

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

REGIONAL BENCH - COURT No.II

Service Tax Appeal No.70226 of 2018

(Arising out of Order-in-Original No.KNP-EXCUS-000-COM-017-15-16 dated 30/10/2015 passed by Commissioner of Customs, Central Excise & Service Tax, Kanpur)

M/s VSN Infratech Pvt. Ltd.,Appellant

(Vision House, B-8,
Khapra Mohal, Shanti Nagar, Kanpur)

VERSUS

Commissioner of Central Excise &

CGST, Kanpur

....Respondent

(117/7, Sarvodaya Nagar, Kanpur)

APPEARANCE:

Shri Ankul Udai, Advocate for the Appellant

Shri A.K. Choudhary, Authorised Representative for the Respondent

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

FINAL ORDER NO.70746/2025

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

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.KNP-EXCUS-000-COM-017-15-16 dated 30/10/2015 passed by Commissioner of Customs, Central Excise & Service Tax, Kanpur. By the impugned order following has been held:-

"ORDER

1. I determine and confirm the differential demand of service tax amounting to Rs.22,23,132/-(including cesses) (Rupees Twenty Two lacs Twenty Three Thousand One Hundred and Thirty Two only) in terms of Section 73(2) of the Finance Act, 1994 against M/S. VSN infratech Pvt. Ltd.

B-8. Khapra Mohal. Shanti Nagar, Kanpur and direct them to deposit the aforesaid determined amount of service tax.

2. I confirm the demand of interest at appropriate rates on the aforesaid demand of service tax under the provisions of Section 75 of the Finance Act, 1994 against M/S. VSN Infratech Pvt. Ltd. B-8, Khapra Mohal, Shanti Nagar, Kanpur and order for recovery of same from them.

3. I impose a penalty of Rs. 22,23,132/- (Rupees Twenty Two Lacs Twenty Three Thousand One Hundred and Thirty Two only) upon M/S. VSN Infratech Pvt. Ltd B-8, Khapra Mohal, Shanti Nagar, Kanpur under Section 78 of the Finance Act, 1994,

4. I also impose penalty of Rs. 10,000/-(Ten Thousand) under Section 77 (1) (a) of the Finance Act, 1994 upon M/S VSH Infratech Pvt. Ltd. B-8, Khapra Mohal, Shanti Nagar, Kanpur for the contraventions of the provisions discussed above

5. I also impose penalty of Rs. 10,000/-[Ten Thousand] under Section 77 (1) (b) of the Finance Act, 1994 upon M/S VSN Infratech Pvt. Ltd. B-8, Khapra Mohal, Shanti Nagar, Kanpur for the contraventions of the provisions discussed above.

6. I also impose penalty of Rs. 10,000/-(Ten Thousand] under Section 77 (1) (d) of the Finance Act, 1994 upon M/S, VSN Infratech Pvt. Ltd. B-8. Khapra Mohal, Shanti Nagar, Kanpur for the contraventions of the provisions discussed above,

7. I also impose penalty of Rs. 10,000/-[Ten Thousand] under Section 77 (2) of the Finance Act, 1991 upon M/S VSN Infratech Pvt. Ltd. B-8, Khapra Mohal, Shanti Nagar, Kanpur for the contraventions of the provisions discussed above.”

1.2 After issuance of the order, a corrigendum dated 31.12.2015 was issued modifying the above order by holding as follows:-

"3. Accordingly, as well in Para 37 of the said Order, the amount of "Rs. 22,23,132/- (including cesses] appearing in the second last line may please be substituted and read as "Rs. 22,27,2011-[including cesses)"

4. In "ORDER" portion in the aforesaid Order-in-Original the amount of "Rs.22,23,132/- [including cesses) (Rupees Twenty Two lacs Twenty Three Thousand One Hundred and Thirty Two only) appearing at SL No 1 may please be substituted and read as "Rs.22,27,201/ [including cesses] (Rupees Twenty Two lacs Twenty Seven Thousand Two Hundred and One only).

5. In "ORDER" portion in the aforesaid Order-in-Original the amount of "Rs.22,23,1321- (Rupees Twenty Two lacs Twenty Three Thousand One Hundred and Thirty Two only) appearing at SL.No. 3 may please be substituted and read as "Rs.22.27,201/- (Rupees Twenty Two lacs Twenty Seven Thousand Two Hundred and One only)."

