007. Thus, the definition speaks of a composite works contract comprising of an element of sale and an element of service.

Having regard to the specific definition of works contract introduced in the Finance Act, 1994, w.e.f. 1st June, 2007 and bearing in mind that both clauses (i) as well as (ii) of the definition have to be satisfied before the levy of service tax on the service component of a works contract, it is necessary to understand the scope and ambit of the expression

“transfer of property in goods” in clause (i) of the definition of works contract from various judgments of this Court. Further, sales tax/VAT could also be levied on such transfer of goods involved in the execution of such contracts and a service tax on as specified in clause (ii) of the definition of works contract.

The evolution of the concept of works contract is noted as under as it is on the service component of such contract that service tax is leviable. The reference to judgments on works contract under Sales Tax law would be pertinent.

(A) Prior to the 46th Amendment of the Constitution, levy of sales tax on sale of goods involved in the execution of a works contract was held to be unconstitutional in *Gannon Dunkerley (I) - State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.* [AIR 1958 SC 560]; [1959 SCR 379]. A Constitution Bench of this Court held that in a building contract where the agreement between the parties was that the contractor should construct the building according to the specifications contained in the agreement and in consideration, received payment as provided therein, there was neither a contract to sell the materials used in the construction nor the property passed therein as movables. It was held that in the building contract which was one (entire and indivisible), there was no sale of goods and it was not within the competence of the concerned provincial State Legislature (Madras Legislature) to impose tax on the supply of the materials used in such a contract treating it as a sale. Consequently, it was held that in a building contract which was one, entirely indivisible, there was no sale of goods and it was not within the competence of the Provincial State Legislature to impose tax on the supply of materials used in such a contract treating it as a sale. This was on the premise that the works contract was a composite contract which is inseparable and indivisible.

(B) As a result of this dictum, the Law Commission of India in its 61st Report specifically examined the taxability of works contract and examined the particular question whether the power to tax indivisible contract of works should be conferred on the States. This led to insertion of Clause (29A) to Article 366 of the Constitution. For ease of reference, the same is extracted as under :

“Article Definitions. 366. - In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say -

“tax on the sale or purchase of goods” [(29A) includes -

(a) xx xx xx

(b) A tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;”

(C) In *Gannon Dunkerley (II) - Gannon Dunkerley and Co. v. State of Rajasthan* [1993 (1) SCC 364], the Constitution Bench of this Court explained the effect of the legal fiction introduced by sub-clause (b) of Clause (29A) of Article 366 of the Constitution. The following principles were enunciated, to outline the operation of sub-clause (b) of Clause (29A) of Article 366 :

(a) That by virtue of the legal fiction in Clause 29A, even in a single indivisible works contract, there is a deemed sale of goods and such sale has all the incidents of ‘sale of goods.’

(b) That the value of goods involved in the execution of a works contract may be determined by taking into account the value of the entire works contract and deducting therefrom, the charges towards labour and services.

(c) That the following charges towards labour and services were to be excluded in determining the value of goods sold in executing a works contract :

- (i) Labour charges for execution of the works;
- (ii) Amount paid to a sub-contractor for labour and services;
- (iii) Charges for planning, designing and architect's fees;
- (iv) Charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
- (v) Cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and
- (vi) Cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
- (vii) Other similar expenses relatable to supply of labour and services;
- (viii) Profit earned by the contractor to the extent it is relatable to supply of labour and services.

(D) Therefore, under the regime that existed prior to the amendment and insertion of Clause (29A) to Article 366 of the Constitution, a typical works contract would not involve sale of goods and no sales tax was leviable on such works contract. However, subsequently, by way of the Constitution (Forty-sixth Amendment) Act, 1982, Clause (29A) came to be inserted into Article 366 of the Constitution of India, providing for an inclusive definition of the expression "tax on the sale or purchase of goods" in relation to various transactions and dealings including *"tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract."*

(E) Following the introduction of the said clause, most States amended their Sales Tax statutes to cover 'works contract.' The Constitutional validity of the aforementioned provisions by which the legislatures of the States were empowered to levy sales tax on certain transactions described in sub-clauses (a) to (f) of Clause (29A) of Article 366 of the Constitution as also the question, whether, the power of the State legislature to levy tax on the transfer of property in goods involved in the execution of works contract is subject to the restrictions and conditions contained in Article 286 of the Constitution, were considered by a Constitution Bench of this Court in *Builders Association of India v. Union of India* [(1989) 2 SCC 645]. Therein, while upholding the constitutional validity of the aforementioned provisions, the Constitution Bench explained the unique features of a composite contract relating to work and materials and expounded on the meaning, effect and amplitude as also contours of the provisions pertaining to the taxing power of the States in relation to works contract particularly in paragraphs 38-40 of the judgment.

(F) In light of the said discussion, this Court concluded that the transfer of any goods in sub-clauses (a) to (f) of Clause (29A) of Article 366 of the Constitution is by way of a deeming provision i.e., a deemed sale. This Court however, cautioned that the levy of sales tax after the 46th Amendment to the Constitution of India has to still comply with the restrictions imposed under Articles 286 and 269 of the Constitution.

(G) Later a three-judge Bench of this Court in *State of A.P. v. Kone Elevators* [(2005) 3 SCC 389 = [2005 \(181\) E.L.T. 156](#) (S.C.)] had taken the view that a contract for

manufacture, supply and installation of lifts is a “sale” and the entire value of the consideration can therefore be taxed under the sales tax law. However, the matter was subsequently referred to a Larger Bench to review the issue afresh. This Court, on re-hearing the matter referred to it, in *Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu* [(2014) 7 SCC 1 = [2014 \(34\) S.T.R. 641](#) (S.C.) = [2014 \(304\) E.L.T. 161](#) (S.C.)], observed that the installation obligation in a contract for manufacture, supply and installation of lift is not merely incidental, but was a profound part of the entire contract. That various components were assembled together and installed at site as a permanent fixture to the building. The goods, skill and labour elements are intimately connected with one another and the contract is not divisible. Therefore, this Court concluded that a contract for manufacture, supply and installation of lifts was a works contract. It was also observed that even after the 46th Amendment, if Article 366(29A)(b) is to be invoked, as a necessary concomitant, it must be shown that the terms of the contract would lead to a conclusion that it is a ‘Works Contract’. In other words, unless a contract is proved to be a ‘Works Contract’ by virtue of the terms agreed to as between the parties, invocation of Article 366(29A)(b) of the Constitution, cannot be made. That in circumstances when no definite conclusion can be made to the effect that a given contract is a works contract, the same will have to be declared as a ‘sale’ attracting the provisions of the relevant sales tax enactments.

(H) In the case of *Bharat Sanchar Nigam Ltd. v. Union of India* [2006] 145 STC 91 (SC) = [2006 \(2\) S.T.R. 161](#) (S.C), the question that came up for decision before this Court was with regard to the nature of the transaction by which mobile phone connections were obtained, as to, whether, it is a sale or a service or both. This Court held that providing a telephone connection which operates by transmission of electromagnetic waves or radio frequencies are not ‘goods’ for the purpose of Article 366(29A) of the Constitution and that the goods in telecommunication are limited to the handsets supplied by the service provider and as far as the SIM cards are concerned, the issue was left for determination by the assessing authorities.

(I) Subsequently, in *Larsen and Toubro Limited and Another v. State of Karnataka and Another* [(2014) (1) SCC 708], this Court deciphered the meaning of the works contract from the earlier judgments and in para 72 opined as under :-

In our opinion, the term “works contract” in “72. Article 366(29A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract. Parliament had such wide meaning of “works contract” in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29A) in Article 366 was to enlarge the scope of the expression “tax on sale or purchase of goods” and overcome *Gannon Dunkerley (1)* [*State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.*, AIR 1958 SC 560 : 1959 SCR 379]. Seen thus, even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term “works contract”. Nothing in Article 366(29A)(b) limits the term “works contract” to contract for labour and service only. The Learned Advocate General for Maharashtra was right in his submission that the term “works contract” cannot be confined to a contract to provide labour and services but is a contract for undertaking or bringing into existence some “works”. We are also in agreement with the submission of Mr. K.N. Bhat that the term “works contract” in Article 366(29A)(b) takes within its fold all genre of works contract and is not restricted to one species of contract to provide for

labour and services alone. Parliament had all genre of works contract in view when clause (29A) was inserted in Article 366.”

(Underlining by me)

(J) Further, the difference between a contract for work (or service) and a contract for sale (of goods) was considered and by placing reliance on *Commissioner of Sales Tax v. Purshottam Premji* [(1970) 2 SCC 287], it was observed that the primary difference between a contract for work (or service) and a contract for sale of goods is that, in the former, there is in the person performing work or rendering service no property in the thing produced as a whole, notwithstanding that a part or even the whole of the materials used by him may have been his property. In the case of a contract for sale, the thing produced as a whole has individual existence as a sole property of the party who produced it, at some time before delivery, and the property therein passes only under the contract relating thereto to other party for a price. It was also observed that the factors highlighted to distinguish a contract for work from a contract for sale are relevant but not exhaustive.

(K) In paragraph 89 of the *Larsen and Toubro Limited and Another* (supra) this Court observed that three conditions must be fulfilled to sustain the levy of tax on the goods deemed to have been sold in execution of the works contract, namely, (i) there must be a works contract, (ii) the goods should have been involved in the execution of the works contract, and (iii) the property in those goods must be transferred to a third party either as goods or in some other form. In a building contract or any contract to do construction, the above three things are fully met. In a contract to build up a flat there will necessarily be a sale of goods element. Works contract also includes building contracts and, therefore, it can be stated that building contracts are a species of works contract.

(L) With reference to the aspect theory, it was held that though the State Legislature does not have the power to tax services by including the cost of such service in the value of goods but that does not detract the State to tax the sale of goods element involved in the execution of works contract in a composite contract like contract for construction of building and sale of a flat therein. In light of the above discussion, the legal proposition was summarised in paragraph 97 of the judgment.

Evolution of the practice in relation to the levy of service tax on works contract :

20. Service tax was introduced in India vide the Finance Act, 1994. Service tax is legislated by Parliament under the residuary entry i.e. Entry 97 of List I of the Seventh Schedule of the Constitution of India read with Article 248 of the Constitution. The service tax provisions have the following basic scheme :

- (i) Section 65 of the Act provides for taxable services;
- (ii) Section 66 of the Act provides for the charge of service tax by the person designated as “the person responsible for collecting the service tax” for the Government;
- (iii) Section 67 of the Act provides for the value of taxable service which is to be subjected to 5% service tax; and
- (iv) Section 68 of the Act provides for the collection and payment mechanism for service tax.

It is necessary to trace the evolution of charging service tax on works contract as discerned by this Court in the aforesaid judgments. While considering the rival contentions of the parties, it is also necessary to examine the issue of levying service tax on contracts said to be in the nature of works contract, both prior to, and following the introduction of an express charging provision to impose tax on works contract although we are concerned with the period prior to the definition of works contract w.e.f. 1st June, 2007 to Finance Act, 1994. This is with reference to the following judgments :

(a) In *Tamil Nadu Kalyana Mandapam Association v. Union of India* [(2004) 5 SCC 632], this Court examined the question, whether, the inclusion of taxation on kalyana mandapams, within the tax net of Sections 66 and 67 of the Finance Act, 1994 as amended in the year 1996 was unconstitutional. It was held that a tax on services rendered by mandap-keepers and outdoor caterers is in pith and substance, a tax on services and not a tax on sale of goods or on hire-purchase activities. The nature and character of this service tax is evident from the fact that the transaction between a mandap-keeper and his customer is definitely not in the nature of a sale or hire-purchase of goods. It is essentially that of providing a service. The manner of service provided assumes predominance over the providing of food in such situations which is a definite indicator of the supremacy of the service aspect. The legislature in its wisdom noticed the said supremacy and identified the same as a potential region to collect indirect tax.

(b) The question, whether, the charges collected towards the services for evolution of prototype conceptual designs, on which service tax had been paid under the Finance Act, 1994 as amended from time to time, were also liable to tax under the Karnataka Value Added Tax Act, 2003, (KVAT) for the sale of advertisement material following the creation of the design-concept, was considered by this Court in *Imagic Creative Pvt. Ltd. v. The Commissioner of Commercial Taxes and Ors.* [(2008) 2 SCC 614 = [2008 \(9\) S.T.R. 337](#) (S.C.)]. This Court observed that payments of service tax as also of KVAT are mutually exclusive. That they should be held to be applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a composite contract as contradistinguished from an indivisible contract. Thus, a distinction was made between an indivisible contract and a composite contract. In doing so, it was held that a composite contract, would have to be construed such that the legal fiction in Article 366(29A) allowing tax on the sale element of a works contract would have to be applied only to the extent for which it was enacted, i.e., to the extent of the value of the sale component of the contract and should not be applied in relation to the service element of the transaction. That taxes, in the nature of a service tax could be applied in relation only to the service element.

(c) In *Nagarjuna Construction Company Ltd. v. Government of India and Ors.* [(2013) 1 SCC 721 = [2012 \(28\) S.T.R. 561](#) (S.C.)], this Court discussed the effect of introduction of an express charging provision to impose tax on works contract, w.e.f. 1st June, 2007, on works contract which were entered into prior to 1st June, 2007. In the said case, the appellant therein was said to be in the business of carrying out composite construction contracts. The appellant-assessee had paid sales-tax/VAT on those contracts under the Andhra Pradesh General Sales Tax Act, 1957, Andhra Pradesh Value Added Tax Act, 2005 and other State enactments. Prior to 1st June, 2007, the assessee had paid service-tax under the category of 'erection, commissioning or installation service' as appearing under Section 65(105)(zzd) of the Finance Act, 1994, or, as 'commercial or industrial construction service' under Section 65(105)(zzq) and as 'construction of complex service' under Section 65(105)(zzzh).

(d) With effect from 1st June, 2007, the charging provision, Section 65(105)(zzzza) was introduced by defining a works contract. The Central Government also introduced, w.e.f. 1st June, 2007 the Works Contract (Composition Scheme for Payment of Service

Tax) Rules, 2007 (hereinafter referred to as 'the 2007 Rules'). Under this scheme, an option of composition was offered @ 2% of the gross amount charged on the works contract. Prior to the composition, the effective tax rate under the other category of services would work out to be approximately 3.96% of the gross amount.

(e) The appellant in *Nagarjuna Construction Company Ltd.* (supra) sought to claim benefit of the Composition Scheme under the 2007 Rules, however, the assessee was disabled to do so because of a clause in Circular No. 98/1/2008-S.T., dated 4th January, 2008 which provided that a taxable service, once classified under the old regime, could not be classified differently, post 1st June, 2007 simply because the consideration, or a part thereof, was received post 1st June, 2007. The vires of Circular No. 98/1/2008-S.T. was challenged before this Court. In upholding the validity of the said Circular, this Court held that the appellant, who had paid service tax prior to 1st June, 2007 for the taxable services, was not entitled to change the classification of the single composite service for the purpose of payment of service tax on or after 1st June, 2007 and hence, was not entitled to avail of the Composition Scheme. It was observed that the appellant-assessee had already paid service tax on the basis of classification of service contract which was in force prior to 1st June, 2007 and the said contract could not be classified differently following the introduction of Section 65(105)(zzzza) and the 2007 Rules.

(f) Thus, Works Contract Services were brought under the service tax net as per an amendment to of the Finance Act, 1994 by introduction of Clause (zzzza) to Section 65(105). The said introduction was made pursuant to the Finance Act, 2007, which expressly made the service component in such works contract liable to service tax w.e.f. 1st June, 2007. The amendment was made to the said section of the Finance Act, 1994 by which works contract which were indivisible and composite could be split so that only the labour and service element of such contracts would be taxed as service tax.

21. Having noted the above developments, it is necessary to discuss the judgment in *Larsen and Toubro Ltd.* (supra) in detail as Learned ASG, Ms. Divan has vehemently submitted that the said judgment requires re-consideration. It may be noted that this judgment concerned the position of law prior to the amendment made to the Finance Act, 1994, w.e.f. 1st June, 2007, incorporating the definition of works contract as under :

(a) In the aforesaid case, this Court traced the historical setting within which the controversy leading up to the 46th amendment in the context of levy of sales tax on works contract progressed. Taking up the question as to whether service tax could be levied on the service element of a works contract, it was observed that service tax was introduced by the Finance Act, 1994 and various services were set out in Section 65 thereof as being amenable to tax. The legislative competence of such tax is traceable to Article 248 read with Schedule VII List I Entry 97 to the Constitution of India. The controversy in the said case was with regard to the period prior to the 2007 Amendment made to the Finance Act, 1994 in the year 2007 which introduced the definition and concept of works contract as being a separate subject-matter of taxation. By the said amendment works contract, which were indivisible and composite were split so that only the labour and service element of such contracts would be taxed under the heading service tax. Thus, the tax was not on works contract as such. In the said case, the Revenue raised four arguments to assail the judgments of various Tribunals and High Courts which had decided against the Revenue on the point. By contrast, the assessees assailed the judgments of the Tribunal and the High Courts against them, in particular the judgment in *G.D. Builders v. Union of India* [[2013 \(32\) S.T.R. 673](#)], of the Delhi High Court. According to the assessees there was no service tax leviable on service element of works contract prior to amendment being made in the year 2007, insofar as the indivisible works contract were concerned and what was taxable under the Finance Act, 1994 was only cases of pure service in which there was no goods element involved. It was urged that the judgment of the Delhi High Court in *G.D. Builders* (supra) was wholly

incorrect and the minority judgment of the judicial members of a Larger Bench of the Delhi Tribunal in *Larsen & Toubro Ltd. v. CST* (in ST Appeal No. 58658 of 2013, decided on 19-3-2015), had comprehensively discussed all the authorities that were relevant to the issue and arrived at the correct conclusion. Thus, the assessee assailed the judgment of the Delhi High Court in *G.D. Builders* (supra) and considered along with *Larsen & Toubro Ltd. v. CST* (supra).

(b) Considering the definition of 'taxable service' in sub-section (105) of Section 65 of the Finance Act, 1994 and the relevant clauses therein, namely, (g), (zzd), (zzh), (zzq) and (zzzh); Charge of service tax in Section 66; valuation of taxable services for charging service tax [Section 67 and Section 65(105)(zzzza)] as well as the Rule 2A of Service Tax Act (determination of value) Rules, 2006, this Court observed that crucial to the understanding and determination of the issue at hand was the second *Gannon Dunkerley and Co. v. State of Rajasthan* [(1993) 1 SCC 364] (*Gannon Dunkerley II*) (supra). That in the said judgment the modalities of taxing composite indivisible works contract was gone into which has been referred to above. It was observed that the value of the goods involved in the execution of the works contract will have to be determined by taking into account the value of entire works contract and deducting therefrom the charges towards labour and services which would cover -

- “(a) labour charges for execution of the works;
- (b) amount paid to a sub-contractor for labour and services;
- (c) charges for planning, designing and architect's fees;
- (d) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
- (e) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and
- (f) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
- (g) other similar expenses relatable to supply of labour and services;
- (h) profit earned by the contractor to the extent it is relatable to supply of labour and services.”

For the purposes of arriving at the basis for the levy of sales tax on works contract, the amount deductible under the aforesaid heads will have to be determined in light of the facts of a particular case and on the basis of the material produced by the contractor.

(c) Referring to the aforesaid eight heads of deductions it was observed that in light of the judgment in *Gannon Dunkerley II* (supra) the same has to be indicated in the contractor's account. However, if it is found that the Contractor has not maintained proper accounts or their accounts are found to be not worthy of credence, it is left to the legislature to prescribe a formula on the basis of a fixed percentage of the value of the entire works contract as relatable to the labour and service element of it. It was observed that “*unless the splitting of an indivisible works contract is done taking into account the eight heads of deduction, the charge to tax that would be made would otherwise contain, apart from other things, the entire costs of establishment, other expenses and profits earned by the contractor and would transgress into forbidden*

to a client, by a consulting engineer in “(g) relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering but not in the discipline of computer hardware engineering or computer software engineering;

to a customer, by a commissioning and (zsd) installation agency in relation to erection, commissioning or installation;

to any person, by a technical testing and (zzh) analysis agency, in relation to technical testing and analysis;

to any person, by a commercial concern, in (zzq) relation to construction service;

to any person, by any other person, in (zzzh) relation to construction of a complex;

Explanation : For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorized by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;”

(d) Speaking about the mutually exclusive taxation and powers of the Centre and the State, the dichotomy between the sales tax leviable by the State and service tax leviable by the Centre was emphasised by this Court in the aforesaid judgment. In the context of composite indivisible works contract, only Parliament can tax the service element contained in these contracts and State only can tax the transfer of property in goods element contained in these contracts. Thus, it is important to segregate the two elements completely for the purpose of taxation. Hence, it was held that works contract is a separate species of contract distinct from contracts for service simpliciter recognised in the world of commerce and law as such and has to be taxed separately as such. Referring to the decision of works contract in *Gannon Dunkerley I*, (supra) *Kone Elevator India (P.) Limited* (supra), *Larsen & Toubro Ltd. and Others v. State of Karnataka* (supra) all arising under the Sales Tax law, it was emphasised that there was no charging section to tax works contract in the Finance Act, 1994 i.e. until the amendment made

with the insertion of sub-clause (zzzza) to clause 105 of Section 65 of the Finance Act, 1994. Ultimately, in para 23 it was observed as under :-

A close look at the Finance Act, 1994 would show that the five “23. taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contract. This is clear from the very language of Section 65(105) which defines “taxable service” as “any service provided”. All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contract, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contract has been made by any of the aforesaid sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.”

It was also observed that while introducing the concept of service tax on service element of indivisible works contract various exclusions are also made, such as, works contract in respect of roads, airport, airways transport, bridges, tunnels and dams, possibly in the national interest. The implication of the exclusion means that such contracts were never intended to be the subject-matter of the service tax.

(e) Further, in *Larsen & Toubro Ltd.* (supra) the correctness of the judgment in *G.D. Builders v. Union of India* [[2013 \(32\) S.T.R. 673](#)] was also considered. In the said case, it was held by the Delhi High Court that Section 65(105)(g), (zzd), (zzh), (zzq) and (zzzh) were good enough to tax indivisible composite works contract and that even when rules are yet to be framed for computation of taxes, taxes would be leviable. This proposition was based on the judgment in *Mahim Patram (P.) Ltd. v. Union of India* [(2007) 3 SCC 668 = [2007 \(7\) S.T.R. 110](#) (S.C.)]. It was observed that in *G.D. Builders* (supra) there was a misreading of *Mahim Patram* (supra) which was a case related to tax under the Central Sales Tax Act; that in *Mahim Patram* (supra), it was observed that under Section 9(2) of the Central Sales Tax Act power is conferred on officers of various States to utilise the machinery provided under the provisions of the States’ sales tax statutes for the purposes of levy and assessment of Central Sales Tax under the Central Act. That Rules could also be made in exercise of power under Section 13(3) of the Central Sales Tax Act as a result of which the necessary machinery for the assessment of Central Sales Tax was found to be there. Therefore, even in the absence of Rules made under the Central Sales Tax Act the machinery provided under the State Sales Tax statute for the purpose of levy and assessment Central Sales tax under the Central Act could be utilized and the same is different from saying that no Rules being framed at all under the Central Sales Tax Act. Merely because no rules were framed for computation under the Central sales tax Act it did not follow that no tax was leviable under the said Act. Hence, the observations of the Delhi High Court in *G.D. Builders* were not approved.