2.1 Appellant is engaged in providing Construction Services in respect of Commercial or Industrial Buildings and Civil Structures. They took service tax registration on 20.05.2011.

2.2 Appellant filed a VCES application dated 21.12.2013 on 23.12.2013 with Assistant Commissioner, declaring service tax dues of Rs.12,10,806/- for the period from 01.04.2009 to 31.12.2012 supported by a calculation chart, reproduced below:-

Period	Details of Work Contract received		Taxable value after abatement claimed from the value of taxable receipt	Rate of Service Tax (incl. Edu.+ SHE Cess)	Service Tax liability thereon	Service Tax already paid by the party	Tax dues declared
	Non - taxable	Taxable					
Apr., 09 to Mar., 10	5455638	Nil	Nil	10.3%	Nil	Nil	Nil
Apr., 10 to Dec., 11	832640	Nil	Nil	10.3%	Nil	Nil	Nil

Apr., 11 to Mar., 12	13786312	7396796	2440943	10.3%	251417	Nil	251417
Apr., 12 to Dec., 12	19964392	28225642	9314462	10.3%	959389	Nil	959389
Grand Total							1210806

2.3 Appellant deposited tax dues of Rs.6,50,000/- vide Challan No.14 on 28.12.2013 and Rs.5,60,806/- vide Challan No.467 dated 28.06.2014.

2.4 The authority on finding that appellant has failed to declare their service tax liability under VCES application truthfully and correctly as the appellant had declared the tax dues amount to Rs.12,10,806/- for the relevant period whereas on examination of calculation chart the same should have worked out to Rs.14,02,684/-. Accordingly, the declaration filed by the appellant was held to be liable for rejection. The said rejection was made after affording proper opportunity of hearing to the appellant and was informed to them through Order No.07/VCES/2013 dated 14.11.2014. Appellant vide letter dated 13.11.2014 informed that they have deposited the short declared service tax to the tune of Rs.1,91,877/- vide Challan No.00352 dated 30.10.2014.

2.5 An inquiry was conducted for ascertaining the correct tax liability by way of issuance of letter dated 24.10.2013 and summon dated 01.11.2013 to the appellant. In response, appellant furnished balance sheet for the year 2009-10 to 2011-12 and thereafter they have filed VCES application with the department on 23.12.2013 declaring the tax dues for the period from 01.04.2011 to 31.12.2012.

2.6 Statement of Shri Ramesh Kumar Pandey, Director of the appellant was recorded on 08.01.2014 wherein he stated that they have provided the civil constrictions and repair maintenance including electrical works since 2009 to various government/private parties mainly HAL, NMDC, UPRUVNL, HRI and Meza Urja (NTPC), UPSIDC and Baghla Canal Division etc. His further statement was recorded on 27.08.2014.

2.7 On examination of the records/information provided by the appellant during investigation, following facts emerged:-

- while filing their VCES declaration appellant had claimed exemption from Service Tax against taxable value of services provided during the years from 2009-10 to 2011-12 as per CBEC's Circular issued under D.O.F. No. 334/1/2012-TRU dated 16.03.2012 and Notification No. 25/2012-ST dated 20.06.2012. This exemption was for the period post the provision of the services and hence was not applicable.
- Appellant beside providing Commercial or Industrial Construction services during the year 2011-12 & 2012-13 had also provided services in relation to cleaning of drains and road side pattries of Industrial Area at UPSIDC, Oral and UPSIDC, Faizabad and Maintenance Services to UPSIDC, Lucknow during the year 2011-12. Appellant claimed exemption from payment of service tax as per Notification No. 25/2012-ST dated 20.06.2012 and declared NIL tax liabilities against provisions of above services. The said notification was not admissible to them.
- Appellant while computing their tax dues w.e.f. 01.07.2012 have not consider provision of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 as amended, which resulted in availment of excess abatement against services provided in relation to execution of works contract during the period from 01.07.2012 to 31.12.2012.
- Appellant have wrongly computed their tax dues for the period onwards 01.04.2012 considering rate of Service Tax as 10.3% instead of applicable rate of Service Tax of 12.36%.
- Appellant despite obtaining Service Tax registration in the month of May. 2011, had never filed any ST-3 returns with the department, whereas they were engaged in providing taxable services to their clients.
- Appellant during the period from April 2009 to December, 2012 was not issuing any bills/invoices to their service

recipients, but also no records showing details of cost of material used in respect of each work contract/ payment receipt were being maintained by them during the said period.

2.8 On the basis of above it was observed that appellant have short paid service tax as indicated in table below:-

Period	Gross receipt against provision of taxable services	Taxable value after abatement @ 33% vide Notf. No.1/2006-ST dt. 01.03.06	Rate of Service Tax	Service Tax payable by the party
2009-10	5455638	1800361	10.3%	185437
2010-11	832640	274771	10.3%	28301
2011-12	21183109	7580376	10.3%	780779
2012-13 (upto 31.12.2012)	48190033	23318649	12.36%	2882185
Total of Service Tax payable by the party				Rs. 38,76,702

2.9 From the facts as indicated above, total service tax liability of the appellant was calculated to Rs.38,76,702/- whereas in their VCES declaration, they have declared as Rs.12,10,806/- which cannot said to be treated as complete declaration.

2.10 After rejection of VCES, a show cause notice dated 19.12.2014 was issued to the appellant asking them to show cause as to why-

"(i) Service Tax amounting to Rs. 38,76,702/-for the period 2009-10 to 2012-13 (upto 31.12.2012) should not be demanded and recovered from them under the provisions of Section 111(1) of the Finance Act, 2013 read with Section 73(1) of the Finance Act, 1994.

(ii) Interest at the appropriate rate for the relevant period till the payment of the Service Tax should not be demanded and recovered from them under the provisions of Section 75 of the Act.

(iii) Penalty should not be imposed upon them under Section 77(1) (a), (b), (d) and 77(2) of the Act ibid for contravention of various provisions of the Act and the Rules made there under as discussed supra.

(iv) Penalty should not be imposed upon them under Section 78 of the Act Ibid for suppression of facts and the

value of taxable service, willful misstatements and for contravention of various provisions of the Act and the Rules made thereunder with intent to evade payment of Service Tax."

2.11 The said show cause notice was adjudicated as per the impugned Order-in-Original dated 30.10.2015. Thereafter, for rectification of mistake under Section 74 of the Finance Act was filed. The said rectification mistake application was rejected vide order dated 22.12.2017 by observing as follows:-

"Please refer to your application for rectification of mistake under section 74 of the Finance Act, 1994, received in this office on 30.10.2017. You have applied for rectification of the Order-in-Original No. KNP-EXCUS-000-COM-017-15-16 dated 30.10.2015.

Earlier, vide application dated 08.09.2016 and reminders dated 02.02.2017, 16.03.2017, 07.04.2017, you had requested for correction of error in calculation and consequent reduction of confirmed demand by an amount of Bs 1,91,877/-. In this regard, considering your rectification application, suitable instructions were issued to the jurisdictional Assistant Commissioner. Aforesaid proceedings were also communicated to you vide this office letter even C. No. 2362 dated 26.05.2017.

Now, against the same O-in-O, you have filed one more rectification application dated 30.10.2017 raising therein some additional issues. The points raised by you are already discussed in the said Order-in-Original No.KNP-EXCUS-000-COM-017-15-16 dated 30.10.2015 readwith corrigendum issued under C. No. V(15) OFF/ADJ/ST/243/2014/6308 dated 31.12.2015 and there appears no mistake apparent from records. Further, the time prescribed for issue of any rectification order under section 74(1), ie.. within two years of the date on which such order was passed, has elapsed. Accordingly, your application stands disposed of."

2.12 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Ankul Udai learned Counsel appearing for the appellant and Shri A.K. Choudhary learned Authorised Representative appearing for the revenue. After completion of hearing, both the sides were given opportunity to file written submission in the matter within a period of 15 days. However, no written submission has been received from either of the sides.