(f) With specific reference to para 51 of the judgment of the Delhi High Court in *G.D. Builders* case (supra), it was observed that the said judgment had ignored the decision by this Court in *Gannon Dunkerley II* (supra) inasmuch as the manner of bifurcation of the service element from a composite works contract was delineated in the said case. That the service element had to be deducted from the gross amount charged thereof and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. Therefore, it was held that *G.D. Builders* (supra) was not correctly decided by observing

in paragraph 39 as under after quoting paragraph 31 of the judgment of Delhi High Court in *G.D. Builders* :

“We are afraid that there are several errors in this paragraph. The High Court first correctly holds that in the case of composite works contract, the service elements should be bifurcated, ascertained and then taxed. The finding that this has, in fact, been done by the Finance Act, 1994 Act is wholly incorrect as it ignores the second Gannon Dunkerley [(1993) 1 SCC 364] decision of this Court. Further, the finding that Section 67 of the Finance Act, which speaks of “gross amount charged”, only speaks of the “gross amount charged” for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. We find therefore that this judgment is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contract.”

It was categorically observed that since the Finance Act, 1994 lays down no charge or machinery to levy and assess service tax on indivisible composite works contract, therefore, service tax was not existent at all under the Act and hence any exemption qua service tax “levied” did not arise at all.

22. As already noted, the definition of works contract was brought under the service tax net as per Section 65(105)(zzzza) of the Finance Act, 1994 by the insertion of the said definition. The said introduction was made pursuant to the Finance Act, 2007, which expressly made the service element in such works contract liable to service tax w.e.f. 1st June, 2007. By the said amendment, works contract which were indivisible and composite could be split so that only the labour and service element of such contracts would be taxed under the heading “Service Tax”.

23. It is in the above backdrop that the definition of Works contract inserted for the first time by virtue of Section 65(105)(zzzza) under the Finance Act, 2007 assumes significance and has to be applied w.e.f. 1st June, 2007. Thus, on and from the enforcement of the amendment in the Financial Year 2007, i.e. 1st June, 2007 the tax on the service component of works contract became leviable. Therefore, till then it was not so leviable as there was no concept of works contract under the said Act.

24. Recognising this aspect of the matter in *Larsen and Toubro Ltd.* (supra), this Court held that Service Tax on works contract was not leviable, meaning thereby, that such tax on the service component of works contract as defined above did not attract Service Tax prior to the amendment.

25. Further, in *Commissioner of Service Tax and Others v. Bhayana Builders Private Limited and Others* [(2018) 3 SCC 782], this Court considered the correctness of the judgment of the Larger Bench of Customs, Excise and Service Tax Appellate Tribunal (for short, “CESTAT”) dated 6-9-2013 in the case of *Bhayana Builders (P) Ltd. v. CST* [(2013) SCC OnLine CESTAT 1951]. In the said case, reliance was placed on *Larsen and Toubro Ltd.* (supra) and it was held that when there was no levy of service tax on works contract, no question of any exemption would arise. It was further held that the Central Government is empowered to grant exemption from the levy of service tax either wholly or partially, only when there is any “taxable service” as defined in sub-clauses of clause (105) of Section 65 of the Finance Act, 1994 and not otherwise. This Court agreed with the view taken by the Full Bench of the CESTAT in the judgment dated 6-9-2013 and dismissed the appeals of the Revenue.

26. Therefore, reliance placed by the assesseees in the present case on the aforesaid judgments is just and proper. On the other hand, the contention of Ms. Diwan, Learned ASG to the effect that even prior to the aforesaid amendment being made to the

Finance Act, 1994 service tax on works contract was leviable is not correct. It was being levied on purely service contract and not on service element of works contract as there was no definition of a works contract till then. Hence, the amendment made to the Finance Act, 1994 by insertion of the definition of works contract as under clause (zzzza) is not clarificatory in nature. Having found that the Service Tax was not at all leviable on service element of a works contract, Parliament felt the need for the amendment and was so incorporated by the Finance Act, 2007.

27. Thus, the judgment in *Larsen and Toubro Ltd.* (supra) has been correctly decided and does not call for a re-consideration insofar as the period prior to 1st June, 2007 is concerned. In view of the above discussion, I agree with the result arrived at by His Lordship M.R. Shah J. vis-a-vis allowing all civil appeals under consideration except Civil Appeal No. 6792 of 2010 which is dismissed. No costs."

The principle Bench of this Tribunal, in identical issue, in the case of *Russell Interiors Private Limited vs. Commissioner, CGST-Delhi South in Service Tax Appeal No. 52659 of 2018* reported at 2023-VIL-222-CESTAT-DEL-ST, decided the matter as under:-

"6. The issue involved in this appeal is as to whether the services such as partition work, metal glass works, civil works, wood work finishing, flooring, ceiling, false ceiling, hardware fittings, blinds, wall paper fixing, electrical work, plumbing work, AC ducting and other similar services in relation to constructed buildings/ offices provided by the appellant during the period 2011-12 are classifiable under "works contract" service or under "interior decorator" service. The impugned order has confirmed the demand under 'interior decorator' service.

7. It is not in dispute that the earlier order dated 28.11.2013 passed by the Commissioner holding that the services would fall under 'interior decorator' service was set aside by order dated 09.10.2018.

The relevant portions of the order passed by the Tribunal are reproduced below:

"The bare perusal of the definition of interior decorator service clarifies that this is a service being provided by way of advice, consultancy, technical assistance or in any other manner though towards planning, design or beautification of the spaces. At this stage, if we look onto the contract of the appellant with his clients, i.e. CHC Constructions Ltd. The perusal thereof shows that the activity of construction and various affiliated works was to be carried out by the appellant as per the technical specifications given after the approval of the architect of the client of the appellant. This very perusal makes it clear that the appellant was not to provide services as that of design and technical assistance or consultancy. The moment the nature of services as mentioned herein are provided without the said technical consultancy, the service comes out of the ambit of interior decoration services. These particular findings are sufficient for us to hold that Show Cause Notice has wrongly proposed the demand under interior decorator services and

the adjudicating authority below also has been wrong by holding these services as interior decorator services."

6. *The perusal of order under challenge clarifies that the Commissioner himself has acknowledged the services of the appellant when provided to OC-CWG to be in the nature of work contract service. The order is absolutely silent to create any distinction about services being provided by the appellant to the clients other than OC-CWG. The contract as discussed above of the appellant with another client rather proves the contrary that the nature of services provided by the appellant has always been same irrespective of the clients. Once such activity is acknowledged by the Department to be a work contract services there is no justification by concluding the similar activities to fall under any other category. The Commissioner is also observed to be wrong while forming an opinion that the activity of the appellant do not fall under any clause i.e. A-E of the definition to works contract services. In view of the above discussion, the demand as confirmed is not sustainable.*

7. *Seeing from another angle of limitation as pleaded, we observe that period in dispute is w.e.f. 2006-07 to 2011-12. The Show Cause Notice is dated 19.10.2011. The Department has invoked the extended period of limitation in accordance of proviso to Section 73 of the Finance Act. Perusal of the Order under challenge shows that there is no lota of evidence proving any act of suppression on mis-representation on part of the appellant that too with the intention of evading taxes. On the contrary, it is an acknowledged fact that the appellant has deposited certain amount while discharging his tax liability, considering the same to be the works contract service. In view of above discussion, the activity of appellant since is held to be work contract service, the Department is held to have wrongly invoked the extended period of limitation as there remains no evasion of tax on part of appellant what to talk of the intent to so evade. Show Cause Notice is therefore held to be barred by time. 8. For the demand within the normal period of limitation, the demand is already held not sustainable. In view of entire above discussion, the order is set aside and Appeal is allowed."*

(emphasis supplied)

8. In view of the aforesaid decision of the Tribunal, the order dated 21.04.2014 passed by the Tribunal confirming the demand under 'interior decorator' service deserves to be set aside and is set aside. The appeal is, accordingly, allowed."

8. In view of the facts as narrated above and the judgments cited above, there is no doubt that the service of the appellant is clearly classified as Works Contract Service. Accordingly, the service tax discharged on the concessional rates under Works Contract Service is correct and legal.

9. Since we have decided the matter on the merits, we are not addressing other issues raised by learned Counsel. As per our above observation and findings, the impugned order is set-aside and the appeal is allowed with consequential relief.

(Pronounced in the open court on 10.04.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

KL

Praveg Limited									
Sr. No.	Tax Authority	Financial Year	Demand Order Dated	Demand Order No	Demand of Rs	Current Status			
						Final Order Dated	Final Order No.	Demand amount in Rs.	Remarks
1	Service Tax	2012-13 & 2013-14	03.06.2020	03/ADC/2020-21	1,06,37,604.00	10.04.2023	A/10844/2023	-	Appeal Order in Favour of Company so demand as per appel is Zero. Appeal order attached herewith.
2	Vat	2010-11			1,22,84,435.00	19.05.2018	2015-16/VAT/50/B-81/5/18	-	Appeal Order in Favour of Company so demand as per appel is Zero. Appeal order attached herewith.
3	TDS	2023-24						61,370.00	Intimation of Under Section 200A/206CB OF INCOEM TAX ACT,1961 Screenshot of TRACES attached herewith.
		2022-23						6,360.00	
		2021-22						720.00	
		2014-15						3,980.00	
		2013-14						2,810.00	
		2012-13						58,650.00	
		2010-11						1,710.00	
4	Income Tax	2020-21	18-12-2022	20222021371393 22010C	7,896.00			7,896.00	Income tax demand is Zero, but due to technical error Interest Amount is shown on income tax website.

For, PRAVEG LIMITED


DIRECTOR

PRAVEG LIMITED

(Formerly known as Praveg Communications (India) Limited)


Regd. Office: 214, Athena Avenue, Behind Jaguar Showroom, S. G. Highway, Gota, Ahmedabad-382481, INDIA

CIN: L24231GJ1995PLC024809 | Phone: +91 79 27496737 | Email: info@praveg.com | Website: www.praveg.com



Login Date: 20-Nov-2023, 12:27:11

Help

-  Click on 'Prior Years' hyperlink to view prior years demand details

Financial Year	Manual Demand (Justification available with AO)	Processed Demand (Justification available from CPC)
2013-14	0.00	2810.00
2014-15	0.00	3980.00
2012-13	0.00	58650.00
2010-11	0.00	1710.00

વંચાણમાં લીધું : (૧) મે. પ્રવેગ કોમ્યુનિકેશન્સ પ્રાઇવેટ લીમીટેડ કે જેઓ ગુજરાત મૂલ્યવર્ધિત વેરા અધિનિયમ, ૨૦૦૩ અન્વયે ટીન ૨૪૦૭૪૨૦૩૦૧૩ ધરાવે છે. તેમના કેસમાં સહાયક વાણિજ્યિક વેરા કમિશ્નર, ઘટક-૭, અમદાવાદે વર્ષ: ૨૦૧૦/૧૧ માટે સ્થાનિક કાયદા અન્વયેની આકારણી કરીને તા.૨૮/૦૩/૨૦૧૫ ના રોજ આદેશ પસાર કરેલ છે. જેની સામે વિવાદીએ તા.૧૭/૦૪/૨૦૧૫ ના રોજ કરેલ વિવાદ અરજી.

: (૨) વર્ષ- ૨૦૧૦-૧૧ નું આકારણી દફતર

: ધંધાના વેરા સલાહકારશ્રી કલ્પેશ પટેલ



૪-૧૬/VAT/૫૦/બ - ૮૨

૫૧૪

ગુજરાત મૂલ્યવર્ધિત વેરા અધિનિયમ, ૨૦૦૩ની કલમ-૭૩ અન્વયે.

૦૩૫૩/૫૭

૨૫૫૪

આદેશ

મે. પ્રવેગ કોમ્યુનિકેશન્સ પ્રાઇવેટ લીમીટેડ. ઠે. ૧૦૨. શાંતિ આર્કેડ. આકાશ-III પાસે. ૧૩૨ ફીટ રીંગ રોડ. નારણપુરા. અમદાવાદ કે જેઓ ગુજરાત મૂલ્યવર્ધિત વેરા અધિનિયમ. ૨૦૦૧ અન્વયે ટીન ૨૪૦૭૪૨૦૩૦૧૩ ધરાવે છે. તેમના કેસમાં સહાયક વાણિજ્યિક વેરા કમિશ્નર. ઘટક-૭, અમદાવાદે વર્ષ: ૨૦૧૦/૧૧ માટેની આકારણી કરીને તા.૨૮/૦૩/૨૦૧૫ ના રોજ આકારણી આદેશ પસાર કરેલ છે. જે અન્વયે રૂ.૧,૨૨,૮૪,૪૩૫/-નું માંગણું ઉપસ્થિત કરેલ છે. આ આદેશ સામે વિવાદીએ અત્રે તા.૧૭/૦૪/૨૦૧૫ ના રોજ પ્રથમ વિવાદ અરજી રજૂ કરેલ છે. જે સમયસર છે. વિવાદીની રજુઆત ધ્યાને લઈ વિવાદ અરજી વિનાભરણે નિયમિત સુનાવણીમાં લીધેલ છે.

વિવાદીની રજુઆત છે કે,

- (૧) તેઓનો ધંધો વિવિધ પ્રકારના ઇવેન્ટ મેનેજમેન્ટ કરવાનો છે તેઓ જે તે ઇવેન્ટને અનુરૂપ Conceptualizing, Complete controlling, designing, execution and supervising કરવાની સેવા પુરી પાડે છે અને તે અંગે સર્વિસ ચાર્જ મેળવે છે તેના પર સર્વિસટેક્સ ભરપાઈ કરે છે. આમ છતાં અન્યાયી રીતે આકારણી અધિકારીએ તેમની સ્વર્ણિમ સંકલ્પ જ્યોત રથ તથા સ્વર્ણિમ કિસાન રથ અંગેની સેવાઓ પુરી પાડવાની આવકને રાઇટ ટુ યુઝ અન્વયેની આવક ગણી ડીમડસેલ ઠરાવી અન્યાયી રીતે વેરો આકારેલ છે તે દૂર કરવો.
- (૨) વિવાદીની બીજી રજુઆત છે કે, આકારણી અધિકારીએ આકારણી આદેશ તૈયાર કરતી વખતે તેઓનાં હિસાબો મુજબનાં ખરેખર વેરાપાત્ર વેચાણોના વેરાની રકમ અન્યાયી રીતે આકારણી આદેશમાં નકકી કરેલ વેરાપાત્ર ટર્ન ઓવરમાંથી બાદ કરી બાકીની રકમ પર વેરો ગણે છે તેથી હિસાબો મુજબનાં વેરાપાત્ર ટર્ન ઓવર પર બેવડો વેરો આકારેલ છે તે દૂર કરવો.
- (૩) વિવાદીની રજુઆત છે કે, તેમના દ્વારા સ્વર્ણિમ સંકલ્પ જ્યોત રથ અને સ્વર્ણિમ કિસાન રથ અંગેની સેવા પુરી પાડેલ છે. હકીકતે આ રથ એ ટ્રોલીવાળા ટ્રેક્ટર છે. ટ્રેક્ટરની કે I.C.V પર કામચલાઉ ધોરણે ફોલ્ડિંગ સ્ટ્રક્ચર લગાડી તેના પર સરકારશ્રી દ્વારા તથા કોર્પોરેશન દ્વારા અપાયેલ બેનર લગાડી તેને લોકભોગ્ય નામ આપી 'રથ' તરીકે ઓળખાવેલ છે. જે હકીકતે ટ્રેક્ટર છે તેથી અધિકારીએ રથ તરીકે ૧૨.૫ તથા ૨.૫% ના દરે વેરો આકારેલ છે તે તદ્દન અસ્વીકાર્ય બાબત છે જેથી આકારાયેલ તમામ વેરો દૂર કરવો.

- (૪) વિવાદીની રજૂઆત છે કે, તેમની ઇવેન્ટ મેનેજમેન્ટની સર્વિસ દરમિયાન પૂરો પાડેલ ફર્નિચરની ભાડાની આવક અંગે આકારાયેલ વેરો તથા વ્યાજ, દંડ દૂર કરવો.
- (૫) આકારણી અધિકારીએ અન્યાયી રીતે સર્વિસની આવકને વેરાપાત્ર ગણી તેનાપર વ્યાજ તથા દંડ આકારેલ છે તે તમામ દૂર કરવો.

વિવાદીની રજૂઆત છે કે, તેમનો ધંધો વિવિધ પ્રકારના ઇવેન્ટનું મેનેજમેન્ટ કરવાનો છે અને ધંધા દરમિયાન તેઓએ વાચબ્રન્ટ ગુજરાત અંગે ઝોબલ ઇન્વેસ્ટર્સ સમીટ-૨૦૧૧, નવરાત્રી મહોત્સવ ૨૦૧૦ માં ફોટોગેલેરી, GPCL, પેવેલીયન સેટ એનર્જીએક્સ્પો ૨૦૧૦, બેટન રેલી અને ખેલમહાકુંભ, ગુજરાત સોલાર પાવર લોન્ચીંગ સેરેમની, GPCL પેવેલીયન સેટ મેગા એકઝીબીશન VYAPAR-2011, સ્વર્ણિમ કિસાન જ્યોત, સ્વર્ણિમ કિસાન રથ, અને સ્વર્ણિમ સંકલ્પ જ્યોત રથ સહિત વિવિધ પ્રકારના ઇવેન્ટ મેનેજમેન્ટનું કામ કરેલ છે અને તે પેટે આવક મેળવેલ છે તેઓનું કામ જેતે ઇવેન્ટ અંગે Conceptualizing, Complete controlling, designing, execution and Supervising કરવાનું અને તે અંગે સેવા પુરી પાડવાનું છે. આ ધંધાકીય પ્રવૃત્તિ દરમિયાન તેઓએ રાજ્ય સરકાર દ્વારા પ્રેરણા પામેલ અને રાજ્યની સ્થાપના ૫૦-વર્ષની ઉજવણીના ભાગ રૂપે સ્વર્ણિમ સંકલ્પ જ્યોત રથ અને સ્વર્ણિમ કિસાન રથ અંગે કામ કરેલ છે અને Charges



its concept, Design of Execution ની સર્વિસની આવક મેળવેલ છે. આ સ્વર્ણિમ સંકલ્પ જ્યોત રથ અને સ્વર્ણિમ કિસાન રથ એ કોઈ ખાસ પ્રકારનો રથ નથી પરંતુ ટ્રેક્ટરની ટ્રોલી પર ફોલ્ડિંગ ફેબ્રિકેશન સ્ટ્રક્ચર બનાવી આવા સ્ટ્રક્ચર પર જે તે એજન્સી દ્વારા અપાયેલ પ્રદર્શિત કરવા માટેની વ્યવસ્થા બનાવેલ છે અને લોકાભાષામાં પ્રચલિત રહે તે માટે આવા ટ્રેક્ટરને 'રથ' નામ આપવામાં આવેલ છે જેથી 'રથ' નામાભિધાન કરેલ એ કોઈ રથ નથી પરંતુ ટ્રેક્ટર જ છે. આમ છતાં, 'રથ' તરીકે ઉંચા દરે વેરો આકારાયેલ છે તે અન્યાયી છે. ખરેખર તો કોઈ જ રથ કે ટ્રેક્ટર ભાડે આપેલ નથી તેથી વેરો આકારવાનો પ્રશ્ન જ ઉભો થતો નથી.

વિવાદીની રજૂઆત છે કે, તેઓને રાજ્યની સ્થાપનાના ૫૦ મા વર્ષની ઉજવણી પ્રસંગે તેને આનુષંગિક રીતે ધી. કમિશનર ઓફ ઇન્ફર્મેશન ગાંધીનગર ગુજરાત દ્વારા રાજ્યનાં ૨૨૫-તાલુકા ઓનાં ૧૮,૦૦૦ ગામડાંઓમાંના લોકોને રાજ્યને દેશના બેસ્ટ રાજ્ય બનાવવા માટે સોગંધ લેવા મોટીવેટ કરવા તથા મોબાઇલ એકઝીબીશન દ્વારા રાજ્ય સરકારની વિવિધ યોજનાઓની માહિતી આપવા "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" ની સંકલ્પના પરિપૂર્ણ કરવા માહિતી કમિશનરશ્રી દ્વારા જાહેર કરાયેલ ટેન્ડર No. INF/FP/SSJR-CZ/T-1/1646 Date-23/11/2009 for SELECTION OF STRUCTURE FABRICATOR CUM EXHIBITING AGENCY for 'SWARNIM SANKALP JYOT RATH' બહાર પડાયેલ હતું. આ ટેન્ડર અંગે તેઓએ કરેલ દરખાસ્ત મંજૂર થતાં તે અનુસાર કરાર કરીને કામગીરી કરેલ છે તથા સરકારશ્રી દ્વારા નક્કી કરાયા મુજબની ડીઝાઇન-ફેબ્રિકેશન કરાવી તે એપ્રુવ કરાવી તેવા ફેબ્રિકેશન-ડેકોરેશન વાળા ટ્રેક્ટરને સરકારશ્રી દ્વારા નિયત કરાયેલ પ્રોગ્રામ મુજબના સમયે અલગ-અલગ સ્થળોએ પહોંચાડેલ છે અને સરકારશ્રી દ્વારા પુરાં પાડવામાં આવેલ બેનર તથા સંદેશાઓ પ્રદર્શિત કરવાની તેમજ તેઓની જાગૃત્તી લાવવાની કાર્યવાહી કરેલ છે. સમગ્ર કાર્યક્રમ તેઓના પોતાના જ કર્મચારીઓ દ્વારા પૂર્ણ કરાયેલ છે. સમયાંતરે સરકારશ્રી દ્વારા નિયુક્ત કરાયેલ પદાધિકારીઓ-અધિકારીઓ દ્વારા સુપરવીઝન થતું રહે અને જરૂરી સલાહ સૂચના મળતાં રહે પરંતુ તમામ કાર્યક્રમ તેઓએ તેમના પોતાના જ અને સંપૂર્ણ નિયંત્રણ હેઠળના કર્મચારીઓ દ્વારા

પૂર્ણ કરેલ છે. આ અંગે રથ- ટ્રેકટરનો સંપૂર્ણ કબજો તમામ સમય દરમિયાન તેમની પાસેજ રહેલ છે ક્યારેય પણ સરકારશ્રીના પ્રતિનિધિ દ્વારા ટ્રેકટર-રથનો કબજો લેવાયેલ નથી કે તેમના દ્વારા કબજો અપાયેલ નથી.