3.2 Arguing for the appellant learned Counsel submits that-

- The appellant have filed VCES declaration declaring their service tax liability. The total amount declared towards the services provided by them and the amount calculated in the show cause notice are exactly identical. Thus, even if there were computational error in the VCES declaration, the same should not have been rejected. Reliance is placed on the following decisions:-
 - Renuka Mangal Seva Kendra Vs CCE, Aurangabad 2016 (43) STR 135 (Tri.-Mumbai);
 - M/s Goenka Motors (P) Ltd. Vs CCE, Allahabad 2017 (11) TMI 883-CESTAT-Allahabad;
- Show cause notice was issued for rejection of VCES Application on 21.10.2014 i.e. after a period of almost 10 months after filing of the application, whereas the same was required to be issued within a period of 30 days therefore the show cause notice issued by Assistant Commissioner for rejection is barred. Reliance is placed on the decision of this Tribunal in the case of Shreyans Builders Vs CCE, Chennai-I 2018 (3) TMI 455-CESTAT-Chennai.
- Show cause notice issued to the applicant/appellant on 19.12.2014 curtailed the opportunity of the applicant and debarred him from filing an appeal/writ petition against the rejection order of the Assistant Commissioner.
- Following mistakes have crept in the impugned order which are apparent form the records:-

- The Submissions made by the applicant that the said mistakes in calculation was only a clerical error and due to oversight has escaped the attention of learned adjudicating authority and no findings has been given by the learned adjudicating authority on the submissions made by the applicant which is a mistake apparent on record. A finding on the submissions made by the applicant in this regard may kindly be provided in the interest of Justice.
- The findings of learned adjudicating authority "Thus there is no dispute regarding the declaration being wrong" are contrary to each other and needs to be rectified.
- The provisions of Section 106 (2) of the Finance Act, 1994 appears to have escaped the attention of the learned adjudicating authority that the designated authority could reject the declaration only in the circumstances enumerated in Clause (a) and (b) of the said subsection. The provisions of proviso to Section 107 (4) for making the payment along with the interest within the extended period of 31.12.2014 also appears to have escaped the attention of the learned adjudicating authority as she has not considered the payment of differential tax along with the interest by the applicant on 30.10.2014. Thus these findings of the learned adjudicating authority needs to be revisited as it is a mistake apparent on record.
- Defects in application, if any, should be explained to the declarant and possible assistance be provided in rectifying these defects. The efforts must be to accept declaration, as far as possible, and recover the arrears of tax. The findings of the learned adjudicating authority in Para 26.2 are contrary to the directions of the board and thus a mistake has crept in the order which needs to be rectified.

- Without admitting the said liability it is respectfully submitted that an amount of Rs. 14,02,684/- has been admittedly paid by the applicant and therefore the differential amount could be calculated to Rs. 20,31,254/- whereas the amount of Rs. 1,97,877/- deposited by the applicant on 30.10.2014 has escaped in calculating the differential amount which has been calculated at Rs. 22,23,132/-. This mistake apparent on record is required to be rectified.
- The fact that the amount of services rendered as declared by the applicant in VCES-1 exactly tallied with the amount of services calculated by the department has not been considered by the learned adjudicating authority as no findings has been given on these submissions of the applicant. Thus there is a mistake apparent on record which needs to be rectified.
- In Para 26.1 of the order in original dated 30.10.2015, the learned Commissioner had observed that the actual service tax amount as per declaration that was liable to be paid by the Appellant was Rs. 14,02,684/-, whereas the liability declared and deposited by the Appellant was Rs. 12,10,806/-. Thus there is no dispute regarding the declaration being wrong.
- It is also respectfully pointed out that the Appellant had declared the value of service of Rs. 54, 55,638/- and Rs. 8,32,640/- respectively during the financial year 2009-10 and 2010-11 respectively and has correctly declared them in the column non-taxable which has been found substantially correct by the learned Commissioner in para 27 of the order.
- It has also been communicated in the impugned order that the time prescribed for issue of rectification order under Section 74 (1) i.e. within two years of the date on which such order was

passed has elapsed. Hence, your application stands disposed of.

- the order passed in rectification of mistake application are passed in violation of principals of natural justice as the same has been passed without affording any opportunity of hearing.
- The service recipients like HAL, NMDC, UPRUVNL, HRI and Meza Urja (NTPC), UPSIDC and Baghla Canal Division etc. are not commercial concerns.

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authority.

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

4.2 We do not find any merits in the submissions made by the appellant that the order has been passed in violation of principals of natural justice as he had not been allowed personal hearing while passing the order on the second rectification application. He filed first rectification mistake application on 08.09.2016. After considering the rectification mistake application suitable instructions were issued to the jurisdictional Assistant Commissioner and were also communicated to the appellant, vide letter dated 26.05.2017. Subsequently appellant has filed one more rectification of mistake application dated 30.10.2017 raising some more issues. This application has been rejected after referring to the impugned order along with the corrigendum. We do not find any provisions in the law which permits filing of multiple rectification mistake applications. It appears that appellant had filed second rectification mistake application after more than five months from the communication of the order on the first application made for rectification of mistake. By the second rectification application, applicant had sought to challenge the correctness of order of the competent authority made rejecting his application under VCES. This ground was considered by the adjudicating authority in the impugned order and a finding recorded. This fact was communicated to

the appellant by the letter dated 22.12.2017. It is settled that finding recorded in the order on any ground even if erroneous cannot be termed as obvious error apparent from record and rectified in terms of Section 74 of the Finance Act, 1994. In the case of Deva Metal Powders Pvt. Ltd. [2008 (9) S.T.R. 113 (S.C.)], Hon'ble Supreme Court has held as follows:

"11. "Mistake" is an ordinary word but in taxation laws, it has a special significance. It is not an arithmetical error which, after a judicious probe into the record from which it is supposed to emanate is discerned. The word "mistake" is inherently indefinite in scope, as to what may be a mistake for one may not be one for another. It is mostly subjective and the dividing line in border areas is thin and indiscernible. It is something which a duly and judiciously instructed mind can find out from the record. In order to attract the power to rectify under Section 22, it is not sufficient if there is merely a mistake in the order sought to be rectified. The mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word "apparent" is that it must be something which appears to be so ex facie and it is incapable of argument or debate. It, therefore, follows that a decision on a debatable point of law or fact or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectifications."

We do not find any merits in submissions made by the appellant that communication dated 22.12.2017 was in contravention of principles of natural justice. Further we also note that the adjudicating authority was not the appellate authority against the order of competent authority rejecting the application made under VCES. If the appellant was aggrieved with such rejection he should have challenged the said order before the prescribed authority rather than raising the same ground again before the

Commissioner by way of second rectification application. We also note this ground which was made part of the submissions of the appellant and finding recorded was not even agitated in first application filed on 08.09.2016 under Section 74.

4.4 We are not hearing the appeal against the order of Assistant Commissioner rejecting the VCES application filed by the appellant, in terms of Section 106 (2) of the Finance Act, 2013 (VCES-2013). Further clarifying the provisions of the scheme Board has vide Circular No 170/5 /2013 – ST dated 08.08.2013 clarified as follows:

12	Whether declarant will be given an opportunity to be heard and explain his cases before the rejection of a declaration under section 106(2) by the designated authority?	Yes. In terms of section 106 (2) of the Finance Act, 2013, the designated authority shall, by an order, and for reasons to be recorded in writing, reject a declaration if any inquiry/investigation or audit was pending against the declarant as on the cutoff date, i.e., 1.3.2013. An order under this section shall be passed following the principles of natural justice. To allay any apprehension of undue delays and uncertainty, it is clarified that the designated authority, if he has reasons to believe that the declaration is covered by section 106 (2), shall give a notice of intention to reject the declaration within 30 days of the date of filing of the declaration stating the reasons for the intention to reject the declaration. For declarations already filed, the said period of 30 days would apply from the date of this circular. The declarant shall be given an opportunity to be heard before any order is passed by the designated authority.
13	What is the appeal mechanism against the order of the designated authority whereby he rejects the declaration under section 106 (2) of the Finance Act, 2013?	The Scheme does not have a statutory provision for filing of appeal against the order for rejection of declaration under section 106 (2) by the designated authority.
14	A declarant pays a certain amount under the Scheme and subsequently his declaration is rejected. Would the amount so paid by him be adjusted against his liability that may be determined by the department?	The amount so paid can be adjusted against the liability that is determined by the department.
15	Section 111 prescribes that where the Commissioner of Central Excise has reasons to believe that the declaration made by the declarant was	The Commissioner would, in the overall facts of the case, taking into account the reasons he has to believe, take a judicious view as to whether a declaration is 'substantially false'. It is

	'substantially false', he may serve a notice on the declarant in respect of such declaration. However, what constitutes a 'substantially false' declaration has not been specified.	not feasible to define the term "substantially false" in precise terms. The proceeding under section 111 would be initiated in accordance with the principles of natural justice. To illustrate, a declarant has declared his "tax dues" as Rs 25 lakh. However, Commissioner has specific information that declaration has been made only for part liability, and the actual "tax dues" are Rs 50 lakh. This declaration would fall in the category of "substantially false". This example is only illustrative.
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It is settled law that it was on the appellant to exercise his options to challenge the order of rejection of his VCES declaration before appropriate forum i.e. jurisdictional High Court by way of appropriate writ, which they have failed to do. Thus, that order becomes final and binding, and could not have been challenged in the proceedings initiated in terms of Section 111 read with section 73 of Finance Act, 1994.