આ બાબતે આ ટેન્ડરના INVITATION FOR BIDS (IFB)તેમજ ટેન્ડરના ARTICLE-21મુજબનાSCOPE OF WORKનો લાગુ પડતો ભાગ પરત્વે ધ્યાન દોરે છે જે નીચે મુજબ છે.

COLintends to appoint a STRUCTURE FABRICATOR CUM EXHIBITING AGENCY for the Swarnim Sankalp Jyot Rath who will fabricate the structure, prepare the exhibition panel by pasting the printed flex, assemble the Swarnim Sankalp Jyot Rath on tractor driven trailers or LCV and exhibiting the Swarnim Sankalp Jyot Rath in Taluka assigned in various parts of Gujarat during "Swarnim Mahotsav."

આમ. આ ટેન્ડરનો સ્કોપ ઓફ વર્કમાં સ્પષ્ટ પણે જણાવાયા મુજબ કમિશનર ઓફ ઇન્ફોર્મેશન એવી એજન્સીને રોકવા માગે છે કે જે ટ્રેકટરની ટ્રોલી કે LCV પર ફેબ્રિકેશન કરી વિવિધ વિગતોવાળાં ફ્લેક્સ બેનર થીપકાવી રાજ્યના વિવિધ તાલુકાઓમાં તેનું પ્રદર્શન કરે. જેથી સ્પષ્ટ થાય છે કે પ્રદર્શન કરવાનું કામ જે તે એજન્સીએ એટલે કે કોન્ટ્રાક્ટરે જ કરવાનું કે બનાવાયેલ રથનો કબજો ક્યારેય કમિશનર ઓફ ઇન્ફોર્મેશન ને કે તેમના અધિકૃત પ્રતિનિધિને સોંપવાનો નથી. આ ટેન્ડર અનુસંધાને કરાયેલ કરારમાં વિગતે જે તે બાબતોનો ઉલ્લેખ કરાયેલ છે તે પૈકી સદર એકઝીબીશન અંગે સરકારશ્રીના પ્રતિનિધિના માર્ગદર્શન અને દોરવણી હેઠળ કોન્ટ્રાક્ટરે કામ કરવાનું છે. પરંતુ સદર રથનો હવાલો હંમેશાં કોન્ટ્રાક્ટર પાસે જ રહે છે તેથી

નો ઉકેટીવ કંટ્રોલ અને જનરલ કંટ્રોલ તમામ સમય માટે કોન્ટ્રાક્ટર પાસે રહે છે તેથી આવા રથ દ્વારા પાડવામાં આવેલ એકઝીબીશન અંગેની સેવા પેટે મળેલ આવક એ સર્વિસની આવક છે અને તેના પર લાગુ પડતા દરે સર્વિસટેક્સની જવાબદારી અદા કરાયેલ છે. સદર આવક એ Transfer of Right to use અંગેની સેવા તરીકેની છે તેથી આવી આવક પર વેચાણો ઠરાવી વેરો આકારી શકાય નહીં. જેથી આકારણી અધિકારીએ સ્વર્ણિમ સંકલ્પ જ્યોત રથ અંગેની સેવા પુરી પાડવાની આવકને ટ્રાન્સફર ઓફ રાઇટ ટુ યુઝ તરીકેની ડીડ વેચાણની આવક ગણી વેરો તથા આનુષંગિક વ્યાજ અને દંડ આકારાયેલ છે તે દૂર કરવા રજૂઆત છે.

વિવાદીની વધુમાં રજૂઆત છે કે, તેઓએ રાજ્ય સરકારના ૫૦ મા સ્થાપના દિવસની ઉજવણીના ભાગરૂપે કમિશનર ઓફ ઇન્ફોર્મેશન દ્વારા બહાર પાડવામાં આવેલ ટેન્ડર અન્વયેનું કામ મેળવેલ છે અને કરેલ છે તેમાં "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" પુરો પાડેલ છે. રાજ્યની સ્થાપનાના ૫૦ મા વર્ષની ઉજવણીના ભાગ રૂપે અન્ય પ્રોગ્રામ અન્વયે ગુજરાત એગ્રો ઇન્ડસ્ટ્રીઝ કોર્પોરેશન લી. કે જે ISO 9001: 2000 સર્ટીફાઇડ ગવર્નમેન્ટ કંપની છે તેના દ્વારા "સ્વર્ણિમ કિસાન રથ" અંગેની કામગીરી સોંપાયેલ હતી. આ કામગીરીમાં પણ સ્વર્ણિમ સંકલ્પ જ્યોત રથ ની જેમ ટ્રેકટર ટ્રોલી-LCV પર સુચવાયા મુજબનું ફોલ્ડીંગ ફેબ્રિકેશન કરી તેના પર તેમના દ્વારા અપાયેલ સંદેશા અને યોજનાઓના પ્રદર્શનનું કાર્ય વિવિધ તાલુકા અને ગ્રામ્ય કક્ષાએ કરવાનું તથા ખેડૂતોને વિવિધ માહિતી આપવાનું કાર્ય કરવાનો કરાર મળેલ હતાં. સદર કરાર અંગે માહિતી કમિશનરશ્રી દ્વારા જાહેર કરાયેલ ટેન્ડરનો ઉલ્લેખ કરી તે મુજબની તમામ શરતો મુજબ "સ્વર્ણિમ કિસાન રથ" ની સંકલ્પના પરિપૂર્ણ કરવા માટેની કામગીરી સોંપાયેલ હતી. જે બાબતે ગુજરાત એગ્રો ઇન્ડસ્ટ્રીઝ કોર્પોરેશન લી. દ્વારા લખાયેલ તા.૧૨/૦૪/૨૦૧૦ ના પત્રની નકલ રજૂ કરે છે જેમાં સંદર્ભમાં માહિતી કમિશનરશ્રી દ્વારા અપાયેલ "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" અંગેના ટેન્ડરનો ઉલ્લેખ કરી કરેલ છે તથા



ત્યારબાદ તેને આનુષંગિક અન્ય પત્ર વ્યવહાર અંતે વિવાદીને "સ્વર્ણિમ કિસાન રથ" અંગેની કાર્યવાહી 'કૃષિ મહોત્સવ' ના પ્રોગ્રામના ભાગરૂપે આપવામાં આવેલ છે.

આમ, "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" અને "સ્વર્ણિમ કિસાન રથ" માં લોકો સુધી પહોંચાડવાની માહિતી અલગ અલગ છે. "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" માં ગુજરાત રાજ્યને દેશનું બેસ્ટ રાજ્ય બનાવવાના સોગંધ લેવાડાવવા તથા વિવિધ સરકારી યોજનાઓની માહિતી આપવાનો હેતુ હતો જ્યારે "સ્વર્ણિમ કિસાન રથ" માં લોકોને ખેતી વિશેની માહિતી આપવાનો તથા જાગૃત કરવાનો હેતુ છે. બંને સંકલ્પનાઓમાં રથ કે જે ટ્રેક્ટરની ટ્રોલી પર કે LCV પર ફેબ્રિકેટ કરી તેના દ્વારા માહિતીનું પ્રદર્શન કરવાની કામગીરી વિવાદીને સોંપાયેલ છે અને તે માટે વિવાદીએ ટ્રેક્ટર-LCV પર જરૂરી ફેબ્રિકેશન કરી સરકારશ્રી/કંપની દ્વારા અપાયેલ માહિતી-બેનર પ્રદર્શીત કરી સંદેશો લોકો સુધી પહોંચાડવાનું કાર્ય કરેલ છે. સમગ્ર કાર્યક્રમ દરમિયાન ટ્રેક્ટર રથનો સંપૂર્ણ કબજો કોન્ટ્રાક્ટર તરીકે વિવાદી પાસે રહેલ છે. સરકારશ્રી દ્વારા કે કંપની દ્વારા ક્યારેય પણ સદર રથનો ડાયરેક્ટ કે ઇનડાયરેક્ટ કબજો લેવાયેલ નથી આમ સમગ્ર કાર્યક્રમ દરમિયાન તમામ રથ અંગેનો ઇફેક્ટીવ કંટ્રોલ અને જનરલ કંટ્રોલ કોન્ટ્રાક્ટ પાસેજ રહેલ હોય આવા પ્રદર્શનની સેવા પુરી પાડવામાટે મળેલ રકમ એ ટ્રેક્ટર-રથના ડીમ્ડસેલ તરીકે Transfer of Right to Use આવક નહીં પરંતુ પ્રદર્શનની સેવા પુરી પાડવાની માટે હોય તેનાપર વેરો આકારી શકાય નહીં. જેથી અધિકારીએ આકારેલ વેરો તથા આનુષંગિક વ્યાજ અને EDS દરે કરવાની રજૂઆત છે.

આ બાબતે વિવાદીની બીજી રજૂઆત છે કે, આકારણી અધિકારીએ આકારણી આદેશમાં મુખ્ય આધાર તરીકે લીધેલ ચુકાદાઓ અત્રે લાગુ પડતા નથી.

મે.દિપકનાથ વિ.ONGC (2010) 31 VST 337 (GAU)ના કેસમાં ONGC તેમની વિવિધ પ્રકારની કામગીરી કરવામાટે ઓપરેટર સહિતની કેઇન ભાડે લેવા માગતા હતા અને તે માટે વિગતે ટેન્ડર નોટીસ બહાર પાડેલ હતી જે ટેન્ડર તથા ફરારની શરતો જોતાં સ્પષ્ટ થાય છે. આ ચુકાદામાં મા. કોર્ટે ટેન્ડરની તથા ફરારની વિવિધ શરતોનો અભ્યાસ કરી તેની વિગતે ચર્ચા કરેલ છે અને પારા નં.૧૮, ૧૯ માં તે બાબતે તારણ કાઢેલ છે જે જોતાં સ્પષ્ટપણે ONGC માણસો સહિતની કેઇન ભાડે લેવાનો ઇરાદો ધરાવતા હતા તથા સદર ફરાર દરમિયાન આ કેઇનો અંગેનો સંપૂર્ણ કબજો અને હક ધરાવતા હતા. આ ફરારના સમય દરમિયાન કેઇન ના the disposal of ONGC રહેલ છે તથા સમગ્ર સમય દરમિયાન ONGC ઇફેક્ટીવ કંટ્રોલ ધરાવે છે. જ્યારે વિવાદીના કેસમાં સ્વર્ણિમ સંકલ્પ જ્યોત રથ અંગે સરકાર તથા સ્વર્ણિમ કિસાન રથ અંગે કંપની ક્યારે પણ ટ્રેક્ટર-રથ ભાડે લેવાનો ઇરાદો ધરાવતા ન હતા કે ક્યારે પણ તેનો જનરલ કંટ્રોલ કે ઇફેક્ટીવ કંટ્રોલ ધરાવતા ન હતા પરંતુ સરકારશ્રીની યોજનાઓ માહિતીનું પ્રદર્શન કરવા માટેની સેવા લેવા માટેનો ફરાર કરેલ હતો. સરકારશ્રી/કંપની દ્વારા આપવામાં આવેલ સાહિત્ય તથા બેનર વગેરે સાચવવાની જવાબદારી પણ વિવાદીને સોંપાયેલ હતી. જે સાહિત્ય-બેનર વગેરે પ્રદર્શનની કામગીરી પૂર્ણ થયાબાદ સુચવેલ એજન્સીમાં પરત કરવાની જવાબદારી વિવાદીની હતી. આમ, સરકાર દ્વારા કે કંપની દ્વારા ક્યારે પણ રથ-ટ્રેક્ટર ભાડે લેવાનો ઇરાદો રાખેલ ન હોય સદર ચુકાદાની હકીકત અત્રેના કેસથી અલગ હોય લાગુ પાડી શકાય નહીં તેવી રજૂઆત છે.



મે. બ્રહ્મપૂત્ર વેલી કન્સ્ટ્રક્શન એન્ડ સપ્લાયર્સ વિ. ONGC (2012) 53 VST 401 (GAU) નો કેસ મે. દિપકનાથ વિ. ONGC ના ચુકાદાને મળતી વિગતોનો હોઇ તે ચુકાદાના આધારે અપાયેલ છે. આ ચુકાદામાં પણ ONGC દ્વારા કેઇન ભાડે લેવાની સ્પષ્ટ બાબત છે. કરારના પ્રિએમ્બલમાં તથા વિગતોની ચકાસણી કરી મા. કોર્ટ દિપકનાથ વિ. ONGC ના ચુકાદાના પારા ૧૮ તથા ૧૯ સંપૂર્ણપણે નોંધીને તે આધારે આ કેસમાં પણ કેઇન ભાડે લેવાનો કરાર હોવાનું ઠરાવેલ તથા સમગ્ર કરારના સમય દરમિયાન કેન પરનો જનરલ કંટ્રોલ અને ઇફેક્ટીવ કંટ્રોલ ONGC નો રહેતો હોવાનું ઠરાવી આવી કેઇન ભાડાંની આવકને Transfer of Right to Useની આવક ઠરાવી વેરાપાત્ર ઠરાવેલ છે. જ્યારે અત્રેના કેસમાં રાજ્ય સરકાર કે કંપની દ્વારા ક્યારેય પણ રથ કે ટ્રેક્ટરો ભાડે લેવાનો ઇરાદો ન હતો. પરંતુ તેઓ દ્વારા અપાયેલ પ્રોગ્રામના દિવસોએ જે તે ગામ કે તાલુકા મથકે રથ દ્વારા કોન્ટ્રાક્ટરે સરકારશ્રીની/કંપનીની આપેલ સામગ્રીનું બેનર વગેરે દ્વારા માહિતીનું પ્રદર્શન કરવાની સેવા લેવાનો ઇરાદો હતો અને વિવાદીએ તે સેવા પોતાના માણસો મારફતે પુરી પાડેલ છે સદર કરાર એ ટ્રેક્ટર કે રથ ભાડે આપવાનો નહીં પરંતુ સરકાર-કંપની દ્વારા અપાયેલ માહિતી યોજનાઓની વિગતો લોકો સુધી પહોંચાડવાની સેવા પુરી પાડવા માટેનો કરાર છે. સદર સેવા પુરી પાડવા વાપરવાના ટ્રેક્ટરને ફોલ્ડીંગ ફેબ્રિકેશનથી તથા પડદાથી સુશોભિત કરી તેને રથ જેવું લોક ભોગ્ય નામ આપેલ છે હકીકતે સરકારની યોજનાઓ માહિતીની જાણકારી લોકો સુધી પહોંચાડવાની સેવાનો કરાર હોઇ તથા રથ કે ટ્રેક્ટરનો ઇફેક્ટીવ કંટ્રોલ સરકારશ્રીને કે કંપનીને આપેલ નથી તેથી આ ચુકાદો અત્રે લાગુ પડતો નથી.

વિવાદીની રજૂઆત છે કે, મે. અગ્રવાલ બ્રધર્સ વિ. હરીયાણા સ્ટેટ 113 STC 317(SC) ના કેસમાં ભાડે આપવાની આવક પર વેરો આકારવા ઠરાવાયેલ હતો. આ કેસમાં શટરીંગનો ઇફેક્ટીવ કંટ્રોલ કંપની સોંપાયેલ હતો જ્યારે અત્રેના કેસમાં ટ્રેક્ટર કે રથનો કબજો ક્યારેય સોંપવામાં આવેલ નથી કે કંપની દ્વારા પણ રથ કે ટ્રેક્ટર At the disposal of સરકાર/કંપની હસ્તક મુકવામાં આવેલ નથી. માત્ર સરકારશ્રીની માહિતી યોજનાઓના પ્રદર્શનની સેવા પુરી પાડેલ છે તેથી આ ચુકાદો અત્રે લાગુ પડતો નથી.

વિવાદી આ ઉપરાંત ગુજરાત વેટ ટ્રીબ્યુનલ દ્વારા અપાયેલ મે. કેપીપરીખના કેસ તા.૦૮/૦૧/૨૦૧૩. અબ્બાસ લોયડ લી. ઓફશોર લી. વિ. તામીલનાડુ (2012) 53 VST 89 (MAID) આંધ્રપ્રદેશ વિ. રાષ્ટ્રીય ઇસ્પાત નિગમ લી., ભારત સંચાર નિગમ લી. વિ. યુનીયન ઓફ ઇન્ડિયા તથા શ્રી નીલકંઠ ક્વોરી વર્ક્સ વિ. ગુજરાત રાજ્યનો ગુજરાત વેટ ટ્રીબ્યુનલનો ચુકાદો વગેરેનો ઉલ્લેખ કરી વિગતે રજૂઆત કરી તેમના કેસની હકીકત ધ્યાને લઇ વિવાદ કાર્યવાહી ચલાવવા રજૂઆત કરે છે. તેમની રજૂઆત છે કે તેમના કેસમાં ટેન્ડરના શબ્દો જ આખા કરારનું હાર્દ રજૂ કરે છે જે ... COI intended to appoint the STRUCTURE FABRICATION CUM EXHIBITING AGENCY ... છે જે સરકાર પ્રદર્શન કરનાર એજન્સીની નિમણુંક કરવા ઇચ્છે છે નહિં કે ટ્રેક્ટર કે રથ ભાડે લેવા માટે તે સ્પષ્ટ કરે છે.

આમ વિવાદીની વિગતો રજૂઆત કેસની હકીકત તથા વિગતો તેમજ વિવાદીના કરાર ટેન્ડરની વિગતો શરતો તથા આકારણી અધિકારીએ નોંધેલ ચૂકાદાઓ અને વિવાદી દ્વારા કરાયેલ તેની ચર્ચા તથા રજૂ થયેલ અન્ય ચુકાદાઓની વિગતો ધ્યાને લેતાં સ્પષ્ટપણે જણાય છે કે,

વિવાદીનો ધંધો વિવિધ પ્રકારના ઇવેન્ટનું મેનેજમેન્ટ કરવાનો છે અને અગાઉ દર્શાવ્યા મુજબના ઘણાબધા ઇવેન્ટ મેનેજ કરેલ છે. ગુજરાત રાજ્યની સ્થાપનાના ૫૦-વર્ષ પુરાયવા નિમિત્તે રાજ્ય સરકારશ્રી



દ્વારા સ્વર્ણિમ વર્ષની ઉજવણીના ભાગરૂપે "સ્વર્ણિમ સંકલ્પ જ્યોત રથ" અને "સ્વર્ણિમ કિસાન રથ" ની પરિકલ્પના આકાર પામેલ છે. આ બંને પ્રકારના રથ એ ટ્રેક્ટરની ટ્રોલી કે LCV પર ફોલ્ડીંગ રીતે ફેબ્રિકેટ કરેલ સ્ટકચર લગાડી તેના પર સરકારશ્રી/કંપની દ્વારા પુરા પાડવામાં આવેલ માહિતી, વિગતો દર્શાવતા બેનર પ્રદર્શિત કરી તેને ગામડાઓ તાલુકાઓ સુધી જ તે નિશ્ચિત સમયે દર્શાવવાના તથા લોકોને તે અંગે માહિતગાર કરવાનું કામ કરેલ છે. સમગ્ર કાર્યવાહી વિવાદીના કર્મચારીઓ દ્વારા પૂર્ણ કરાયેલ છે સરકારશ્રી કંપનીના અધિકારીઓ-કર્મચારીઓ તે અંગે સલાહ સુચન માર્ગદર્શન આપતા રહેલ છે. પરંતુ સમગ્ર પ્રદર્શન વિવાદી દ્વારા કરાયેલ છે. સમગ્ર પ્રદર્શન દરમિયાન ટ્રેક્ટર-રથનો પ્રત્યક્ષ કે પરોક્ષ રીતે કબજો કે હવાલો ક્યારેય સરકારશ્રી કે કંપનીના અધિકારીઓ દ્વારા લેવાયેલ નથી. પ્રદર્શન અંગેનો દિવસ દીઠ નહીં પરંતુ સમગ્ર પ્રદર્શન કાર્યવાહી કરવા અંગે રથ દીઠ સર્વિસ ચાર્જ ચુકવાયેલ છે. વિવાદીએ લાગુ પડતા દરે સર્વિસ ચાર્જ વસુલ કરી તેની જવાબદારી અદા કરેલ છે. સમગ્ર પ્રવૃત્તિમાં સરકારશ્રી કંપનીનો ઇરાદો રથ ભાડે લેવાનો જણાતો નથી. પરંતુ વિવાદી પાસેથી પ્રદર્શન કરાવવાની સેવા મેળવવાનો રહેલ જણાય છે. સરકારશ્રી/કંપનીએ ક્યારેય પણ ટ્રેક્ટર કે રથનો ઇફેક્ટીવ કંટ્રોલ મેળવેલ નથી કે ધારણ કરેલ નથી. આકારણી અધિકારીએ આકારણીમાં આધાર તરીકે લીધેલ મે. દિપકનાથ વિ. ONGC તથા મે. બ્રહ્મપુત્રા વેલી કન્ટ્રીકેશન એન્ડ સપ્લાયર્સ વિ. ONGC ના કેસમાં સ્પષ્ટપણે ONGC એ કેઇનો ભાડે લેવાનો કરાર કરેલ હતા તથા સદર કેઇનો અંગે કરારના સમગ્ર સમય દરમિયાન ઇફેક્ટીવ કંટ્રોલ ધારણ રહેલ હતો તેથી તે કેસમાં કેઇનો અંગે ટ્રાન્સફર ઓફ રાઇટ ટુ યુઝ થાય છે અને તે અંગેની આવક ને વેરાપાત્ર ગણેલ છે. પરંતુ અત્રેના કેસમાં સરકારશ્રી દ્વારા સ્વર્ણિમ સંકલ્પ જ્યોત રથ તથા મે. ગુજરાત એગ્રો ઇન્ડસ્ટ્રીઝ કોર્પોરેશન લી. દ્વારા સ્વર્ણિમ કિસાન રથ દ્વારા સરકારશ્રીની યોજનાઓની માહિતી પ્રદર્શિત કરવાની, લોકોને જાગૃત કરવાની તથા તેની વિવિધ ટેકનોલોજીઓની માહિતી આપી તે દ્વારા માર્ગદર્શન કરવા માટેની સેવા વિવાદી પાસેથી લેવાયેલ છે. આમાટે રથની સંકલ્પના કરાયેલ છે અને તે દ્વારા માહિતી યોજનાઓનું પ્રદર્શન કરાયેલ છે. સદર સેવા માટેના ટ્રેક્ટર કે રથનો પ્રત્યક્ષ કે પરોક્ષ કબજો સરકારશ્રી દ્વારા કે કંપની દ્વારા લેવાયેલ નથી. આમ, અત્રેના કેસની હકીકત જુદી પડે છે. અત્રેના કેસમાં વિવાદીએ સરકારશ્રી તથા કંપની દ્વારા પુરી પાડવામાં આવેલ માહિતીના ફોક્સ બેનર વગેરે પ્રદર્શિત કરવાની સેવા પુરી પાડેલ છે રથ કે ટ્રેક્ટરનો તે માટે ઉપયોગ કરેલ છે અને તે અંગે રથ દીઠ રકમ મેળવેલ છે. સદર કાર્યક્રમમાં પ્રદર્શિત કરવાપાત્ર ફોક્સ બેનર વગેરે જાળવવાની તથા યોગ્ય રીતે પ્રદર્શિત કરવાની જવાબદારી વિવાદીની છે તેમજ સદર કાર્યક્રમ પૂર્ણ તથા સરકારશ્રી દ્વારા પ્રદર્શિત કરવા માટે અપાયેલ સામગ્રી પરત કરવા બાબતે પણ કરારમાં સ્પષ્ટ ઉલ્લેખ છે તે બાબત જ સ્પષ્ટ કરે છે કે, સમગ્ર કાર્યક્રમ દરમિયાન રથ કે ટ્રેક્ટરનો હવાલો અને સરકારશ્રી દ્વારા પુરી પાડવામાં આવેલ પ્રદર્શન માટેની સામગ્રી સહિત વિવાદી પાસે રહે છે. આમ, વિવાદીએ સરકાર / કંપની દ્વારા અપાયેલ માહિતી પ્રદર્શિત કરવાની સેવા પુરી પાડેલ હોઇ તેમજ રથ કે ટ્રેક્ટરનો ઇફેક્ટીવ કંટ્રોલ સરકાર કે કંપનીને આપેલ નથી. તેમજ સદર રથ કે ટ્રેક્ટર At the disposal of the Govt. Or company ક્યારેય મુકેલ નથી. આ અંગે વિવાદીએ સર્વિસ ટેક્ષ પણ ભરેલ છે. જે તમામ બાબતો ધ્યાને લેતાં સ્પષ્ટ થાય છે કે, વિવાદીએ પ્રદર્શન અંગેની સેવા પુરી પાડેલ છે અને રથ કે ટ્રેક્ટર ભાડે આપવા અંગેની આવક મેળવેલ નથી. સરકાર / કંપનીનો ઇરાદો ટ્રેક્ટર રથ ભાડે મેળવવાનો નહીં પરંતુ પોતાની યોજનાઓ અને



માહિતીનું પ્રદર્શન કરાવવાનો હેતુ હોય તેમાટે સેવા પૂરી પાડવા વિવાદી સાથે કરાર કરેલ છે. ટેન્ડરમાં તથા સ્કોપ ઓફ વર્કની વિગતો ધ્યાને લેતાં પણ સ્પષ્ટપણે જણાય છે કે, COI intends to appoint the STRUCTURE FABRICATOR CUM EXHIBITING AGENCY એટલે કે, સરકાર તથા કંપનીએ રથ ભાડે લેવા માટે નહીં પરંતુ, સરકારશ્રીની યોજનાઓ-માહિતીનું પ્રદર્શન કરનાર એજન્સીની જરૂર છે અને તે અન્વયે કરાર કરી વિવાદીને કામ સોંપાયેલ છે. જે અન્વયે વિવાદીએ સેવા પૂરી પાડેલ છે અને સેવા તરીકે આવક મેળવેલ છે તથા સર્વિસટેક્ષ પણ ભરપાઈ કરેલ છે.

આમ, વિવાદીએ સરકારને તથા કંપનીને પૂરી પાડેલ "સ્વર્ણિમ સંકલ્પ જયોત રથ" તથા "સ્વર્ણિમ કિસાન રથ" એ કોઈ ખાસ પ્રકારના રથ નથી પરંતુ માત્ર ટ્રેક્ટર કે LCV જ છે અને વિવાદીએ ટ્રેક્ટર કે રથ અંગે સરકાર કે કંપનીને ક્યારેય ટ્રાન્સફર ઓફ રાઇટ ટુ યુઝ અન્વયે કબજો કે કન્ટ્રોલ તબદીલ કરેલ નથી કે ક્યારેય પણ રથ કે ટ્રેક્ટર At the disposal of Government Or Company મૂકેલ નથી કે ક્યારે પણ સરકારશ્રીનો કે કંપનીનો આવો ઇરાદો પણ ન હતો જે ધ્યાને લેતાં વિવાદીની રજૂઆત યોગ્ય રાખવાપાત્ર જણાય છે. તેથી આકારણી અધિકારીએ "સ્વર્ણિમ સંકલ્પ જયોત રથ" તથા "સ્વર્ણિમ કિસાન રથ" અંગેની પ્રદર્શન સેવા પૂરી પાડવાની મેળવેલ આવકને Transfer of Right to use અંગેની આવક ગણી તેને ડીમ્ડ વેચાણો તરીકે ઠરાવી વેરો આકારેલ છે તે દૂર કરવાપાત્ર જણાય છે.

વિવાદીની આકારણી આદેશના ભાગ-૨ માં આકારણી અધિકારીએ ગણેલ વેરાપાત્ર ટર્ન ઓવર રજૂઆત તરીકે ધ્યાને લેવાની સાથોસાથ અન્ય રજૂઆત ધ્યાને લઈ વિવાદ અનુસાર વેરાપાત્ર નકકી કરેલ છે અને આકારણી તબક્કે વેરાપાત્ર ટર્ન ઓવર નકકી કરતી વખતે હિસાબો મુજબ વેરો બાદ કરી વેરો આકારવાની કરેલ ભૂલ અંગેની ગણતરી સુધારવા પાત્ર જણાય છે.

વધુમાં, વિવાદી વતી સલાહકારશ્રી કલ્પેશભાઈ પટેલ હાજર રહી ગુજરાત એગ્રો. ઇન્ડ. કોર્પો. લી. (GAI.CO) નું સર્ટીફિકેટ રજૂ કરેલ છે. જે સર્ટીફિકેટ મુજબ મે. પ્રવેગ કોમ્યુનિકેશન લી. એ તા.૧૬/૦૫/૨૦૧૦ થી તા.૧૪/૦૬/૨૦૧૦ સુધીમાં ૨૨૩ ટ્રેક્ટર તથા ટ્રોલી (સ્વર્ણિમ કિસાન રથ) તેમજ ૧૫ L.C.V (Tata 407) (સ્વર્ણિમ કિસાન રથ) તરીકે પ્રદર્શિત કરવામાં આવેલ તેમજ GAI.C દ્વારા પ્રવાસ કાર્યક્રમની વિગતો મુજબ સ્વર્ણિમ રથ ગુજરાતના કયા તાલુકામાં પ્રવાસ કરશે તે દર્શાવેલ હતું. જે મુજબ પ્રવેગ કોમ્યુનિકેશન લી. એ ભાડેથી મેળવેલ વાહનો, સ્વર્ણિમ કિસાન રથના ડ્રાઈવર, હેલ્પર ક્લીનર્સ પર આધિપત્ય અને કંટ્રોલ તેઓએ તેમના દ્વારા નિયુક્ત કરેલ વ્યક્તિનું રહેલ હતું. તેમજ GAI.C કે ગુજરાત સરકારે કોઈપણ વાહન આપેલ નથી કે મેનપાવર એટલે કે ડ્રાઈવર, ક્લીનર કે હેલ્પર પૂરા પાડેલ નથી. વિવાદીએ આ બાબતની ખરાઈ માટે GAI.CO Gujarat Agro Industries Corp. (A Government of Gujarat enterprise)] નું સર્ટીફિકેટ રજૂ કરેલ છે. વિવાદીએ આવા ટ્રેક્ટર તથા ટ્રોલી ભાડે રાખવા માટે ટ્રેક્ટર તથા ટ્રોલીના માલિક સાથે કરાર કરેલ હતા જેની વિગતો નીચે મુજબ છે.

(૧) શ્રી લાલજીભાઈ.બી.દેસાઈ અને મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. વતી પારસકુમાર પટેલ વચ્ચે કૃષિ મહોત્સવ-૨૦૧૦ દરમિયાન કિસાન રથ માટેના કોન્ટ્રાક્ટ માટેના સમજુતી કરાર મુજબ લાલજીભાઈ બી. દેસાઈએ મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. ને તા. ૮મી મે, ૨૦૧૦ થી ૧૬મી જુન, ૨૦૧૦ સુધીના સમયગાળા માટે ૨૨૩ ટ્રેક્ટર, ટ્રોલી (રથ) સાથે ભાડે આપેલ તેમજ કરારમાં શરતો પણ સામેલ છે.

(૨) શ્રી સંજય નારણભાઈ પટેલ અને મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. વતી નલીનભાઈ ભાવસાર વચ્ચે કુષિ મહોત્સવ-૨૦૧૦ દરમ્યાન કિસાન રથ માટે L.C.V.(TATA 407) કોન્ટ્રાક્ટ માટેના સમજૂતી કરાર મુજબ શ્રી સંજય નારણભાઈ પટેલએ મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. ને તા.૯મી મે, ૨૦૧૦ થી ૧૬મી જુન, ૨૦૧૦ સુધી ના સમયગાળા માટે ૧૫ L.C.V (TATA 407) સાથે ભાડે આપેલ તેમજ કરારમાં શરતો પણ સામેલ છે.

વિવાદી વતી સલાહકારશ્રી કલ્પેશભાઈ પટેલ હાજર રહી કમિશનર ઓફ ઇન્ફર્મેશન (ફિલ્મ પ્રોડક્શન બ્રાન્ચ (COI)), ગાંધીનગરનું સર્ટીફિકેટ રજૂ કરેલ છે. જે સર્ટીફિકેટ મુજબ મે. પ્રવેગ કોમ્યુનિકેશન લી. એ તા.૧લી ફેબ્રુઆરી, ૨૦૧૦ થી તા.૧૫ એપ્રિલ, ૨૦૧૦ સુધીના સુધીમાં ૨૨૪ ટ્રેક્ટર તથા ટ્રોલી (સ્વર્ણિમ કિસાન રથ) તરીકે પ્રદર્શિત કરવામાં આવેલ તેમજ COI દ્વારા પ્રવાસ કાર્યક્રમની વિગતો મુજબ સ્વર્ણિમ રથ ગુજરાતના કયા તાલુકામાં પ્રવાસ કરશે તે દર્શાવેલ હતું. જે મુજબ પ્રવેગ કોમ્યુનિકેશન લી. એ ભાડેથી ખરીદ કરેલ વાહનો, સ્વર્ણિમ કિસાન રથના ડ્રાઇવર, હેલ્પર ક્લીનર્સ પર આધિપત્ય અને કંટ્રોલ તેઓએ તેમના દ્વારા નિયુક્ત કરેલ વ્યક્તિનું રહેલ હતું. તેમજ C.O.I કે ગુજરાત સરકારે કોઇપણ વાહન આપેલ નથી કે મેનાપાવર એટલે કે ડ્રાઇવર, સફાઇ કામદાર કે હેલ્પર પૂરા પાડેલ નથી. ઉપરોક્ત C.O.I નું સર્ટીફિકેટ રજૂ કરેલ છે. તેમજ તેઓએ આવા ટ્રેક્ટર તથા ટ્રોલી ભાડે રાખવા માટે તેઓના માલિક સાથે કરેલ કરારની વિગતો નીચે



શ્રી એમ બી સરન (મે. એમ બી સરન, પ્રોપ. પેઢીના માલિક) અને મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. વતી પારસ પટેલ વચ્ચે સ્વર્ણિમ સંકલ્પ જ્યોત રથ માટે ટ્રેક્ટર પૂરો પાડવા માટેનો કોન્ટ્રાક્ટ માટેના સમજૂતી કરાર મુજબ શ્રી એમ બી સરનએ મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. ને તા.૧લી ફેબ્રુઆરી, ૨૦૧૦ થી તા.૧૫ એપ્રિલ, ૨૦૧૦ સુધીના સમયગાળા માટે ૨૧૧ ટ્રેક્ટર તથા ટ્રોલી (રથ) સાથે ભાડે આપેલ તેમજ કરારમાં શરતો પણ સામેલ છે.

(૨) શ્રી દલપતભાઈ મનજીભાઈ પટેલ અને મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. વતી શ્રી નલીનભાઈ ભાવસાર વચ્ચે સ્વર્ણિમ સંકલ્પ જ્યોત રથ માટે ટ્રેક્ટર પૂરો પાડવા માટેનો કોન્ટ્રાક્ટ માટેના સમજૂતી કરાર મુજબ શ્રી દલપતભાઈ મનજીભાઈ પટેલએ મે. પ્રવેગ કોમ્યુનિકેશન પ્રા. લી. ને તા. ૬ ફેબ્રુઆરી, ૨૦૧૦ થી તા.૧૫ એપ્રિલ, ૨૦૧૦ સુધીના સમયગાળા માટે ૧૧ નંગ L.C.V.(TATA 407) સાથે ભાડે આપેલ તેમજ કરારમાં શરતો પણ સામેલ છે.

વિવાદીના કેસમાં સરકાર પક્ષ તરફથી મળેલ રજૂઆતના મુદ્દા-૩ મુજબ નાયબ માહિતી નિયામકના પત્રને ધ્યાને લઈ જો ટેન્ડરમાં વેટની રકમ અગાઉથી દર્શાવેલ હોય તો આવો ભરેલ ફેરો ફોરફીટ કરવા અંગે રજૂઆત મળેલ છે.

ઉક્ત રજૂઆતની પૂર્તતા અન્વયે ફાઇલ ચકાસતાં વિવાદ ફાઇલના પાના નં. સી/૧૭૩ પર નાયબ માહિતી નિયામક, માહિતી ખાતા સાથે ટેન્ડરરો (બીડર) દ્વારા થયેલ પ્રી-બીડ મિટિંગની ચર્ચા માર્ગદર્શન અન્વયેની કાર્યવાહી નોંધ છે. આ માત્ર માર્ગદર્શન અંગેની કાર્યવાહી નોંધ છે, અંતિમ દસ્તાવેજ નથી. વધુમાં વિવાદીને જોઇન્ટ ડાયરેક્ટર ઓફ ઇન્ફર્મેશન દ્વારા તા.૨૪-૧૨-૨૦૦૯ના રોજ લખાયેલ પત્રમાં માત્ર ૪% સર્વિસ

ટેક્સનો ઉલ્લેખ છે. આથી ઉક્ત કરારમાં વેટનો સમાવેશ કરવામાં આવેલ નથી. જેના પુરાવા રૂપે બીલની નકલ મેળવી છે. તેમાં સર્વિસ ટેક્સનો સમાવેશ થયેલ છે. પરંતુ વેટનો સમાવેશ થયેલ નથી.

વિવાદીની સ્વર્ણિમ સંકલ્પ જ્યોત રથ અને સ્વર્ણિમ કિસાન રથ અંગેની સેવા પુરી પાડવાની આવકને Transfer of Right to use અંગેની આવક ન ગણવાની રજૂઆત માન્ય રાખવાપાત્ર હોઈ આ રથ એ રથ નથી પરંતુ ટ્રેક્ટર છે તે ધ્યાને લઈ, વેરાપાત્ર વ્યવહાર બનતો ન હોઈ વેરાના દર બાબતે નિર્ણય લેવાનો રહેતો નથી.

વિવાદીએ ઇવેન્ટ મેનેજમેન્ટની સેવા દરમિયાન પુરા પાડેલ ફર્નિચરની ભાડાની આવક બાદ આપવા અંગેની રજૂઆત પુરાવાના અભાવે અસ્વીકાર્ય ગણેલ છે. વિવાદીના સલાહકારની રજૂઆત ધ્યાને લઈ તેઓની C/A વેરાશાખ યથાવત રાખેલ છે.

વિવાદીની રજૂઆત અંશતઃ માન્ય રહેતાં આકારેલ વેરાને આનુષંગિક પણે આકારેલ વ્યાજ તથા દંડ આપોઆપ દૂર કરવા પાત્ર થાય છે. ભાગવાર આંકડાની પરિસ્થિતિનું પત્રક નીચે મુજબ છે.

વિગત	આકારણી મુજબ			વિવાદ મુજબ		
ભાગ-૧ અને ૨						
કુલ વેચાણી	૧૪,૯૭,૮૪,૧૭૬			૧૪,૯૭,૮૪,૧૭૬		
લેબર અને સર્વિસ ચાર્જની	૧૦,૭૨,૨૩,૧૭૬			૧૪,૫૯,૪૯,૦૦૭		
ટર્ન ઓવર	૪,૨૫,૬૧,૦૦૦			૩૮,૩૫,૭૦૯		
નેટ ટર્ન ઓવર	ટેક્સ	એડી. ટેક્સ		નેટ ટર્ન ઓવર	ટેક્સ	એડી. ટેક્સ
૩,૮૯,૬૮,૨૯૧	૪૮,૭૧,૦૩૬	૯,૭૪,૨૦૭		૨૧૧,૩૦૪	૨૬,૪૧૩	૫,૨૮૩
૮,૭૬,૮૪૦	૩૫,૦૭૩	૮,૭૬૯		૮,૭૬,૮૪૦	૩૫,૦૭૩	૮,૭૬૯
૨૩,૨૩,૨૨૫	૨,૯૦,૪૦૨	૫૮,૪૦૦		૨૩,૨૩,૨૨૫	૨,૯૦,૪૦૨	૫૮,૪૦૦
કુલ	૪,૨૧,૬૮,૩૫૬	૫૧,૯૬,૫૧૧	૧૦,૪૧,૩૭૬	૩૪,૧૧,૩૬૯	૩,૫૧,૮૮૮	૭૨,૪૫૨
ભાગ- ૩ / ૪ યથાવત						
ભાગ-૫						
ભરવાપાત્ર વેરો	૬૨,૩૭,૮૮૭			૪,૨૪,૩૪૦		
વેરાશાખ	૩,૬૮,૨૬૧			૩,૬૮,૨૬૧		
બાકી વેરો	૫૮,૬૯,૬૨૬			૫૬,૦૭૯		
વેરાશાખ આગળના વર્ષ માટે C/A	૮,૦૯૪			૮,૦૯૪		
ભરવાપાત્ર વેરો	૫૮,૭૭,૭૨૦			૬૪,૧૭૩		
ભાગ-૬						
ભરવાપાત્ર વેરો	૫૮,૭૭,૭૨૦			૬૪,૧૭૩		
વ્યાજ	૪૯,૩૭,૨૮૫			૫૩,૯૦૫		
દંડ	૧૪,૬૯,૪૩૦			૧૬,૦૪૪		
કુલ	૧,૨૨,૮૪,૪૩૫			૧,૩૪,૧૨૨		



ભરેલ	--	--
બાકી	૧,૨૨,૮૪,૪૩૫	૧,૩૪,૧૨૨

વિવાદમાં સંભવિત રાહત રૂ.૧,૨૧,૫૦,૩૧૩/-



સ્થળ : અમદાવાદ
તારીખ : ૪/૨૦૧૮

-સહી-

(એ જી દફતરી)

નાયબ રાજ્ય વેરા કમિશનર,
વિવાદ-૧, અમદાવાદ.

પ્રતિ,

✓ મે. પ્રવેગ કોમ્યુનિકેશન્સ પ્રાઇવેટ લીમીટેડ,
ઠે. ૧૦૨, શાંતિ આર્કેડ, આકાશ-III પાસે,
૧૩૨ ફ્રીટ રીંગ રોડ, નારણપુરા, અમદાવાદ.

નકલ રવાના :

- સહાયક રાજ્યવેરા કમિશનરશ્રી, ઘટક-૭, અમદાવાદને ભરેલ રકમના ચલનની ખરાઇ કર્યા બાદ જ માંગણાં / રીફંડ ની કાર્યવાહી કરવા સારું.

નકલ સવિનય રવાના -

- મે. સંયુક્ત રાજ્ય વેરા કમિશનરશ્રી. વિભાગ-૧. અમદાવાદને જાણ સારું.

ખરી નકલ

(એ.જી.દફતરી)

નાયબ રાજ્ય વેરા કમિશનર,
વિવાદ-૧, અમદાવાદ.

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10005 of 2022-DB

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-APP-011-2021-22 dated 23.06.2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Praveg Communications India Limited

.... Appellant

Formerly Known As Ms Praveg Communications Ltd
210-214 Athena Avenue Nr Eulogia Hotel Gota
Ahmedabad, Gujarat - 382481

VERSUS

Commissioner of Central Excise & ST, Ahmedabad

.... Respondent

7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

APPEARANCE :

Shri Jigar Shah, Advocate for the Appellant
Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 16.03.2023

DATE OF DECISION: 10.04.2023

FINAL ORDER NO. A/10844 / 2023

RAMESH NAIR :

The brief facts of the case are that the appellant are engaged in providing exhibition service, event management service, advertisement service, works contract service etc. They have carried out the activity of conceptualizing, designing and execution of stalls as per the customer's requirement and for the same, the appellant were assigned work orders from the customers viz. Tourism Corporation of Gujarat Limited, Sports Youth and Cultural Activities Department, All India Conference on livestock and Dairy Development etc. The appellant classified the said activity as works contract under Section 65 (105)(zzzza) of the Finance Act, 1994 and availed the benefit of concessional rate of tax under Rule 3(1) of the Works Contract Rules, 2007 and paid service tax at the rate of 4 / 8%. An audit

was conducted by CERA audit team whereby it was alleged that the appellant classified the services as works contract services however, there was no sale of goods therefore service cannot be classified under works contract service and service tax @ 12.36% should have been paid by the appellant. The investigation and enquiry culminated into the issuance of show cause notice dated 15.11.2017 wherein it was proposed to demand service tax amounting to Rs. 1,06,37,604/- under Section 73(1) of the Finance Act, 1994 along with interest and penalty under Section 75, 76, 77(2) and Section 78 of the Finance Act, 1994 respectively. After considering the reply filed by appellant the learned Commissioner, CGST and CE, Ahmedabad vide order-in-original No. 03/ADC/2020-21 MLM dated 03.06.2020 confirmed the demand of service tax amounting to Rs. 1,06,37,604/- along with interest for delay in making payment of service tax and penalty. Aggrieved by the order-in-original dated 03.06.2020, the appellant preferred the appeal before learned Commissioner (Appeals) however, the learned Commissioner (Appeals) upheld the order-in-original and confirmed the demand along with interest and penalty and rejected the appeal filed by the appellant. Being aggrieved by the said impugned order dated 23.06.2021 the appellant preferred the present appeal before this Tribunal.

2. Shri Jigar Shah, learned Counsel appearing on behalf of the appellant submits that the setting up of exhibition stall is a turnkey project assigned to the appellant which is rightly classified under works contract service and service tax is rightly paid under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. He submits that turnkey projects were assigned by the customers for designing, making layouts, execution and supervision of temporary structures in compliance of the terms of the

agreement. The terms of the agreement made it clear that the appellant have to undertake all the activities mentioned therein under instructions of the Professional Advisor and the Director General, SAG representative. It was a consolidated work undertaken by the appellant which was inclusive of service as well as the materials required for the preparation of the stall. The materials such as cloth, plywood, nut, bolts, flags etc. which are used in the setup of the stall are subject to the approval of the Director General, SAG Engineer. The property in goods of the material gets transferred to the customers. Hence, the appellant has rightly classified the activity under 'works contract service'. The VAT returns filed by the appellant during the impugned period also makes it abundantly clear that there is supply of both service and goods in the present case. He further submits that it is settled law that a contract that provide for the supply of goods as well as labour would a works contract and to the extent the property in goods actually passes from the contractor to the principal, the transaction would come within the purview of the extended definition of sale namely transfer of property in goods whether as goods or in some other form. This is the position after the Constitution (46th Amendment) Act, 1982 whereby the legislatures of the States were empowered to levy sales tax on certain transactions described in Article 366 (29A) of the Constitution of India. This position has been confirmed by Hon'ble Supreme Court in the case of *Bharat Sanchar Nigam Limited vs. UOI* – 2006 (3) SCC 1 wherein it was held by the Hon'ble Apex Court that the bifurcation of an activity into sale and service is permissible in the case of works contracts.