4.5 On the merits of the case, impugned order records as follows:-

"25.5. Now, I am considering each service provided by the party on which they have claimed exemption for determining the tax liability or otherwise. The services on which the party has accepted their liability and had also deposited the same, are not being discussed.

SERVICES PROVIDED DURING THE FINANCIAL YEAR 2009-10 & 2010-11

27.1. For the financial year 2009-10 and 2010-11, it has been alleged by the department and has also confirmed by the party that they have received the amount of Rs.54,55,638/- and Rs.8.32.540/-, respectively from Vision Educational & Charitable Trust in lieu of providing services of construction at the Engineering Colleges at Aligarh & Kanpur. The amount of service tax involved on said services is Rs.1,85,437/- and Rs 28,301/-, respectively after allowing the abatement. As per the copies of work orders and the completion certificates issued by the service recipient, It has been noticed that the service were provided for construction of Septic tank,

Manhole Chambers, Rainwater Harvesting for ground recharge for college and hostel buildings of colleges at Aligarh and Kanpur: The facts regarding providing the said services have not been disputed by the party and the department, as well. One more fact, which has not been disputed by the department, is that the services were provided to the educational institutions engaged in imparting technical education of university level and awarding degree. I have also noticed and verified from the concerned website [<http://www.vision.org.in/vita>] of the Vision Institute of Technology-Aligarh (VIT-A) that the institute is accredited by AICTE and approved by Mahamaya Technical University (MTU) Noida and the MTU Code is 524. Similarly, the Vision Institute of Technology-Kanpur (VIT-K) is also accredited by AICTE and approved by Gautam Buddha Technical University (GBTU) Lucknow under GBTU Code 523, which has been verified from website of the institute i.e. www.vision.org.in/vitk/. The fact regarding their accreditation has been verified from concerned website of AICTE ie <http://www.aicte-india.org/> and has been noticed that Vision Institute of Technology is appearing at Sl.No.3040 to 3047 for various courses. The facts regarding affiliation from the university have been verified from the concerned websites of GBTU, Lucknow and MTU, Noida, which are <http://www.uptu.ac.in/> and <http://www.mtu.ac.in>, respectively.

27.2 In this regard, I have observed that the party had relied upon the Para no. 13.2 of CBEC Circular no 80/10/2004 dated 17.09.2004, wherein it has been mentioned that the levability of service tax would depend upon, as to whether the building or civil structure is "used, or to be used for commerce or Industry. Such constructions, which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic

purposes and not for the purposes of profit, are not taxable, being non-commercial in nature.

27.3. The relevant portion of the said Circular No. 80/10/04-ST dated 17.09.2004 is as under

13. Construction services (commercial and industrial buildings or civil structures):

13.1 Services provided by a commercial concern in relation to construction, repairs, alteration or restoration of such buildings, civil structures or parts thereof which are used, occupied or engaged for the purposes of commerce and industry are covered under this new levy. In this case the service is essentially provided to a person who gets such constructions etc. done, by a building or civil contractor Estate builders who construct buildings/civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor/contractors, the payment made to such contractor would be subjected to service tax under this head. The tax is limited only in case the service is provided by a commercial concern. Thus service provided by a labourer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to service tax.

13.2 The leviability of service tax would depend primarily upon whether the building or civil structure is 'used, or to be used for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the

purposes of profit are not taxable, being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax

27.4. Thus, for the taxability of service tax for the "Commercial or Industrial construction service", the real test as explained in para 13.1 of the said letter is to verify the usage of such construction by the service recipients on whose behalf such construction has been carried out by the said service provider. In other words, if such constructions are used for commercial or Industrial purpose by the service recipients, then only such construction activities shall be liable to service tax.

27.5. Para 13.2 categorically clarifies the scope of applicability and non applicability of service tax with regard to this service. If we look at the said para, it is mentioned therein that "The leviability of service tax would depend primarily upon whether the building or civil structure is 'used, or to be used for commerce or Industry."

27.6 in the said para 13.2, it is further clarified that "Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature."

27.7. Further, the commercial or industrial construction service under Section 55(105)(zzq) of the Finance Act, 1994 means-

(a) construction of a new building or a civil structure or a part thereof, or

- (b) construction of pipeline or conduit; or*
- (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or*
- (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is-*
- (i) used, or to be used, primarily for, or*
- (ii) occupied, or to be occupied, primarily with; or*
- (iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;*

Further, the definition of "taxable service" of "Commercial & Industrial Construction", is defined as under "any service provided or to be provided to any person, by a commercial concern, in relation to commercial or industrial construction service."

27.8. From the above definitions and the clarification, it is very clear that the services "in relation to Construction of a new building or a civil structure or a part thereof which is used, or to be used primarily for commerce or industry or intended for commerce or industry, only is covered under the category of "Commercial or industrial Construction Service.

27.9. In this regard, I have also considered the CBEC Circular No. 116/10/2009 dt. 15,09,2009, which is as under-

"the essence of the definition of "Commercial or industrial Construction Service" is that the "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or

engaged either wholly or primarily for the furtherance of commerce or industry. As the canal system built by the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal system is built by private agencies and developed as a revenue generating measure, then such construction should be charged to service Tax"

27.10. From the above, once again it gets clarified that the exemption from payment of Service tax can be denied only if the services are used for the structures that are used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry.

27.11. In light of the facts discussed above, I hold that the party is not liable to pay any service tax on the services provided to M/s Vision Educational & Charitable Trust for construction of Septic tank, Manhole Chambers, Rainwater Harvesting for ground recharge for college and hostel buildings of Vision Institute of Technology-Aligarh & Kanpur. I also hold that the demand of service tax of Rs.1,85,437/- and Rs. 28,301, respectively for the financial year 2005.10 & 2010-11 on the aforesaid services are not maintainable and liable to be set aside.

SERVICES PROVIDED DURING THE FINANCIAL YEAR 2011-12:

28.1. The next are the services provided by the party to various recipients during the financial year 2011-12 The first one is the service provided to M's Hindustan Aeronautics Limited at Korwa and Kanpur. The service provided at Korwa is in relation to construction of RCC made within the factory premises and the township residential premises) for which an amount of Rs. 10,03,697-es been charged. The service tax involved thereon after providing abatement is Rs 34,118/ The service provided at Kanpur is in relation to construction of

Flight Shed, Taxi Track and Ground Run Tarmac for which an amount of Rs 70,29,418/- has been charged and service tax Involved thereon after providing abatement is Rs. 2.38.930/

28.1.1. In this regard, the facts suggest that the service recipient in this case is a Limited Company. The unit of Konwa is Avionics Division and at Kanpur is Transport Aircraft Division. It is a well known fact that the recipient is a commercial establishment engaged in commercial activities of manufacturing and selling of aircrafts and also providing maintenance services relating to aircrafts. They are registered with the Central Excise department, as manufacturer and with service tax department, as service provider and are paying central excise duty and the service tax, as the case may be

28.1.2. As per the definition of the "commercial or industrial construction service under Section 65(105)(zzq) of the Finance Act, 1994, as reproduce in para 20.5.7 above, the services provided for construction of roads have been exempted from levy of service tax, as the same have not been considered as service, as per the exclusion clause Further, the definition of "work contract", as defined in section 65(105)(zzzza) also excludes the service provided to any person, by any other person in relation to the execution of a works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams from the levy of service tax as the same have not been treated as service under the exclusion clause.

26.1.3. Further, the CBEC Circular No. 110/4/2009-ST dated 23-02-2009 issued under F. No. 345/17/2008-TRU had clarified that the Commercial or Industrial construction service under section 65(105) (zzq) specifically excludes construction or repairs of roads. The relevant para of the circular are reproduced below:

"2. Commercial or industrial construction service (section 65(105) (zzq)) specifically excludes construction or repairs

of roads. However, management, maintenance or repair provided under a contract or an agreement in relation to properties, whether immovable or not, is leviable to service tax under section 65(105) (zzg) of the Finance Act, 1994. There is no specific exemption under this service for maintenance or repair of roads etc. Reading the definitions of these two taxable services in tandem leads to the conclusion that while construction of road is not a taxable service, management, maintenance or repair of roads are in the nature of taxable services, attracting service tax.