2.1 He further submits that Works Contract Composition Scheme Rules, 2007 were notified by the Legislature vide Notification No. 32/2007-ST dated 22.05.2007 providing the option to a taxable person towards determination

and payment of its liability for works contract service on composition basis. He submits that the appellant have opted for the composition scheme prior to payment of service tax and benefit of composition scheme was availed throughout the period of ongoing contract and in terms of Rule 3(3), the composition scheme granted the option to pay service tax at the rate of 2% upto 28.02.2008 and from 01.03.2008 onwards, at the rate of 4% on the total value of the works contract. However, the condition was that the appellant must not have paid the service tax under other category. He submits that in terms of Rule 3(1) of Works Contract Rules, 2007 which is over-riding effect of the provisions of Section 67 of the Act and Rule 2A of the Determination of Value Rules. Therefore, for the same reason they availed the benefit of Composition Scheme. He placed reliance on the Hon'ble Apex Court judgment in the case of *CCE vs. Larsen & Toubro Limited - 2015 (39) STR 913 (SC)*. He submits that learned Commissioner (Appeals) rejected the classification as 'works contract service' on the grounds that mere production of purchase bill does not support the ownership of the said goods were transferred. He submits that Commissioner has not considered the VAT returns submitted by the appellant towards sale of goods used in execution of works contract. He submits that show cause notice as well as the impugned order accepted that on or before 01.07.2012 the activity carried out by the appellant shall qualify under works contract service but after the period 01.07.2012 the activity carried out by the appellant shall fall under interior decorator despite the fact that appellant have not changed their scope of work then how the activity carried out by the appellant can change.

2.2 He further submits that demand of service tax under the category of taxable service under Section 65B(41) of the Finance Act, 1994 @ 12.36% is

bad in law as the appellant is not engaged in providing service simpliciter in terms of Finance Act, 1994. It is his submission that pursuant to enactment of the Negative List regime with effect from 01.07.2012, all services provided from one person to another against consideration except those covered under Negative List, exclusion or exemption, were leviable to service tax. Under the Negative List regime, the service portion in execution of works contract has been listed as a declared service under Section 66E of Finance Act, 1994. He submits that the appellant are engaged in providing works contract service to their customers. The nature of their service has remained unchanged in the Negative List regime as per amended Rule 2A of Service Tax Rules, 2006. The appellant have been discharging service tax at the applicable rates (i.e. 12.36% on 40% of taxable value of the contract) since 01.07.2012 onwards.

2.3 Learned Counsel further submits that demand of service tax under 'Interior Decorator Service' is wholly incorrect and bad in law. He submits that in the present case, the ingredients provided for defining Interior Decorator service are not satisfied inasmuch as the primary ingredient of 'Interior Decorator Service' is the provision of service by way of advice, consultancy, technical assistance or in any other manner to the service recipients coupled with planning, designing or beautification of spaces. He submits that setting-up of stalls for exhibition or events cannot be considered to classify 'Interior Decorator Service'. The work undertaken by the appellant, by no stretch of imagination can be considered to be 'Interior Decorator Service'. It is merely a setup of stall as per the design and approval of the customers. There is neither any element of beautification of space involved nor any provision of advice, consultancy that is provided by the appellant. Every pattern and design for a stall is as per the layout which

is provided by the customer to the appellant. The activity undertaken by the appellant is simply a works contract service since there is both labour and use of material as part of the contract and the property in goods gets transferred in favour of the customers. He placed reliance on the judgment in the case of R Nagendra Rao vs. CCE – 2018-TIOL-3280-CESTAT-MAD.

2.4 As regards the allegation in the show cause notice as to provision of tangible goods service he submits that it is supply of tangible goods service is completely baseless and not sustainable in law. There is no substantial basis to conclude that the appellant provided supply of tangible goods service. It has been arbitrarily concluded merely on the basis of the nomenclature used in the invoices issued by the appellant that the appellant are mainly providing Interior Decorator Service as the main service and the supply of tangible goods service is incidental or ancillary service. He submits that certain conditions are required to be satisfied in order to determine whether a transaction amounts to a 'transfer of right to use goods' which has not been satisfied. Therefore, classification 'supply of tangible goods service' is devoid of legal merits. He further submits that principle of bundled service has been incorrectly invoked in the present case. Without prejudice, he further submits that the demand under a wrong heading of service itself vitiates the proceedings and the impugned order. Since the service is not classifiable as 'Interior Decorator's Service' even if the service is not classifiable as Works Contract, the demand cannot be sustained as held in the following judgment:-

(a) AT & Co. vs. CCE - 2017 (49) STR 574 (T)

(b) CCE vs. H.M. Satyanarayan Engineers and Contractors - 2018 TIOL 2676-CESTAT MUM

(c) CCE vs. Zenith Punjab Rollers Pvt. Limited - 2018-TIOL-2524-CESTAT CHD

(d) Crescent Organics Pvt. Limited vs. CCE - 2016 (46) S.T.R. 470 (T)

(e) DSP Merrill Lynch Limited vs. CST, 2016 (44) S.T.R. 436 (T)

2.5 Without prejudice he also submits that the demand of service tax Interior Decorator Service is not sustainable as there is mechanism to ascertain the value of service component in the facts of the present case. He takes support of the following judgments:-

(a) Commissioner of Central Excise & Customs, Kerala & Ors vs. Larsen & Toubro Limited & Ors – 2015 (39) STR 913 (SC)

(b) Suresh Kumar Bansal vs. UOI – 2016 (43) STR 3 (Del.)

He further submits that the demand was raised on the basis of definition of services in erstwhile regime which are not relevant in negative list based service tax regime. For this reason also service tax demand on the classification of service under Interior Decorator's Service is not sustainable.

2.6 He also submits that there is no suppression of facts since the department was well aware of the facts hence invocation of extended period of limitation is wholly incorrect. He relied upon following decisions:-

(a) CCE vs. Vineet Electrical, 2002 (144) ELT A292 (SC)

(b) CCE vs. Raptakos Brett, 2006 (194) ELT 101 (T)

(c) CCE vs. Rishabh Velveleen, 1999 (114) ELT 839 (T)

(d) Pee Jay Apparels vs. CCE, 2001 (135) ELT 842 (T)

(e) Cosmic Dye Chemical vs. CCE, 1995 (75) ELT 721 (SC)

He further submits that extended period of limitation was also not applicable since the issue involves interpretation of law. He takes support of the following judgments:-

(a) Ispat Industries Limited vs. CCE - 2006 (199) ELT 509 (Tri.-Mum)

(b) NIRC Limited vs. CCE - 2007 (209) ELT 22 (Tri.-Del.)

(c) Chemicals & Fibres of India Limited vs. CCE 1988 (33) ELT 551 (Tri.)

(d) Homa Engineering Works vs. Commissioner of C. Ex., Mumbai - 2007 (7) STR 546 (Tri-Mum)

(e) Jaihind Projects Limited vs. CCE - [2010] 25 STT 196 (Tri-Ahmedabad)

3. Shri Prakash Kumar Singh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that Adjudicating Authority has confirmed the demand of service tax on the activity of the appellant treating as 'Interior Decorator's Service'. For ease of reference, definition of 'Interior Decorator's Service' which was prevailing prior to 01.07.2012 under Section 65(59) of the Finance Act, 1994 reads as under:-

“‘Interior Decorator’ means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of spaces, whether man-made or otherwise and includes a landscape designer.”

Section 65(105)(q) of the erstwhile Finance Act, 1994 defines taxable service of 'Interior Decorator's Service' as under:-

“(q) “taxable service” means any service provided or to be provided to any person, by an interior decorator in relation to planning, design or beautification of spaces, whether man-made or otherwise, in any manner.”

In order to classify the service under Interior Decorator service the following ingredients are to be satisfied:-

- (i) Providing by way of advice, consultancy, technical assistance or in any other manner.
- (ii) Services related to planning, design or beautification of spaces

- (iii) whether man-made or otherwise
- (iv) includes a landscape designer

As stated above, the primary ingredient of Interior Decorator's service is the provision of service by way of advice, consultancy and technical assistance or in any other manner to the service recipients coupled with planning, designing or beautification of spaces.

5. In the present case, the appellant's activity being of setting-up of stalls for exhibition or events cannot be considered to be classified under Interior Decorator's service for the reason that there is neither any element of beautification of space nor any provision of advice or consultancy is provided by the appellant. The pattern and design for a stall is as per the layout provided by the customers to the appellant. Therefore, the ingredient to classify the service under Interior Decorator's service, in the present case is not satisfied hence, the service cannot be classified under Interior Decorator's service. Moreover, the post Negative List regime, with effect from 01.07.2007, the definition of service was done away and there is only service portion in execution of works contract is listed as a declared service for the purpose of levy of service tax. The appellant's strong claim is that their service is nothing but Works Contract service. In this regard post 01.07.2012, the Works Contract service has been specified as declared service under Section 66E as under:-

"66E. The following shall constitute declared services, namely:

.....

(h) service portion in the execution of a works contract;

....."

The Works Contract Composition Scheme Rules, 2007 were notified vide Notification No. 32/2007-ST dated 22.05.2007 providing the option to a

taxable person towards determination and payment its liability for works contract service on composition basis. The said Notification No. 32/3007-ST dated 22.05.2007 reads as under:-

Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007

In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely :-

1. **Short title and commencement.** - (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

(2) They shall come into force with effect from the 1st day of June, 2007.

2. **Definitions.** - In these rules, unless the context otherwise requires, -

(a) “Act” means the Finance Act, 1994 (32 of 1994);

(b) “section” means the section of the Act;

(c) “works contract service” means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;

(d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3.(1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent. of the gross amount charged for the works contract.

Explanation. - For the purposes of this rule, gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

(2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

[Notification No. 32/2007-S.T., dated 22-5-2007]

6. It is settled law, as per Section 65B of the Finance Act, 1994, Works Contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. In the present case, admittedly the appellant have installed stalls in the exhibition along with material. In this regard the appellant have submitted invoices of the material purchased for use in the execution of contract. Some sample invoices are scanned below:-

21/11/14

SHREE HARI
★ INTERIORS ★
14, SAMPAN COMPLX, OPP. HAVMOR RESTAURANT
B/H, NVRANGPURA STAND, NVRANGPURA, A' BAD-9
Phone : 26564317, MOBILE : 9825005102

63

TAX INVOICE

To,
PRAVEG COMMUNICATIONS PVT.LTD.
102, SHANTI ARCADE,
132' RING ROAD,
NARANPURA,
AHMEDABAD-13
TIN No. : 24074203013
Transport : GOTA
L.R. No. :
From : AHMEDABAD To :

Invoice No. : T/0334
Invoice Date : 18-11-2013
Challan No. : S/217
Challan Date : 17-11-2013
Due Date : 18-11-2013
HSN Code :

SR. NO.	DESCRIPTION	QUANTITY	RATE	AMOUNT
1	NONWOVEN FABRIC RED 3.05MTR	1366.400	74.00	101113.60

carpet for

CASH / CHEQUE
Che.No.: 225448
Date: 22/11/14
Amt.: 1,01,113.60

APPROVED BY
Name: Jyoti Patel
Signature: [Signature]

Bank's Detail :
INTERIORS
State Bank of India, C.G.Road.
A/c.No.: 56399001946

Basic Amount : 101113.60
Disc. % :
Packing : 1300.00
VAT. 4.00 % : 4056.54
ADD.TAX 1.00 % : 1024.14
CST. % :
Round off : 0.28
Total : 107534.00

RS. : One Lakhs Seven Thousand Five Hundred Thirty Four Only.

Type of Sale : VAT 4%
Form to be collect :
TIN No. : 24073403073
CST.No. : 24573403073

For, INTERIORS
Dt. 01-10-2005
Dt. 01-10-2005
[Authorized Signatory]

Terms and conditions :
1. Subject to Ahmedabad Jurisdiction only.
2. Interest 24% P.A. will be charged for late payment.
3. Goods once sold will not be taken back or exchanged.


pl

In respect of bought-out material used for execution of the contract, the appellant have also discharged State VAT. The sample copies of receipt of VAT payment are scanned below:-



12/2 5/30 18

<https://www.commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewAckReceipt>

Annexure - 3
68



999131425103865



Type of Act
VAT

Acknowledgement No 999131425103865
Acknowledgement Date 13/01/2014
Receipt Date 13/01/2014

UNIT Ghatak 7 (ABD)

Range Range 2 (ABD)

Division Division 1 (ABD)

Dealer's Name/Firm Name PRAVEG COMMUNICATIONS PVT. LTD.

officer --

Type of Return Yearly

Period From 01/04/2012

Period To 31/03/2013

Registration No 24074203013

Status Regular

Branch Status PRPL

Branch Name 102,
Ghatlodia,Ahmedabad

Details Of Return	
VAT Form205,VAT Form205A	
Date of Submission	13/01/2014
Tax Payable	197670
Penalty Payable	2000
Interest Payable	8994
Total Amount Payable	208664

Nature Of Default					
Month	Tax	Penalty	Interest	Total Amount Payable	Total Amount Paid
01/04/2012	197670	2000	8994	208664	null
31/03/2013					


[/www.commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewAckReceipt](https://www.commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewAckReceipt)


12


10/01/2015

<https://www.commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewAckReceipt>

78




999141529588980



Type of Act
VAT

Acknowledgement No 999141529588980
Acknowledgement Date 10/01/2015
Receipt Date 10/01/2015

UNIT Ghatak 7 (ABD)

Range Range 2 (ABD)

Dealer's Name/Firm Name PRAVEG COMMUNICATIONS PVT. LTD.

Division Division 1 (ABD)

Type of Return Yearly

Period From 01/04/2013

officer --

Registration No 24074203013

Status Regular

Period To 31/03/2014

Branch Status PRPL

Branch Name 102,
Ghatlodia,Ahmedabad

Details Of Return	
VAT Form205,VAT Form205A	
Date of Submission	10/01/2015
Tax Payable	122891
Penalty Payable	0
Interest Payable	2150
Total Amount Payable	125041

Nature Of Default					
Month	Tax	Penalty	Interest	Total Amount Payable	Total Amount Paid
01/04/2013	122891	0	2150	125041	null
31/03/2014					

<https://www.commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewAckReceipt>

1/2

With regard to the payment of VAT, the appellant have also submitted VAT return in Form-205 under Section 33 of Gujarat VAT Act, 2003. One sample copy of such Form-205 is scanned below:-

67

FORM 205
[See sub-rule(2) of rule 20]

(SELF ASSESSMENT UNDER SECTION 33 OF THE GUJARAT VALUE ADDED TAX ACT, 2003)
FOR THE YEAR 2012 - 2013

Original / Revised ORIGINAL
If Revised, Date of original return
Acknowledgement No. (Attach a note explaining the revisions)

Registration No.	24074203013		
PAN			
Tax Period	From	01/04/2012	To 31/03/2013
Name of the Registered Dealer	PRAVEG COMMUNICATIONS PVT. LTD		
Address			
Room/Block/Flat No.	102		
Municipal No & Name of Building	SHANTI ARCADE		
Road/Street/Land	NR. AKASH-III	Area	132 FT RING ROAD
Post Office	NARANPURA	Taluka	AHMEDABAD
Village/Town/City	AHMEDABAD	District	AHMEDABAD
Pin Code No.	380013		

PART I - TURNOVER OF SALES AND PURCHASES

Description	Sales	Purchase
01. Total Turnover	163140936	116886289
02. Deduct :		
02.1 Exempted from tax under section 5(1)	0	0
02.2 Exempted from tax under section 5(2)	0	1016197
02.3 Branch transfer or consignment to and from outside the state.		
(a) of the goods manufactured	0	
(b) other than (a) above	0	0
02.4 Purchases not qualifying for tax credit as per section 11(8) read with section 11(5)		61270250
02.5 Reduction as per item 37 of Annexure III	0	1539860
02.6 Charges towards labour, service and other charges referred to in sub-clause (c) of clause (30) of section 2	160279790	49449572
Total of (02.1) to (02.6)	160279790	113275879
03. Net Taxable Turnover (01 - 02)	2861146	3410410

PART II - OUTPUT TAX

Rate of Tax	Commodity	HSN Code	Turnover excluding Tax	Tax	Additional Tax	Total Turnover including tax
1%			0	0	0	0
4%			150860	6034	1508	153402
12.5%			2350213	293776	58755	2702744
Other			0	0	0	0
Total			2501073	299810	60263	2861146
04.1	Total Tax					360073

Tax payable on the purchases of taxable goods under section 9 (Including Tax)

Rate of Tax	Commodity	HSN Code	Turnover of purchase	Tax	Additional Tax	
1	2	3	4	5	6	
1%			0	0	0	
4%			0	0	0	
12.5%			0	0	0	
Other			0	0	0	
Total			0	0	0	
Total Tax (col.5 + col.6)						0

04.2

PART III INPUT TAX

Description	Value of Goods (Rs.)
05. Purchases of Capital goods from Registered Dealer	0
06. Purchases of Taxable goods other than capital goods from Registered Dealer	3410410
07. Purchases of Taxable goods from a person other than Registered Dealer	0
Total	3410410

Calculation of Input Tax Credit (Including Tax)

Rate of Tax	Commodity	HSN Code	Turnover of Purchase	Tax	Additional Tax
1	2	3	4	5	6
1%			0	0	0
4%			3410410	129922	32481
12.5%			0	0	0
Other			0	0	0
Total (Col. 5 + Col. 6)					162403
Tax payable on the purchases of taxable goods under section 9					0
Tax paid under the Gujarat Tax on Entry of Specified Goods into Local Areas Act, 2001 (Guj. 22 of 2001)					0
08. Total					162403

PART IV TAX CREDIT

Description	Amount (Rs.)
09. Tax credit brought forward from previous tax period	0
10. Tax credit as per 8	162403
Total (9 + 10)	162403
Adjustment of tax on purchase as per Annexure II (±)	0
11. Gross Tax Credit	162403
12. Reduction in tax credit	
12.1 Under section 11(3)(b)(i) (other than 12.2 below)	0
12.2 Under section 11(3)(b)(ii) (of the goods manufactured)	0
12.3 Under section 11(3)(b)(ii) (of fuels used for mfg. of goods)	0
12.4 Under section 11(5) (for use in manufacture of goods exempted from tax under section 5(1) and 5(2))	0
12.5 Other reason	
TOTAL : [12.1 + 12.2 + 12.3 + 12.4 + 12.5]	0
13. Net tax credit admissible (11 - 12)	162403

71

PART V - NET TAX PAYABLE	
Description	Amount (Rs.)
14. The amount of tax payable as per 04.1	
15. Tax payable on the purchases of taxable goods u/s 9 as per 04.2	360073
16. Total Tax	0
17. LESS :	360073
17.1 Adjustment of tax on sale as per Annexure I (1)	
17.2 Remission under section 41	0
17.3 Credit u/s 69B(9) of the amount of tax deducted at source (enclose Form-703)	0
17.4 Adjustment of the amount deposited under section 22	0
17.5 Net tax credit as per 13	0
Total	162403
18. Net tax payable (16 - 17)	162403
19. Excess Amount of tax credit (18 - 17)	197670
20. Excess Amount of tax credit adjusted against CST	0
21. Excess Amount of tax credit claimed as refund	0
22. Amount of tax credit carried forward to the next tax period [19-(20+21)]	0

PART VI - PAYMENT OF TAX			
Description	Amount (Rs.)		
23. Amount payable			
23.1 Amount of tax payable as per 18	197670		
23.2 Amount of interest	8994		
23.3 Amount of penalty	2000		
Total :	208664		
24. Amount paid	208664		
25. Amount outstanding	0		
26. Amount paid in excess	0		
Challan No.	Date of Payment	Bank / treasury in which amount paid	Amount
4476874	09/10/2012	STATE BANK OF INDIA	166326
4476895	02/11/2012	STATE BANK OF INDIA	19700
4221939	31/05/2013	STATE BANK OF INDIA	7210
3830725	20/09/2013	STATE BANK OF INDIA	15428
TOTAL AMOUNT			208664

ANNEXURE I		(In Rupees)	
Adjustment in sale as per	Increase	Decrease	
27. Sub-section (1) of section 8			
27.1 Sub-clause (a) (Sale cancelled)			
27.2 Sub-clause (b) (alteration in consideration of sale)			
27.3 Sub-clause (c) (goods returned)			
28. Sub-rule (7) of rule 17 (pertains to transactions through commission agent)			
Total :			
29. Net of Sale			
Adjustment in tax on sale			

72

(In Rupees)

ANNEXURE II

	Increase	Decrease
Adjustment in Purchase		
30. On account of credit note / debit note		
31. On account of goods on which right to use such goods is transferred as defined under sub-clause (d) of clause(23) of section2		
Total		
32. Net of Purchase		
Adjustment in tax on purchase		

(In Rupees)

ANNEXURE III

Reduction	Sales	Purchase
33. Sales / Purchases as specified in sub-section (2) of section 5 of the Central Act. (By way of transfer of documents of title)	0	0
34. In the courseof export/import out of country	0	0
35. Sales/purchases as specified in sub-section (3) of section 5 of te Central Act.	0	0
36. In the course of Interstate trade and commerce other than branch transfer or consignment.	0	1539860
37. Total	0	1539860

ANNEXURE IV

Description of top 3 commodities dealt in during the tax period.

1	4% COMMODITY
2	
3	

Tax Invoice Issued in the Period

From No.

To

Retail Invoice Issued in the Period

From No.

To

PART VII. PAYMENT OF TAX

Month	Amount Paid under Gujarat Value Added Tax, 2003	Date of Payment	Amount Paid under Central Sales Tax, 1956	Date of Payment	Total Payment
APRIL	166326	09/10/2012			166326
MAY					
JUNE					
JULY	19700	02/11/2012			19700
AUGUST					
SEPTEMBER					
OCTOBER					
NOVEMBER					
DECEMBER					
JANUARY	22638	20/09/2013			22638
FEBRUARY					
MARCH					
Others					
Other :					
Total	208664		0		208664

69
73

DECLARATION

I, PARASKUMAR MANEKLAL PATEL
Declare that the information given is true and complete. (Designation) DIRECTOR

Full Signature of authorized signatory

Place AHMEDABAD

Date 10/10/2013

Name PARASKUMAR MANEKLAL PATEL

Status DIRECTOR

FOR OFFICE USE

Return received by _____	Date _____
CTO Code No. _____	_____
Entry No. in office record _____	Date _____

The appellant have also submitted VAT assessment order. The copy of the same is scanned below:-

Commercial Tax Gujarat

Page 1 of 5

ANNEXURE-3-c

FORM-304

[See sub-rule (2) of 29, sub-rule (2) of rule 31 and sub-rule(2) of 32]
Assessment Order

(under section 32/34/35 of Gujarat Value Added Tax Act, 2003)

Name of the Dealer :	PRAVEG COMMUNICATIONS LIMITED
RC No. :	24074203013
Address :	102, SHANTI ARCADE, 132 RING ROAD, NARANPURA, AHMEDABAD, AHMEDABAD-380061
Assessment Year :	2017-2018
Period of assessment :	01/04/2013 - 31/03/2014
Date of service of notice in form :	09/01/2018

PART I

Turnover of sales and purchases		(Rupees)			
Description	Sales		Purchases		
	As per Return	As per Assessment	As per Return	As per Assessment	
01. Total turnover	250347679	250347679	163814912	163814912	
02.1 Exempted from tax under section 5(1)		0		2184037	
02.2 Exempted from tax under section 5(2)		0	2184037	0	
02.3 Branch transfer or consignment to and from outside the state		0		0	
(a) of the goods manufactured		0			
(b) other than (a) above		0		0	
02.4 Purchases not qualifying for tax credit as per section 11(8) read with Section 11(5)			72822268	159054556	
02.5 Reduction as per item 37 of annexure-III		0	945062	945062	
02.6 Charges towards labour, service and other charges referred to in sub-clause (c) of clause (30) of section 2	247136149	247136149			
Total of (02.1) to (02.6)	247136149	247136149	162183655	162183655	
03. Net Taxable Turnover (01-02)	3211530	3211530	1631257	1631257	

PART II

Output Tax						
As per Return						
Rate of tax	Commodity Name	Commodity Code	Turnover excluding tax	Tax payable	Additional tax	Total Turnover including tax

Commercial Tax Gujarat

82

Page 2 of 5

12.5	Not Available	99998	623700	77963	15592	717255
4	4 %	ITM04	2375500	95020	23755	2494275
TOTAL			2999200	172983	39347	3211530
04.1 Total Output Tax						212330
04.2 Total Tax Payable on Purchase of taxable goods under section 9						0
Tax Liability(04.1+04.2)						212330

As per Assessment

Rate of tax	Commodity Name	Commodity Code	Turnover excluding tax	Tax payable	Additional tax	Total Turnover including tax
4	Others	99999	2375500	95020	23755	2494275
12.5	Others	99999	623700	77963	15593	717255
TOTAL			2999200	172983	39348	3211530
04.1 Total Output Tax						212330
04.2 Total Tax Payable on Purchase of taxable goods under section 9						0
Tax Liability(04.1+04.2)						212330

PART III

Input tax

Description	Value of goods (Rupees)	
	As per Return	As per Assessment
05. Purchase of capital goods from registered dealers	0	0
06. Purchases of taxable goods other than capital goods from registered dealers	1631257	1631257
07. Purchases of taxable goods from a person other than registered dealer	0	0
Total	1631257	1631257

Calculation of Input Tax - As per Return

Rate of tax	Commodity Name	Commodity Code	Turnover of purchase	Tax charged in respect of item 7 & 8	Additional tax
4	4 %	ITM04	1489255	56734	14183
12.5	12.5 %	ITM16	142002	15435	3087
Total(Col.5+Col.6)					89439
Total Tax Payable on Purchase of taxable goods under section 9					0
Tax paid under the Gujarat Tax on entry of specified goods into Local Areas Act, 2001 (Guj. 22 of 2001)					89439
Total(Input Tax Credit)					

Calculation of Input Tax - As per Assessment

				Tax charged

http://gujvatis.ctdgujarat.local/gvat/frontController.do?actionCode=viewCommonNok... 09-01-2018

Commercial Tax Gujarat

Rate of tax	Commodity Name	Commodity Code	Turnover of purchase	in respect of item 7 & 8	Additional tax
4	Others	99999	1418348	56734	14183
12.5	Others	99999	123480	15435	3087
Total (Col.5+Col.6)					89439
Total Tax Payable on Purchase of taxable goods under section 9					0
Tax paid under the General Tax on entry of specified goods into Local Areas Act, 2001 (Guj. 22 of 2001)					0
08. Total (Input Tax Credit)					89439

PART IV

Tax credit		
Description	Admissible tax credit (Rupees)	
	As per Return	As per Assessment
09. Tax credit brought forward from previous tax period		0
10. Tax credit as per 08	89439	89439
Total (09 + 10)	89439	89439
Adjustment of tax on purchase as per Annexure II		0
11. Gross tax credit	89439	89439
12. Reduction in Tax Credit		
12.1 Under section 11(3)(i) (other than 12.2 below)		0
12.2 Under section 11(3)(ii) (of the goods manufactured) (as per illustration given in the instructions)		0
12.3 Under section 11(3)(iii) (of fuels used for manufacture of goods)		0
12.4 Under section 11(5) (for use in manufacture of goods exempted from tax under sections 5(1) and 5(2))		0
12.5 Other reason		0
Total (12.1 + 12.2 + 12.3 + 12.4 + 12.5)	0	0
13. Net tax credit admissible (11 - 12)	89439	89439

PART V

Net tax payable		
Description	(Rupees)	
	As per Return	As per Assessment
14. The amount of tax payable as per 04.1	212330	212230
15. Tax payable on the purchases of taxable goods under section 9 as per 04.2	0	0
16. Total tax	212330	212230
17. Less:		
17.1 Adjustment of tax on sale as per Annexure I	0	0

Commercial Tax Gujarat

85

Page 4 of 5

17.2 Remission under section 41		
17.3 Credit u/s 57B(9) of the amount of tax deducted at source (enclose Form-41)	0	0
17.4 Adjustment of the amount deposited under section 23	0	0
17.5 Net tax credit as per 17	0	0
Total	89439	89439
18. Net tax payable (16-17)	89439	89439
19. Excess amount of tax credit (18-17)	122891	122891
20. Amount of tax credit adjusted against CST	0	0
21. Excess Amount of tax credit claimed as refund	0	0
22. Amount of tax credit carried forward to the next tax period [18-(20+21)]	0	0

PART VI

Payment of tax

Description	(Rupees)	
	As per Return	As per Assessment
23. Amount payable		
23.1 Amount of tax payable as per 19	122891	122891
23.2 Amount of interest	2180	2180
23.3 Amount of penalty		0
Total	125071	125071
24. Amount paid	125071	125071
25. Amount outstanding		0
26. Excess amount payable		0
26.1 Refund already given		0
26.2 Excess amount of refund adjusted against CST		0
26.3 Interest on Refund		0
26.4 Net Refund Payable (Refund + Interest)		0

Annexure I

(Rupees)

Adjustment in sale	Increase		Decrease	
	As per Return	As per Assessment	As per Return	As per Assessment
27. sub-section (1) of section 8		0		0
27.1 Sub-clause (a) (sale cancelled)				0
27.2 Sub-clause (b) (alteration in consideration of sale)		0		0
27.3 Sub-clause (c) (goods returned)				0
28. sub-rule(7) of rule 17 (pertains to transactions through commission agent)		0		0
Total	0	0	0	0

Commercial Tax Gujarat

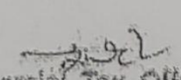
29. Net of sale	0	0
-----------------	---	---

Annexure II		(Rupees)	
Adjustment in purchase	Increase		Decrease
	As per Return	As per Assessment	As per Return As per Assessment
30. on account of credit note/debit note		0	0
31. on account of goods on which right to use such goods is transferred as defined under sub-clause (d) of clause (23) of section 2			0
Total :	0	0	0
32. Net of purchase		0	0

Annexure III		(Rupees)	
Reduction	Sales		Purchases
	As per Return	As per Assessment	As per Return As per Assessment
33. Sales/purchases as specified in sub-section (2) of section 5 of the Central Act. (By way of transfer of documents of title)		0	0
34. In the course of export/import out of country		0	0
35. Sales/purchases as specified in the sub-section (3) of section 5 of the Central Act		0	0
36. In the course of interstate trade and commerce other than through consignment		0	945062
37. Total :	0	0	945062

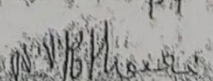
Remarks

નમુના-૩૦૨ની નોટીસ અન્વયે વેપારીશ્રી મતી તેઓશ્રીના સી.ટી.વી. શ્રી, તેજસ મહેતા સબ-૨૦૧૩/૧૪ ની આકારણીના તમામ હિસાબી સાહિત્ય સાથે હાજર રહ્યા. વેપારીશ્રીનો ધંધો ઇલેક્ટ્રોનિક મેનજમેન્ટ સાઇબાઈલ, હોડીંગ્સ, રીફલેક્ટીવ બોર્ડ, ફ્લોયર ની છે. આકારણી સમયના કુલ વેચાણો રૂ. ૨૫,૦૩,૪૭,૬૭૮/- છે તેમાં ચાંજીસનો રૂ. ૨૪,૭૧,૩૬,૧૪૮/- પુરાવા આધારિત ચકાસી બાદ કરતાં કુલ વેચાણ વેચાણો રૂ. ૩૨,૧૧,૫૩૦/- રહે છે જેના ઉપર ભાગ-૨ મુજબ કુલ વેરો રૂ. ૨,૧૨,૩૩૦/- આકારણ છે. સંજ. ૨૦૧૩/૧૪ માં કુલ ખરીદી રૂ. ૧૬,૩૮,૧૪,૮૧૨/- છે. જેમાંથી માહી માલની ખરીદી રૂ. ૨૧,૮૪,૦૩૭/- તથા વેરાશાખને પાત્ર ન હોય તેવી ખરીદી રૂ. ૭,૨૮,૨૨,૧૮૮/- તેમજ ઓ.જી.એસ ખરીદી રૂ. ૬,૪૫,૦૬૨/- તેમજ તેના ચાંજીસની રૂ. ૮,૬૨,૩૨,૨૮૮/- મળી કુલ કપાત રૂ. ૧૬,૨૧,૮૩,૨૫૫/- બાદ આપતા કુલ વેચાણ ખરીદી રૂ. ૧૬,૩૧,૨૫૭/- રહે છે. જેના ઉપર ભાગ-૩ મુજબ કુલ વેરાશાખ રૂ. ૮૮,૪૩૯/- થાય છે. B.F વેરાશાખ રૂ. શૂન્ય છે. જેમાં ચાલુ વર્ષની વેરાશાખ રૂ. ૮૮,૪૩૯/- ઉમેરતાં કુલ વેરાશાખ રૂ. ૮૮,૪૩૯/- થાય છે. વેપારીશ્રીને ભરવાપાત્ર વેરો રૂ. ૨,૧૨,૩૩૦/- થાય છે. જેમાંથી રૂ. ૮૮,૪૩૯/- વેરાશાખ બાદ કરતાં કુલ ભરવાપાત્ર વેરો રૂ. ૧,૨૨,૮૯૧/- રહે છે. જેમાં વેરો પેમેન્ટનું સ્વાજ રૂ. ૨,૧૫૦/- ઉમેરતાં નેટ ભરવાપાત્ર વેરો રૂ. ૧,૨૫,૦૪૧/- થાય છે. જેની સામે વેપારીશ્રીએ ભરેલ રકમ રૂ. ૧,૨૫,૦૪૧/- મજરે આપતાં કોઈ રકમ ભરવાની રહેતી નથી. જે અંગે વેપારીશ્રીને જાણ કરવા.

Signature: 
Commercial Tax Officer (S)
Date: 09-01-2018, Ahmedabad.



True copy

Comm. 
(3)

The appellant have also submitted Chartered Accountant certificate showing purchase of material and sale thereof:-

V.V. Patel & Co.
Chartered Accountants

HEAD OFFICE :
B/2, 9th Floor, Palladium, B/h. Divya Bhaskar Press Office,
Off. S. G. Highway, Corporate Road,
Makarba, Ahmedabad-380 051
Tele-fax : 079-27430594 / 95, 26935400, 99251 71083, 99090 18394
Website : www.vvpatelcompany.com
E-mail : info@vvpatelcompany.com

ANNEXURE- 3 F 121

TO WHOMEVER IT MAY CONCERN


This is to certify that M/s. Praveg Communications Limited are work as Event management, Business Exhibition services, Advertisement and Works Contract Services at 102,1st Floor shanti arcade, Nr. Akash-III, 132 fit ring road, Naranpura, Ahmedabad. Following are the purchases and sales data are certified by us.

PARTICULARS	F.Y. 2012-13	F.Y. 2013-14
TOTAL PURCHASE (RS.)	116686289/-	163814912/-
• LABOUR CHARGES	49449572/-	86232288/-
• MATERIAL PURCHASES	67236717/-	77582624/-
TOTAL SALES (RS.)	163148079/-	250347679/-
• WORKS CONTRACT SERVICES	77698819/-	66006973/-
• OTHER SERVICES	82588114/-	181129176/-
• TRADING OF GOODS	2861146/-	3211530/-

This certificate issued on specific request by party.

Place: Ahmedabad

Date: 11.08.2020



For, V.V.PATEL & CO.
Partner

OFFICES
3, Ground Floor, Ruty Business Park,
Vijaydagan Bus Terminal, Thapa (West), Mumbai-400 601
1208, Nirmal Tower, 26, Barakhamba Road, New Delhi-110 001

Surat : 18, Shanti Vihar Society, Magob, Parvat Pattiya, Surat-395 010
Rajkot : 202, Shreeji Complex, Opp. Imperial Heights, Nr. Big Bazar,
150 ft. Ring Road, Rajkot-360 005

7. From the above documents which are undisputed it is absolutely clear that the appellant have purchased goods and used the same in execution of Works Contract for installation of stalls at exhibition centers. The appellant have also discharged VAT in respect of goods used in execution of Works Contract. In these undisputed facts, the entire activity of the appellant clearly falls under Works Contract service. Accordingly, the service tax at concessional rates discharged as per the Rule 3(1) of Works Contract Rules, 2007 is absolutely correct and legal. Therefore, no demand exists. This issue has been considered by the Hon'ble Supreme Court in the case of Total Environment Building Systems Pvt. Limited which is affirmed by Hon'ble Supreme Court in the case of *CCE vs. Larsen & Toubro Limited – 2015 (39) STR 913 (SC)*. The Hon'ble Supreme Court in the case of Total Environment Building Systems Pvt. Limited (*supra*) decided the matter as under:-

“19. Before proceeding to consider the aforesaid rival contentions, it would be useful to discuss the evolution, meaning and content of the expression works contract in the context of sales tax law and as well as under the service tax regime. This is, having regard to the definition of works contract being inserted w.e.f. 1st June, 2007 to the Finance Act, 1994 which seeks to impose service tax on the service aspect of a works contract. The reason for this exercise is because works contract by itself is not taxable. A works contract as defined by the amendment has two components, namely, a sale component and a service component. It is only when both the components are satisfied and co-exist that a contract becomes a works contract as defined. Further, it is only on the service component of the works contract that the service tax is leviable w.e.f. 1st June, 2007. As far as the sale component in a works contract is concerned, the Sales Tax laws of the respective States would apply. It is also necessary to state that after the enforcement of the Central Goods and Services Tax Act (CGST), 2017 regime the matter is covered under that Act. Therefore, it is necessary to gather the meaning of works contract from judicial precedent in order to answer the rival submissions in the instant case.

Section 65(105)(zzzza) of the Finance Act, 1994 as amended by the Finance Act, 2007 which defines work contract, has been extracted as under, for ease of reference :

“ ‘Works contract’ means a contract wherein, -

transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

such contract is for the purposes of (ii) carrying out, -

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and

electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.”

A reading of the aforesaid definition would indicate that two requisites must be satisfied before service tax on works contract could be levied. In other words, a contract in order to be works contract must involve :

“(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, *and*

(ii) such contract is for the purposes of carrying out, -

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.”

Thus, works contract has two essential components: firstly, sale of goods involved in the execution of such contracts which would attract Sales Tax or Value Added Tax (VAT) as the case may be, i.e., prior to the enforcement of the Goods and Services Tax regime and secondly, a service component which is specified in clause (ii)(a)-(e) of the definition of works contract which would attract Service Tax under the provisions of the Finance Act, 1994 as amended in the year 2007. If both the above requisites are present, then Service Tax on works contract is leviable on the service component. This is clear from the use of the word “and” between components (i) and (ii) of the definition of works contract under Clause (zzzza) of Section 65 of the Finance Act, 1994 which is as per the amendment in the year 2007. Thus, the definition speaks of a composite works contract comprising of an element of sale and an element of service.

Having regard to the specific definition of works contract introduced in the Finance Act, 1994, w.e.f. 1st June, 2007 and bearing in mind that both clauses (i) as well as (ii) of the definition have to be satisfied before the levy of service tax on the service component of a works contract, it is necessary to understand the scope and ambit of the expression

“transfer of property in goods” in clause (i) of the definition of works contract from various judgments of this Court. Further, sales tax/VAT could also be levied on such transfer of goods involved in the execution of such contracts and a service tax on as specified in clause (ii) of the definition of works contract.

The evolution of the concept of works contract is noted as under as it is on the service component of such contract that service tax is leviable. The reference to judgments on works contract under Sales Tax law would be pertinent.

(A) Prior to the 46th Amendment of the Constitution, levy of sales tax on sale of goods involved in the execution of a works contract was held to be unconstitutional in *Gannon Dunkerley (I) - State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.* [AIR 1958 SC 560]; [1959 SCR 379]. A Constitution Bench of this Court held that in a building contract where the agreement between the parties was that the contractor should construct the building according to the specifications contained in the agreement and in consideration, received payment as provided therein, there was neither a contract to sell the materials used in the construction nor the property passed therein as movables. It was held that in the building contract which was one (entire and indivisible), there was no sale of goods and it was not within the competence of the concerned provincial State Legislature (Madras Legislature) to impose tax on the supply of the materials used in such a contract treating it as a sale. Consequently, it was held that in a building contract which was one, entirely indivisible, there was no sale of goods and it was not within the competence of the Provincial State Legislature to impose tax on the supply of materials used in such a contract treating it as a sale. This was on the premise that the works contract was a composite contract which is inseparable and indivisible.

(B) As a result of this dictum, the Law Commission of India in its 61st Report specifically examined the taxability of works contract and examined the particular question whether the power to tax indivisible contract of works should be conferred on the States. This led to insertion of Clause (29A) to Article 366 of the Constitution. For ease of reference, the same is extracted as under :

“Article Definitions. 366. - In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say -

“tax on the sale or purchase of goods” [(29A) includes -

(a) xx xx xx

(b) A tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;”

(C) In *Gannon Dunkerley (II) - Gannon Dunkerley and Co. v. State of Rajasthan* [1993 (1) SCC 364], the Constitution Bench of this Court explained the effect of the legal fiction introduced by sub-clause (b) of Clause (29A) of Article 366 of the Constitution. The following principles were enunciated, to outline the operation of sub-clause (b) of Clause (29A) of Article 366 :

(a) That by virtue of the legal fiction in Clause 29A, even in a single indivisible works contract, there is a deemed sale of goods and such sale has all the incidents of ‘sale of goods.’

(b) That the value of goods involved in the execution of a works contract may be determined by taking into account the value of the entire works contract and deducting therefrom, the charges towards labour and services.

(c) That the following charges towards labour and services were to be excluded in determining the value of goods sold in executing a works contract :

- (i) Labour charges for execution of the works;
- (ii) Amount paid to a sub-contractor for labour and services;
- (iii) Charges for planning, designing and architect's fees;
- (iv) Charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
- (v) Cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and
- (vi) Cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
- (vii) Other similar expenses relatable to supply of labour and services;
- (viii) Profit earned by the contractor to the extent it is relatable to supply of labour and services.

(D) Therefore, under the regime that existed prior to the amendment and insertion of Clause (29A) to Article 366 of the Constitution, a typical works contract would not involve sale of goods and no sales tax was leviable on such works contract. However, subsequently, by way of the Constitution (Forty-sixth Amendment) Act, 1982, Clause (29A) came to be inserted into Article 366 of the Constitution of India, providing for an inclusive definition of the expression "tax on the sale or purchase of goods" in relation to various transactions and dealings including *"tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract."*

(E) Following the introduction of the said clause, most States amended their Sales Tax statutes to cover 'works contract.' The Constitutional validity of the aforementioned provisions by which the legislatures of the States were empowered to levy sales tax on certain transactions described in sub-clauses (a) to (f) of Clause (29A) of Article 366 of the Constitution as also the question, whether, the power of the State legislature to levy tax on the transfer of property in goods involved in the execution of works contract is subject to the restrictions and conditions contained in Article 286 of the Constitution, were considered by a Constitution Bench of this Court in *Builders Association of India v. Union of India* [(1989) 2 SCC 645]. Therein, while upholding the constitutional validity of the aforementioned provisions, the Constitution Bench explained the unique features of a composite contract relating to work and materials and expounded on the meaning, effect and amplitude as also contours of the provisions pertaining to the taxing power of the States in relation to works contract particularly in paragraphs 38-40 of the judgment.

(F) In light of the said discussion, this Court concluded that the transfer of any goods in sub-clauses (a) to (f) of Clause (29A) of Article 366 of the Constitution is by way of a deeming provision i.e., a deemed sale. This Court however, cautioned that the levy of sales tax after the 46th Amendment to the Constitution of India has to still comply with the restrictions imposed under Articles 286 and 269 of the Constitution.

(G) Later a three-judge Bench of this Court in *State of A.P. v. Kone Elevators* [(2005) 3 SCC 389 = [2005 \(181\) E.L.T. 156](#) (S.C.)] had taken the view that a contract for

manufacture, supply and installation of lifts is a “sale” and the entire value of the consideration can therefore be taxed under the sales tax law. However, the matter was subsequently referred to a Larger Bench to review the issue afresh. This Court, on re-hearing the matter referred to it, in *Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu* [(2014) 7 SCC 1 = [2014 \(34\) S.T.R. 641](#) (S.C.) = [2014 \(304\) E.L.T. 161](#) (S.C.)], observed that the installation obligation in a contract for manufacture, supply and installation of lift is not merely incidental, but was a profound part of the entire contract. That various components were assembled together and installed at site as a permanent fixture to the building. The goods, skill and labour elements are intimately connected with one another and the contract is not divisible. Therefore, this Court concluded that a contract for manufacture, supply and installation of lifts was a works contract. It was also observed that even after the 46th Amendment, if Article 366(29A)(b) is to be invoked, as a necessary concomitant, it must be shown that the terms of the contract would lead to a conclusion that it is a ‘Works Contract’. In other words, unless a contract is proved to be a ‘Works Contract’ by virtue of the terms agreed to as between the parties, invocation of Article 366(29A)(b) of the Constitution, cannot be made. That in circumstances when no definite conclusion can be made to the effect that a given contract is a works contract, the same will have to be declared as a ‘sale’ attracting the provisions of the relevant sales tax enactments.

(H) In the case of *Bharat Sanchar Nigam Ltd. v. Union of India* [2006] 145 STC 91 (SC) = [2006 \(2\) S.T.R. 161](#) (S.C), the question that came up for decision before this Court was with regard to the nature of the transaction by which mobile phone connections were obtained, as to, whether, it is a sale or a service or both. This Court held that providing a telephone connection which operates by transmission of electromagnetic waves or radio frequencies are not ‘goods’ for the purpose of Article 366(29A) of the Constitution and that the goods in telecommunication are limited to the handsets supplied by the service provider and as far as the SIM cards are concerned, the issue was left for determination by the assessing authorities.

(I) Subsequently, in *Larsen and Toubro Limited and Another v. State of Karnataka and Another* [(2014) (1) SCC 708], this Court deciphered the meaning of the works contract from the earlier judgments and in para 72 opined as under :-

In our opinion, the term “works contract” in “72. Article 366(29A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract. Parliament had such wide meaning of “works contract” in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29A) in Article 366 was to enlarge the scope of the expression “tax on sale or purchase of goods” and overcome *Gannon Dunkerley (1)* [*State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.*, AIR 1958 SC 560 : 1959 SCR 379]. Seen thus, even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term “works contract”. Nothing in Article 366(29A)(b) limits the term “works contract” to contract for labour and service only. The Learned Advocate General for Maharashtra was right in his submission that the term “works contract” cannot be confined to a contract to provide labour and services but is a contract for undertaking or bringing into existence some “works”. We are also in agreement with the submission of Mr. K.N. Bhat that the term “works contract” in Article 366(29A)(b) takes within its fold all genre of works contract and is not restricted to one species of contract to provide for

labour and services alone. Parliament had all genre of works contract in view when clause (29A) was inserted in Article 366.”

(Underlining by me)

(J) Further, the difference between a contract for work (or service) and a contract for sale (of goods) was considered and by placing reliance on *Commissioner of Sales Tax v. Purshottam Premji* [(1970) 2 SCC 287], it was observed that the primary difference between a contract for work (or service) and a contract for sale of goods is that, in the former, there is in the person performing work or rendering service no property in the thing produced as a whole, notwithstanding that a part or even the whole of the materials used by him may have been his property. In the case of a contract for sale, the thing produced as a whole has individual existence as a sole property of the party who produced it, at some time before delivery, and the property therein passes only under the contract relating thereto to other party for a price. It was also observed that the factors highlighted to distinguish a contract for work from a contract for sale are relevant but not exhaustive.

(K) In paragraph 89 of the *Larsen and Toubro Limited and Another* (supra) this Court observed that three conditions must be fulfilled to sustain the levy of tax on the goods deemed to have been sold in execution of the works contract, namely, (i) there must be a works contract, (ii) the goods should have been involved in the execution of the works contract, and (iii) the property in those goods must be transferred to a third party either as goods or in some other form. In a building contract or any contract to do construction, the above three things are fully met. In a contract to build up a flat there will necessarily be a sale of goods element. Works contract also includes building contracts and, therefore, it can be stated that building contracts are a species of works contract.

(L) With reference to the aspect theory, it was held that though the State Legislature does not have the power to tax services by including the cost of such service in the value of goods but that does not detract the State to tax the sale of goods element involved in the execution of works contract in a composite contract like contract for construction of building and sale of a flat therein. In light of the above discussion, the legal proposition was summarised in paragraph 97 of the judgment.

Evolution of the practice in relation to the levy of service tax on works contract :

20. Service tax was introduced in India vide the Finance Act, 1994. Service tax is legislated by Parliament under the residuary entry i.e. Entry 97 of List I of the Seventh Schedule of the Constitution of India read with Article 248 of the Constitution. The service tax provisions have the following basic scheme :

- (i) Section 65 of the Act provides for taxable services;
- (ii) Section 66 of the Act provides for the charge of service tax by the person designated as “the person responsible for collecting the service tax” for the Government;
- (iii) Section 67 of the Act provides for the value of taxable service which is to be subjected to 5% service tax; and
- (iv) Section 68 of the Act provides for the collection and payment mechanism for service tax.

It is necessary to trace the evolution of charging service tax on works contract as discerned by this Court in the aforesaid judgments. While considering the rival contentions of the parties, it is also necessary to examine the issue of levying service tax on contracts said to be in the nature of works contract, both prior to, and following the introduction of an express charging provision to impose tax on works contract although we are concerned with the period prior to the definition of works contract w.e.f. 1st June, 2007 to Finance Act, 1994. This is with reference to the following judgments :

(a) In *Tamil Nadu Kalyana Mandapam Association v. Union of India* [(2004) 5 SCC 632], this Court examined the question, whether, the inclusion of taxation on kalyana mandapams, within the tax net of Sections 66 and 67 of the Finance Act, 1994 as amended in the year 1996 was unconstitutional. It was held that a tax on services rendered by mandap-keepers and outdoor caterers is in pith and substance, a tax on services and not a tax on sale of goods or on hire-purchase activities. The nature and character of this service tax is evident from the fact that the transaction between a mandap-keeper and his customer is definitely not in the nature of a sale or hire-purchase of goods. It is essentially that of providing a service. The manner of service provided assumes predominance over the providing of food in such situations which is a definite indicator of the supremacy of the service aspect. The legislature in its wisdom noticed the said supremacy and identified the same as a potential region to collect indirect tax.

(b) The question, whether, the charges collected towards the services for evolution of prototype conceptual designs, on which service tax had been paid under the Finance Act, 1994 as amended from time to time, were also liable to tax under the Karnataka Value Added Tax Act, 2003, (KVAT) for the sale of advertisement material following the creation of the design-concept, was considered by this Court in *Imagic Creative Pvt. Ltd. v. The Commissioner of Commercial Taxes and Ors.* [(2008) 2 SCC 614 = [2008 \(9\) S.T.R. 337](#) (S.C.)]. This Court observed that payments of service tax as also of KVAT are mutually exclusive. That they should be held to be applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a composite contract as contradistinguished from an indivisible contract. Thus, a distinction was made between an indivisible contract and a composite contract. In doing so, it was held that a composite contract, would have to be construed such that the legal fiction in Article 366(29A) allowing tax on the sale element of a works contract would have to be applied only to the extent for which it was enacted, i.e., to the extent of the value of the sale component of the contract and should not be applied in relation to the service element of the transaction. That taxes, in the nature of a service tax could be applied in relation only to the service element.

(c) In *Nagarjuna Construction Company Ltd. v. Government of India and Ors.* [(2013) 1 SCC 721 = [2012 \(28\) S.T.R. 561](#) (S.C.)], this Court discussed the effect of introduction of an express charging provision to impose tax on works contract, w.e.f. 1st June, 2007, on works contract which were entered into prior to 1st June, 2007. In the said case, the appellant therein was said to be in the business of carrying out composite construction contracts. The appellant-assessee had paid sales-tax/VAT on those contracts under the Andhra Pradesh General Sales Tax Act, 1957, Andhra Pradesh Value Added Tax Act, 2005 and other State enactments. Prior to 1st June, 2007, the assessee had paid service-tax under the category of 'erection, commissioning or installation service' as appearing under Section 65(105)(zzd) of the Finance Act, 1994, or, as 'commercial or industrial construction service' under Section 65(105)(zzq) and as 'construction of complex service' under Section 65(105)(zzzh).

(d) With effect from 1st June, 2007, the charging provision, Section 65(105)(zzzza) was introduced by defining a works contract. The Central Government also introduced, w.e.f. 1st June, 2007 the Works Contract (Composition Scheme for Payment of Service

Tax) Rules, 2007 (hereinafter referred to as 'the 2007 Rules'). Under this scheme, an option of composition was offered @ 2% of the gross amount charged on the works contract. Prior to the composition, the effective tax rate under the other category of services would work out to be approximately 3.96% of the gross amount.

(e) The appellant in *Nagarjuna Construction Company Ltd.* (supra) sought to claim benefit of the Composition Scheme under the 2007 Rules, however, the assessee was disabled to do so because of a clause in Circular No. 98/1/2008-S.T., dated 4th January, 2008 which provided that a taxable service, once classified under the old regime, could not be classified differently, post 1st June, 2007 simply because the consideration, or a part thereof, was received post 1st June, 2007. The vires of Circular No. 98/1/2008-S.T. was challenged before this Court. In upholding the validity of the said Circular, this Court held that the appellant, who had paid service tax prior to 1st June, 2007 for the taxable services, was not entitled to change the classification of the single composite service for the purpose of payment of service tax on or after 1st June, 2007 and hence, was not entitled to avail of the Composition Scheme. It was observed that the appellant-assessee had already paid service tax on the basis of classification of service contract which was in force prior to 1st June, 2007 and the said contract could not be classified differently following the introduction of Section 65(105)(zzzza) and the 2007 Rules.

(f) Thus, Works Contract Services were brought under the service tax net as per an amendment to of the Finance Act, 1994 by introduction of Clause (zzzza) to Section 65(105). The said introduction was made pursuant to the Finance Act, 2007, which expressly made the service component in such works contract liable to service tax w.e.f. 1st June, 2007. The amendment was made to the said section of the Finance Act, 1994 by which works contract which were indivisible and composite could be split so that only the labour and service element of such contracts would be taxed as service tax.

21. Having noted the above developments, it is necessary to discuss the judgment in *Larsen and Toubro Ltd.* (supra) in detail as Learned ASG, Ms. Divan has vehemently submitted that the said judgment requires re-consideration. It may be noted that this judgment concerned the position of law prior to the amendment made to the Finance Act, 1994, w.e.f. 1st June, 2007, incorporating the definition of works contract as under :

(a) In the aforesaid case, this Court traced the historical setting within which the controversy leading up to the 46th amendment in the context of levy of sales tax on works contract progressed. Taking up the question as to whether service tax could be levied on the service element of a works contract, it was observed that service tax was introduced by the Finance Act, 1994 and various services were set out in Section 65 thereof as being amenable to tax. The legislative competence of such tax is traceable to Article 248 read with Schedule VII List I Entry 97 to the Constitution of India. The controversy in the said case was with regard to the period prior to the 2007 Amendment made to the Finance Act, 1994 in the year 2007 which introduced the definition and concept of works contract as being a separate subject-matter of taxation. By the said amendment works contract, which were indivisible and composite were split so that only the labour and service element of such contracts would be taxed under the heading service tax. Thus, the tax was not on works contract as such. In the said case, the Revenue raised four arguments to assail the judgments of various Tribunals and High Courts which had decided against the Revenue on the point. By contrast, the assessee assailed the judgments of the Tribunal and the High Courts against them, in particular the judgment in *G.D. Builders v. Union of India* [[2013 \(32\) S.T.R. 673](#)], of the Delhi High Court. According to the assessee there was no service tax leviable on service element of works contract prior to amendment being made in the year 2007, insofar as the indivisible works contract were concerned and what was taxable under the Finance Act, 1994 was only cases of pure service in which there was no goods element involved. It was urged that the judgment of the Delhi High Court in *G.D. Builders* (supra) was wholly

incorrect and the minority judgment of the judicial members of a Larger Bench of the Delhi Tribunal in *Larsen & Toubro Ltd. v. CST* (in ST Appeal No. 58658 of 2013, decided on 19-3-2015), had comprehensively discussed all the authorities that were relevant to the issue and arrived at the correct conclusion. Thus, the assessee assailed the judgment of the Delhi High Court in *G.D. Builders* (supra) and considered along with *Larsen & Toubro Ltd. v. CST* (supra).

(b) Considering the definition of 'taxable service' in sub-section (105) of Section 65 of the Finance Act, 1994 and the relevant clauses therein, namely, (g), (zzd), (zzh), (zzq) and (zzzh); Charge of service tax in Section 66; valuation of taxable services for charging service tax [Section 67 and Section 65(105)(zzzza)] as well as the Rule 2A of Service Tax Act (determination of value) Rules, 2006, this Court observed that crucial to the understanding and determination of the issue at hand was the second *Gannon Dunkerley and Co. v. State of Rajasthan* [(1993) 1 SCC 364] (*Gannon Dunkerley II*) (supra). That in the said judgment the modalities of taxing composite indivisible works contract was gone into which has been referred to above. It was observed that the value of the goods involved in the execution of the works contract will have to be determined by taking into account the value of entire works contract and deducting therefrom the charges towards labour and services which would cover -

- “(a) labour charges for execution of the works;
- (b) amount paid to a sub-contractor for labour and services;
- (c) charges for planning, designing and architect's fees;
- (d) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
- (e) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and
- (f) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
- (g) other similar expenses relatable to supply of labour and services;
- (h) profit earned by the contractor to the extent it is relatable to supply of labour and services.”

For the purposes of arriving at the basis for the levy of sales tax on works contract, the amount deductible under the aforesaid heads will have to be determined in light of the facts of a particular case and on the basis of the material produced by the contractor.

(c) Referring to the aforesaid eight heads of deductions it was observed that in light of the judgment in *Gannon Dunkerley II* (supra) the same has to be indicated in the contractor's account. However, if it is found that the Contractor has not maintained proper accounts or their accounts are found to be not worthy of credence, it is left to the legislature to prescribe a formula on the basis of a fixed percentage of the value of the entire works contract as relatable to the labour and service element of it. It was observed that “*unless the splitting of an indivisible works contract is done taking into account the eight heads of deduction, the charge to tax that would be made would otherwise contain, apart from other things, the entire costs of establishment, other expenses and profits earned by the contractor and would transgress into forbidden*

to a client, by a consulting engineer in “(g) relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering but not in the discipline of computer hardware engineering or computer software engineering;

to a customer, by a commissioning and (zsd) installation agency in relation to erection, commissioning or installation;

to any person, by a technical testing and (zzh) analysis agency, in relation to technical testing and analysis;

to any person, by a commercial concern, in (zzq) relation to construction service;

to any person, by any other person, in (zzzh) relation to construction of a complex;

Explanation : For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorized by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;”

(d) Speaking about the mutually exclusive taxation and powers of the Centre and the State, the dichotomy between the sales tax leviable by the State and service tax leviable by the Centre was emphasised by this Court in the aforesaid judgment. In the context of composite indivisible works contract, only Parliament can tax the service element contained in these contracts and State only can tax the transfer of property in goods element contained in these contracts. Thus, it is important to segregate the two elements completely for the purpose of taxation. Hence, it was held that works contract is a separate species of contract distinct from contracts for service simpliciter recognised in the world of commerce and law as such and has to be taxed separately as such. Referring to the decision of works contract in *Gannon Dunkerley I*, (supra) *Kone Elevator India (P.) Limited* (supra), *Larsen & Toubro Ltd. and Others v. State of Karnataka* (supra) all arising under the Sales Tax law, it was emphasised that there was no charging section to tax works contract in the Finance Act, 1994 i.e. until the amendment made

with the insertion of sub-clause (zzzza) to clause 105 of Section 65 of the Finance Act, 1994. Ultimately, in para 23 it was observed as under :-

A close look at the Finance Act, 1994 would show that the five “23. taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contract. This is clear from the very language of Section 65(105) which defines “taxable service” as “any service provided”. All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contract, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contract has been made by any of the aforesaid sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.”

It was also observed that while introducing the concept of service tax on service element of indivisible works contract various exclusions are also made, such as, works contract in respect of roads, airport, airways transport, bridges, tunnels and dams, possibly in the national interest. The implication of the exclusion means that such contracts were never intended to be the subject-matter of the service tax.

(e) Further, in *Larsen & Toubro Ltd.* (supra) the correctness of the judgment in *G.D. Builders v. Union of India* [[2013 \(32\) S.T.R. 673](#)] was also considered. In the said case, it was held by the Delhi High Court that Section 65(105)(g), (zzd), (zzh), (zzq) and (zzzh) were good enough to tax indivisible composite works contract and that even when rules are yet to be framed for computation of taxes, taxes would be leviable. This proposition was based on the judgment in *Mahim Patram (P.) Ltd. v. Union of India* [(2007) 3 SCC 668 = [2007 \(7\) S.T.R. 110](#) (S.C.)]. It was observed that in *G.D. Builders* (supra) there was a misreading of *Mahim Patram* (supra) which was a case related to tax under the Central Sales Tax Act; that in *Mahim Patram* (supra), it was observed that under Section 9(2) of the Central Sales Tax Act power is conferred on officers of various States to utilise the machinery provided under the provisions of the States’ sales tax statutes for the purposes of levy and assessment of Central Sales Tax under the Central Act. That Rules could also be made in exercise of power under Section 13(3) of the Central Sales Tax Act as a result of which the necessary machinery for the assessment of Central Sales Tax was found to be there. Therefore, even in the absence of Rules made under the Central Sales Tax Act the machinery provided under the State Sales Tax statute for the purpose of levy and assessment Central Sales tax under the Central Act could be utilized and the same is different from saying that no Rules being framed at all under the Central Sales Tax Act. Merely because no rules were framed for computation under the Central sales tax Act it did not follow that no tax was leviable under the said Act. Hence, the observations of the Delhi High Court in *G.D. Builders* were not approved.

(f) With specific reference to para 51 of the judgment of the Delhi High Court in *G.D. Builders* case (supra), it was observed that the said judgment had ignored the decision by this Court in *Gannon Dunkerley II* (supra) inasmuch as the manner of bifurcation of the service element from a composite works contract was delineated in the said case. That the service element had to be deducted from the gross amount charged thereof and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. Therefore, it was held that *G.D. Builders* (supra) was not correctly decided by observing

in paragraph 39 as under after quoting paragraph 31 of the judgment of Delhi High Court in *G.D. Builders* :

“We are afraid that there are several errors in this paragraph. The High Court first correctly holds that in the case of composite works contract, the service elements should be bifurcated, ascertained and then taxed. The finding that this has, in fact, been done by the Finance Act, 1994 Act is wholly incorrect as it ignores the second Gannon Dunkerley [(1993) 1 SCC 364] decision of this Court. Further, the finding that Section 67 of the Finance Act, which speaks of “gross amount charged”, only speaks of the “gross amount charged” for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. We find therefore that this judgment is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contract.”

It was categorically observed that since the Finance Act, 1994 lays down no charge or machinery to levy and assess service tax on indivisible composite works contract, therefore, service tax was not existent at all under the Act and hence any exemption qua service tax “levied” did not arise at all.

22. As already noted, the definition of works contract was brought under the service tax net as per Section 65(105)(zzzza) of the Finance Act, 1994 by the insertion of the said definition. The said introduction was made pursuant to the Finance Act, 2007, which expressly made the service element in such works contract liable to service tax w.e.f. 1st June, 2007. By the said amendment, works contract which were indivisible and composite could be split so that only the labour and service element of such contracts would be taxed under the heading “Service Tax”.

23. It is in the above backdrop that the definition of Works contract inserted for the first time by virtue of Section 65(105)(zzzza) under the Finance Act, 2007 assumes significance and has to be applied w.e.f. 1st June, 2007. Thus, on and from the enforcement of the amendment in the Financial Year 2007, i.e. 1st June, 2007 the tax on the service component of works contract became leviable. Therefore, till then it was not so leviable as there was no concept of works contract under the said Act.

24. Recognising this aspect of the matter in *Larsen and Toubro Ltd.* (supra), this Court held that Service Tax on works contract was not leviable, meaning thereby, that such tax on the service component of works contract as defined above did not attract Service Tax prior to the amendment.

25. Further, in *Commissioner of Service Tax and Others v. Bhayana Builders Private Limited and Others* [(2018) 3 SCC 782], this Court considered the correctness of the judgment of the Larger Bench of Customs, Excise and Service Tax Appellate Tribunal (for short, “CESTAT”) dated 6-9-2013 in the case of *Bhayana Builders (P) Ltd. v. CST* [(2013) SCC OnLine CESTAT 1951]. In the said case, reliance was placed on *Larsen and Toubro Ltd.* (supra) and it was held that when there was no levy of service tax on works contract, no question of any exemption would arise. It was further held that the Central Government is empowered to grant exemption from the levy of service tax either wholly or partially, only when there is any “taxable service” as defined in sub-clauses of clause (105) of Section 65 of the Finance Act, 1994 and not otherwise. This Court agreed with the view taken by the Full Bench of the CESTAT in the judgment dated 6-9-2013 and dismissed the appeals of the Revenue.

26. Therefore, reliance placed by the assesseees in the present case on the aforesaid judgments is just and proper. On the other hand, the contention of Ms. Diwan, Learned ASG to the effect that even prior to the aforesaid amendment being made to the

Finance Act, 1994 service tax on works contract was leviable is not correct. It was being levied on purely service contract and not on service element of works contract as there was no definition of a works contract till then. Hence, the amendment made to the Finance Act, 1994 by insertion of the definition of works contract as under clause (zzzza) is not clarificatory in nature. Having found that the Service Tax was not at all leviable on service element of a works contract, Parliament felt the need for the amendment and was so incorporated by the Finance Act, 2007.

27. Thus, the judgment in *Larsen and Toubro Ltd.* (supra) has been correctly decided and does not call for a re-consideration insofar as the period prior to 1st June, 2007 is concerned. In view of the above discussion, I agree with the result arrived at by His Lordship M.R. Shah J. vis-a-vis allowing all civil appeals under consideration except Civil Appeal No. 6792 of 2010 which is dismissed. No costs."

The principle Bench of this Tribunal, in identical issue, in the case of *Russell Interiors Private Limited vs. Commissioner, CGST-Delhi South in Service Tax Appeal No. 52659 of 2018* reported at 2023-VIL-222-CESTAT-DEL-ST, decided the matter as under:-

"6. The issue involved in this appeal is as to whether the services such as partition work, metal glass works, civil works, wood work finishing, flooring, ceiling, false ceiling, hardware fittings, blinds, wall paper fixing, electrical work, plumbing work, AC ducting and other similar services in relation to constructed buildings/ offices provided by the appellant during the period 2011-12 are classifiable under "works contract" service or under "interior decorator" service. The impugned order has confirmed the demand under 'interior decorator' service.

7. It is not in dispute that the earlier order dated 28.11.2013 passed by the Commissioner holding that the services would fall under 'interior decorator' service was set aside by order dated 09.10.2018.

The relevant portions of the order passed by the Tribunal are reproduced below:

"The bare perusal of the definition of interior decorator service clarifies that this is a service being provided by way of advice, consultancy, technical assistance or in any other manner though towards planning, design or beautification of the spaces. At this stage, if we look onto the contract of the appellant with his clients, i.e. CHC Constructions Ltd. The perusal thereof shows that the activity of construction and various affiliated works was to be carried out by the appellant as per the technical specifications given after the approval of the architect of the client of the appellant. This very perusal makes it clear that the appellant was not to provide services as that of design and technical assistance or consultancy. The moment the nature of services as mentioned herein are provided without the said technical consultancy, the service comes out of the ambit of interior decoration services. These particular findings are sufficient for us to hold that Show Cause Notice has wrongly proposed the demand under interior decorator services and

the adjudicating authority below also has been wrong by holding these services as interior decorator services."

6. *The perusal of order under challenge clarifies that the Commissioner himself has acknowledged the services of the appellant when provided to OC-CWG to be in the nature of work contract service. The order is absolutely silent to create any distinction about services being provided by the appellant to the clients other than OC-CWG. The contract as discussed above of the appellant with another client rather proves the contrary that the nature of services provided by the appellant has always been same irrespective of the clients. Once such activity is acknowledged by the Department to be a work contract services there is no justification by concluding the similar activities to fall under any other category. The Commissioner is also observed to be wrong while forming an opinion that the activity of the appellant do not fall under any clause i.e. A-E of the definition to works contract services. In view of the above discussion, the demand as confirmed is not sustainable.*

7. *Seeing from another angle of limitation as pleaded, we observe that period in dispute is w.e.f. 2006-07 to 2011-12. The Show Cause Notice is dated 19.10.2011. The Department has invoked the extended period of limitation in accordance of proviso to Section 73 of the Finance Act. Perusal of the Order under challenge shows that there is no lota of evidence proving any act of suppression on mis-representation on part of the appellant that too with the intention of evading taxes. On the contrary, it is an acknowledged fact that the appellant has deposited certain amount while discharging his tax liability, considering the same to be the works contract service. In view of above discussion, the activity of appellant since is held to be work contract service, the Department is held to have wrongly invoked the extended period of limitation as there remains no evasion of tax on part of appellant what to talk of the intent to so evade. Show Cause Notice is therefore held to be barred by time. 8. For the demand within the normal period of limitation, the demand is already held not sustainable. In view of entire above discussion, the order is set aside and Appeal is allowed."*

(emphasis supplied)

8. In view of the aforesaid decision of the Tribunal, the order dated 21.04.2014 passed by the Tribunal confirming the demand under 'interior decorator' service deserves to be set aside and is set aside. The appeal is, accordingly, allowed."

8. In view of the facts as narrated above and the judgments cited above, there is no doubt that the service of the appellant is clearly classified as Works Contract Service. Accordingly, the service tax discharged on the concessional rates under Works Contract Service is correct and legal.

9. Since we have decided the matter on the merits, we are not addressing other issues raised by learned Counsel. As per our above observation and findings, the impugned order is set-aside and the appeal is allowed with consequential relief.

(Pronounced in the open court on 10.04.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

KL

EULOGIA INN PRIVATE LIMITED (Formerly EULOGIA INN LLP)								
Sr. No.	Tax Authority	F.Y.	Order Dated	Order No	Deamnd of Rs	Current Status		
						Appeal	Appeal Date	Remarks
1	INOCME TAX	2019-20	26-09-2022	Order U/s 143(3) of I.T.Act.	15987059	Form No. 35 is Filled	21-10-2022	Appeal filled by the Company. Form 35 attached herewith.

Acknowledgement Receipt of Income Tax Forms (Other Than Income Tax Return)



e-Filing Acknowledgement Number / Quarterly Statement Receipt Number
741728480211022

Date of e-Filing
21-Oct-2022

Name	:	EULOGIA INN LLP
PAN/TAN	:	AAEFE9648J
Address	:	PLOT NO.54/3, T.P.NO.32.S.NO.93/1/2/2, B/H SILVER GARDENIA. S.G.HIGHWAY,NEAR GOTA FLYOVER, Gota, Gota B.O, GANDHI NAGAR, Gujarat, INDIA - 382481
Form No.	:	Form 35
Form Description	:	Appeal to the Commissioner of Income-tax (Appeals). This form is in compliance with rule 45
Assessment Year	:	2020-21
Financial Year	:	-
Month	:	-
Quarter	:	-
Filing Type	:	Original
Capacity	:	PTR
Verified By	:	ACSPP9592J

(This is a computer generated Acknowledgement Receipt and needs no signature)



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT



1.	PAN	AAEFE9648J
2.	Name of the assessee	EULOGIA INN LLP
3.	Address of the assessee	406 ABHISHREE AVENUE,, NEAR SBI ZONAL OFFICE, NEHRU NAGAR CIRCLE, AMBAWADI,, AHMEDABAD 380015, Gujarat, India
4.	Assessment Year	2020-21
5.	Status	FIRMS
6.	Residential Status	Resident
7.	Date of filing of Return of Income	27/01/2021
8.	Acknowledgement Number of Return of Income	228719581270121
9.	Date of processing u/s 143(1)(a) of the Income-tax Act.	03/11/2021
10.	Income Computed under section 143(1) of the Act	2,29,970
11.	Date of service of Notice under section 143(2) of the Income-tax Act	30/06/2021,30/06/2021
12.	Date(s) of issue of Notice(s) under section 142(1) of the Income-tax Act	15/11/2021,11/02/2022
13.	Order passed under section	143(3) read with section 144B of the Income-tax Act
14.	Returned Income	Rs. 0
15.	Date of Order	26/09/2022
16.	DIN	ITBA/AST/S/143(3)/2022-23/1045979851(1)

ASSESSMENT ORDER

1. Facts of the case in brief

The assessee is a Limited Liability Partnership(Firm) has filed its return of income for Assessment Year 2020-21 on 27-01-2021, declaring total income at Rs. NIL. Assessee is engaged in the business of hotel, restaurant and hospitality services. This case was selected for Limited Scrutiny under CASS System for verification of high creditors/ liabilities and unsecured loans. A notice u/s 143(2) of the Income-tax Act was issued on 29-06-2021 through e-mail portal, which was served to the assessee. Subsequently, the case was transferred to ReFAC.

2. Details of Opportunities Given:

Type of	Date of	Date of	Response	Date of	Response	Remarks
---------	---------	---------	----------	---------	----------	---------

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

notice / communication	notice / communication	compliance given	of the assessee received /not received	response if received	Type (Full/part/ adjourn- ment)	if any.
Notice 143(2)	u/s 29-06-2021	14-07-2021	Received	12-07-2021	Part	-
Notice 142(1)	u/s 15-11-2021	26-11-2021	Not received	-	-	-
Letter	02-12-2021	13-12-2021	Not received	-	-	-
Letter	02-02-2022	07-02-2022	Received	08-02-2022	Part	-
Notice 142(1)	u/s 11-02-2022	17-02-2022	Received	18-02-2022	Part	-
Letter	11-03-2022	16-03-2022	Received	21-03-2022	Part	-
Letter	24-08-2022	29-08-2022	Received	29-08-2022	Part	-
Letter	01-09-2022	06-09-2022	Received	05-09-2022	Part	-
Letter	10-09-2022	12-09-2022	Not Received	-	-	-
Show Notice	cause 19-09-2022	23-09-2022	Not received	-	-	-

3. Cases where variation is not proposed: N/A

4. Cases where variation is proposed:

4.1 Complete description of issues (issue wise)

High creditors / Liabilities and Unsecured Loans

4.2 Synopsis of all submissions of the assessee relating to the issue and indicating the dates of submission:

In response to the notice u/s 143(2), the assessee submitted the reply with ITR filed, ITR-V, computation of income, Balance Sheet with schedule of accounts, Profit & Loss Account and Tax Audit Report.

In response to the letter dated 02.02.2022, the assessee requested adjournment for 15 days vide letter dated 08-02-2022.

In response to notice u/s 142(1) dated 11.02.2022, the assessee submitted reply on 18-02-2022 with 21 attachments containing statement of bank account of the assessee, GSTR-3B, ledger copy of sundry creditors, list and ledger copy of advance

from customers, confirmation of accounts with ITR-V of the party and bank account copy of corresponding page.

In response to the letter issued on 11-03-2022 requesting to submit the details of PAN, address, email ID of the sundry creditors and advance from customers for Rs.1lakh and above, the assessee submitted reply on 21.03.2022 with list of sundry customers and advance from customers.

In response to the letter issued on 24-08-2022 requesting to furnish the details including PAN and address etc on some of the sundry creditors, advance from customers etc, the assessee submitted the details on 29-08-2022 without having pan and address of some parties.

In response to the letter issued on 01.09.2022 requesting to furnish the PAN and address of the some of the parties, the assessee replied with details and ledgers having no pan and address for few parties.

Again letter issued on 10.09.2022, the assessee not responded.

For show-cause notice also not responded.

4.3 Summary of information/evidence collected which proposed to be used against it (attached documents if required) :

Inspite of repeated requests to the assessee, the assessee submitted the ledgers details but not containing the details of PAN, address and email-id in respect of the advance from two customers viz. M/s Kabir Enterprise and Kavya steel. Till date the assessee did neither reply nor responded to the show-cause notice issued by this unit on 19-09-2022 to show cause why the advance received from the customers M/s. Kabir Enterprise (Amount Rs. 1,20,00,000) and M/s. Kavya Steel (Amount Rs.35,00,000) totaling to Rs.1,55,00,000/- should not be treated as unexplained cash credits u/s 68 of the Income-tax Act, 1961 and added to the total income of the assessee and taxed u/s 115BBE of the Income-tax Act, 1961.

4.4 Variation proposed on the basis of inference drawn:

The assessee neither offered any explanation nor submitted any reply for the letter issued on 10.09.2022 and also the show cause notice issued on 19-09-2022 . The assessee failed to furnish details of PAN, Complete address and mail-id of the two customers mentioned above, the identity, genuineness and credit worthiness of the customers is doubtful and without having the details , the assessing officer could not be verify the facts. The onus is on the part of the assessee to prove the identity of the customers. Hence, the assessing officer is having no other option left with treat above transactions with M/s Kabir Enterprise and M/s. Kavya Steel to

the tune of Rs.1,55,00,000/- should be treated as unexplained cash credits u/s 68 of the Income-tax Act, 1961 and added to the total income of the assessee and taxed u/s 115BBE of the Income-tax Act, 1961.

Addition u/s 68 of the IT Act: Rs.1,55,00,000/-

4.5 Synopsis of the reply to SCN and additional SCN (if any):

No reply received in response to SCN

4.6 Summary of information evidence collected after SCN (if any):

NIL

4.7 Point-wise rebuttal of reply of the assessee including analysis of any case law relied upon:

Nil

4.8 Conclusion drawn

The assessee neither offered any explanation nor submitted any reply for the letter issued on 10.09.2022 and also the show cause notice issued on 19-09-2022. The assessee failed to furnish details of PAN, Complete address and mail-id of the two customers mentioned above, the identity, genuineness and credit worthiness of the customers is doubtful and without having the details, the assessing officer could not verify the facts. Hence, the assessing officer is having no other option left with treat above transactions with M/s Kabir Enterprise and M/s. Kavya Steel to the tune of Rs.1,55,00,000/- should be treated as unexplained cash credits u/s 68 of the Income-tax Act, 1961 and added to the total income of the assessee and taxed u/s 115BBE of the Income-tax Act, 1961.

5. Final Computation of taxable Income:

Sl. No	Description	Amount (in INR)
1	Income as per Return of income filed	NIL
2	Income as computed u/s 143(1)(a)	2,29,970
3	Variation in respect of issue of : Unexplained Cash credits u/s 68 of the IT Act, 1961 as discussed above.	1,55,00,000
4	Total Income/Loss Determined	1,57,29,970

6. Assessed under section 143(3) r.w.s. 144B of the Income-tax Act, 1961. Penalty

proceedings u/s 271AAC(1) and 272A(1)(d) of the Income-tax Act, 1961 have been initiated through notices separately. Computation of income and demand notice u/s 156 of the Act is attached.

Assessment Unit
Income Tax Department

Copy to:

Assessee



Assessment Unit
Income Tax Department



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT



To, EULOGIA INN LLP 406 ABHISHREE AVENUE,,NEAR SBI ZONAL OFFICE, NEHRU NAGAR CIRCLE,AMBAWADI, AHMEDABAD 380015,Gujarat India	
---	--

PAN: AAEFE9648J	Date: 26/09/2022	Status: FIRM	DIN & Notice No: ITBA/AST/S/156/2022- 23/1045979905(1)
---------------------------	----------------------------	------------------------	--

Subject: Notice of demand under section 156 of the Income-Tax Act, 1961

1. This is to give you notice that for the assessment year **2020-21** a sum of **Rs. 1,59,87,059**, details of which are given on the reverse, has been determined to be payable by you.
2. The amount should be paid to the Manager, authorised bank/State Bank of India within 30 days of the service of this notice. A challan is enclosed for the purpose of Payment.
3. If you do not pay the amount within the period specified above, you shall be liable to pay simple interest at one per cent for every month or part of a month from the date commencing after the end of the period aforesaid in accordance with section 220(2).
4. If you do not pay the amount of the tax within the period specified above, penalty (which may be as much as the amount of tax in arrear) may be imposed upon you after giving you a reasonable opportunity of being heard in accordance with section 221.
5. If you do not pay the amount within the period specified above, proceedings for the recovery thereof will be taken in accordance with sections 222 to 227, 229 and 232 of the Income-tax Act, 1961.
6. If you intend to appeal against the assessment, you may present an appeal under Part A of Chapter XX of the Income-tax Act, 1961, to the **NATIONAL FACELESS APPEAL CENTRE (NFAC)** within thirty days of the receipt of this notice, in Form No. 35, duly stamped and verified as laid down in that form.

Yours faithfully,

**Assessment Unit
Income Tax Department**

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No 121

Comp.Appl/19(AHM)2021 in CP(CAA) 103 of 2019
in CA(CAA) 152 of 2018

Order under Section 230-232

IN THE MATTER OF:

Praveg Communications Ltd
Sword & Shield Pharma Ltd

.....Applicant

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

Order delivered on ..20/09/2021

PRESENT:

For the Applicant : Mr. Amit Ladda, Advocate
For the Respondent : Mr. Navin Pahwa, Sr. Counsel

ORDER

Heard learned counsel for the BSE and learned counsel for the Respondent. It appears to us that the objections of BSE to the scheme have been complied with by the Petitioner, accordingly, the pursis is filed to accepting the same. In view of this, this application becomes infructuous and stands disposed of.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

NOTICES

Notice No.	20170104-19	Notice Date	04 Jan 2017
Category	Company related	Segment	Equity
Subject	Revocation of Suspension in trading of equity shares of Sword &Shield Pharma Ltd. (Scrip Code: 531637)		
Attachments	Annexure II.pdf ; Annexure I.pdf		

Content

Revocation of Suspension in trading of equity shares of Sword & Shield Pharma Ltd. (Scrip Code: 531637)

Trading Members of the Exchange are hereby informed that the suspension in trading of equity shares of the below mentioned company will be revoked w.e.f. January 12, 2017. Pursuant to SEBI Circular No. CIR/CFD/CMD/12/2015 dated November 30, 2015, trading in the securities of the company will be resumed in "XT" group.

Scrip Code	Name of the Company
531637	Sword & Shield Pharma Ltd.

Trading members may note that the entire promoter's shareholding i.e.3,40,000 equity shares are under lock-in as per the details given under:

No of Shares	Distinctive Nos	Date upto – under lock-in
1,22,600	As per Annexure II	30/05/2017
2,17,400	Demat	31/05/2017

A profile of the Company is also attached as Annexure I.

The Information Memorandum of the aforesaid company will be available on the Exchange's website under Corporates->Listed Corporates->Information Memorandum->Revocation.

Further the trading members may please note that the above mentioned scrip will be a part of Special Pre-open Session for IPO's & Relisted Scrips -Relist session on January 12, 2017.

For further information on SPOS, the trading members are requested to refer to the Exchange's notice no.20120216-29 on ***Enabling Special Pre-open Session for IPO's & Relisted Scrips.***

Trading Members are requested to take note of the same.

Arpita Joshi
Associate Manager
Listing Compliance

January 04, 2017

In the matter of Companies Act, 2013

And

**In the matter of adjudication proceeding under Sub-section (1)
of section 12 of the Companies Act, 2013.**

And

In the matter of M/S. SWORD & SHIELF PHARMA LIMITED.

30 MAY 2019 / 1164

1. M/s. SWORD AND SHIELD PHARMA LTD
55, World Business House, Near Parimal Garden,
Ambawadi, Ahmedabad-380006.
 2. PRAVINBHAI MANEKLAL PATEL (Managing Director)
A-24, NANDANVAN BUNGLOWS,
NR, AUDA WATER TANK,
THALTEJ- HEBATPUR ROAD,
THALTEJ, AHMEDABAD, 380059
 3. KIRTIKUMAR SANKARLAL PATEL (CFO(KMP))
29, RADHE BUNGLOWS, NEAR NARAYAN SCHOOL,
AJWA ROAD, VADODARA-390019.
 4. ANKITABEN KANUBHAI LUNAGARIYA (Company Secretary)
TO. LAPALIYA, TA. AMRELI,
DIST. AMRELI-365601, Gujarat
-Respondents

Date of hearing- 20.05.2019.

Present

- | | |
|--|--|
| 1. Shri L. R. Meena, Registrar of Companies | Adjudicating Officer |
| 2. Shri Naresh Chandra, Senior Technical Assistant | Present staff |
| 3. Shri Anand Lavingia (PCS) | Company Secretary
(PCS) and authorised
representative of the
above respondents. |

ORDER

The above named company was incorporated on 28.02.1995 and as per record of this office presently the company is having its registered office situated at 55, World Business House, Near Parimal Garden, Ambawadi, Ahmedabad-380006.

WHEREAS M/s. SWORD & SHIELF PHARMA LIMITED (herein after referred to as "company") is a company having its Registered office at 55, World Business House, Near Parimal Garden, Ambawadi, Ahmedabad-380006 registered under the provisions of the Companies Act, 1956 (hereinafter referred to as "Act") in the state of Gujarat.

And whereas As per Section 12(1) of the Companies Act, 2013, a company shall, on and from the fifteenth day of its incorporation and at all times thereafter should have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

And Whereas the Regional Director (NWR) had issued Letter No. RD (NWR)/230-232/(244)/ 2018-19/180 dated 09.04.2019 to M/s. SWORD AND SHIELD PHARMA LTD on its above registered office of the Company in the matter of scheme of amalgamation, but the said letter was returned back by the Postal Authority with the remarks "Left".

And whereas, the Regional Director (NWR) vide letter No. RD (NWR)/230-232/(244)/2018-19/434 dated 25.04.2019 directed the undersigned that the subject company has not maintaining its registered office in compliance of section 12 of the Companies Act, 2013 and initiate necessary action for violation of section 12 of the Companies Act, 2013.

And whereas, in view of the above facts & observation, it appears that the company is not maintaining its registered office and the provision of section 12(1) of the Companies Act, 2013 has been contravened and the company and every officer of the company, who is in default shall be liable for action under section 12(8) of the Companies Act, 2013.

1. In view of the above facts, the undersigned has reasonable cause to believe that the provision of Section 12(1) of the Companies Act, 2013 not been complied with by the Company and its officers in default. Thus, the Company and its officers in default have rendered themselves liable to be penal action as provided in sub-section (8) of section 12 of the Companies Act, 2013. As

per provision of section 12 (8), there is provision for penalty for which the ROC is empowered to adjudicate the penalty under section 454 (3) of the Companies Act, 2013.


2. On the basis of adjudication application dated 02.05.2019, the office of the Registrar of Companies, Gujarat, Dadra and Nagar Haveli issued adjudication notice for violation of section 12(1) of the Companies Act, 2013 to the Company and its Respondents on 14.05.2019 by giving an opportunity of being heard in the matter before the undersigned on 22.05.2019.
3. That in response of the adjudication notice dated 22.05.2019, Shri Anand Lavingia (PCS) has visited to the office of the undersigned on 20.05.2019 and requested the undersigned to process and hear the matter of adjudication for violation of section 12(1) of the Companies Act, 2013 on 20.05.2019 in place of 22.05.2019. The adjudication office has grant the permission to Shri Anand Lavingia (PCS) appears on behalf of the respondents for hearing the matter on spot on 20.05.2019 instead of 22.05..2019 accordingly.
4. The undersigned in exercise of power conferred under sub section 3 of section 454 of the Companies Act, 2013 fixed the date of hearing on 20.05.2019 instead of 22.05.2019 for adjudicating penalty for violation of provision of section 12 (1) of the Companies Act, 2013.
5. In response to the adjudication notice dated 14.05.2019 issued by the undersigned, the Company and its officer in default vide Board Resolution and Memorandum of appearance dated 02.05.2019 have authorized Shri Anand Lavingia, Practicing Chartered Accountant to appear and represent before the adjudicating authority- Registrar of Companies, Gujarat on the above given date and time for oral and written submission and to all acts and things as may be necessary and incidentally in the matter.
6. During the hearing on 20.05.2019, Anand Lavingia, Practicing Chartered Accountant and Authorized representative of the Respondents reiterated submissions made in the adjudication notices. He tendered adjudication application dated 02.05.2019 before the members. He oral stated that due to leave of few staff members of the company on the day of delivery of letter calling for information by the office of the Regional Director, the office was closed for few hours by the operating staff, this very reason the notice

sent by the Regional Directorate was not received by the company and has been returned with the remarks "Left". He informed that violation on the part of the Respondents was absolutely unintentional and was committed inadvertently without any mala fide intention.

7. That keeping in mind all the relevant facts and after consideration of the oral submissions made by Anand Lavingia, Practicing Chartered Accountant and Authorized Representative of the Respondents, it is observed that the company and Respondent No. 2 to 4 have committed default under section 12 (1) of the Companies Act, 2013 for not maintaining of registered office. The submission made by the company appears to be satisfactory. However, as a matter of the fact that the notice sent by Directorate was undelivered as above stated, it is hereby ordered that sum of Rs. 3,000/- each to company and its 3 officers have been imposed as penalty and the matter stand disposed off.
8. The penalties imposed as under should be paid by the Respondents as per Law and submit the copies of Challan to this office. The company should file the INC 28 with attachment of this order and copy of aforesaid Challan.

Sr. No.	Name of the Respondents	Amount (In Rs.)
1.	M/s. SWORD AND SHIELD PHARMA LTD	3,000/-
2.	PRAVINBHAI MANEKLAL PATEL (Managing Director)	3,000/-
3.	KIRTIKUMAR SANKARLAL PATEL (CFO(KMP))	3,000/-
4.	ANKITABEN KANUBHAI LUNAGARIYA (Company Secretary)	3,000/-
	Total Rs.	12,000/-

The adjudication notice stands disposed of with this order.


(L. R. Meena)
Adjudicating officer,
Registrar of Companies,
Gujarat, Dadra and Nagar Haveli.

Signed this 20th day of May, 2019.

Copy to:

- ✓ 1. M/s. SWORD AND SHIELD PHARMA LTD
55, World Business House, Near Parimal Garden,
Ambawadi, Ahmedabad-380006.
2. PRAVINBHAI MANEKLAL PATEL (Managing Director)
A-24, NANDANVAN BUNGLOWS,
NR, AUDA WATER TANK,
THALTEJ- HEBATPUR ROAD,
THALTEJ, AHMEDABAD, 380059
3. KIRTIKUMAR SANKARLAL PATEL (CFO(KMP))
29, RADHE BUNGLOWS, NEAR NARAYAN SCHOOL,
AJWA ROAD, VADODARA-390019.
4. ANKITABEN KANUBHAI LUNAGARIYA (Company Secretary)
TO. LAPALIYA, TA. AMRELI,
DIST. AMRELI-365601, Gujarat
5. Master File
6. Office Copy