3. The next issue requiring resolution is the types of activities that can be called as 'construction of road' as against the activities which should fall under the category of maintenance or repair of roads. In this regard the technical literature on the subject indicate that the activities can be categorized as follows,-

(A) Maintenance or repair activities:

- I. Resurfacing*
- II. Renovation*
- III. Strengthening*
- IV. Relaying*
- V. Filling of potholes*

(B) Construction Activities:

- I. Laying of a new road*
- II. Widening of narrow road to broader road (such as conversion of a two lane road to a four lane road)*
- III. Changing road surface (graveled road to metalled road/ metalled road to blacktopped/ blacktopped to concrete etc)*

28.1.4. I have also considered the letter dated 27/7/2005 issued by Joint Secretary (TRU) in relation to taxability of service. In para 14 the issue of taxability of Commercial & Industrial construction services has been explained therein. It can be seen from the relevant para reproduced below that the services of road construction have been

considered as non-taxable, if the same are recognizable as separate activity. From the perusal of the work order, I have come to know that the contract in this case, is single contract, for construction of RCC roads at the given premises and not composite contract with other services. The para 14.4 & 14.5 are mentioned below for ready reference

14.4 At present, services rendered for construction of commercial or industrial buildings is taxable. However, construction of roads is not liable to service tax. A point has been raised that if a commercial complex is constructed which also contains roads whether the value of construction of roads would be liable to service tax.

14.5 if the contract for construction of commercial complex is a single contract and the construction of road is not recognized as a separate activity as per the contract, then the service tax would be leviable on the gross amount charged for construction including the value of construction of roads.

28.1.5. In light of the facts and provisions discussed above, it can be seen that the standalone construction services provided by the party in respect of construction of RCC roads in the factory premises and the residential premises at M's HAL, Korwa shall not be liable to service tax. Accordingly, I hold that the services provided by the party to Mis HAL, Korwa are not taxable. I also hold that the service tax amounting to Rs.34,116/-is not demandable from the party and liable to be set-aside.

28.1.6. However, the services provided by the party at the factory premises of Mis HAL, Kanpur for construction of Flight Shed, Taxi Track and Ground Run Tarmac shall not be exempted from the service tax, as the same are the services provided to Commercial and Industrial concern [HAL] by a Commercial & Industrial Service provider [the party and the constructed civil structure/building is intended for use in commercial or industrial activities of

the recipient. Secondly, the contract is a composite contract for construction of various civil structures including road. No exemption to such services provided to commercial concerns has been provided under any of the exclusion clause of the definitions or any clarification issued in any of the CBEC circulars discussed above. Accordingly, I hold that the aforesaid services of construction of Flight Shed, Taxi Track and Ground Run Tarmac provided by the party to M/s HAL, Kanpur are taxable. I also hold that the service tax amounting to Rs 2,38,930/- is demandable from the party.

28.2. The next are the services provided by the party to Mis UPSIDC Ltd., at various locations at Lucknow, Faizabad & Orail. The amount received on this account from the respective offices is Rs. 2,22,272, 2,77,458/-and Rs.6,03,065/- and the service tax involved thereon is Rs 7,555/-, 28,578/- and 62.116/-, respectively, The nature of service provided by the party, as reflected in the contracts is Maintenance of Industrial Area at Sarojini Nagar, Lucknow and cleaning services in respect of drains and Road Side Ptries at Industrial Area Faizabad and Orail. The service tax on amounts received from Faizabad & Orail offices has been demanded on full amount and on the amount received from Lucknow office, the amount has been demanded after allowing abatement.

28.2.1. I have examined the matter in light of the provisions. The recipient of the services in this case is a limited corporation engaged in development and maintenance of Industrial Area in the state of Uttar Pradesh. The land in the developed industrial area is transferred to the industrialists under lease agreement by charging the cost of developed plots on the rates fixed by their management. Apart from the said amount, certain yearly maintenance charges are also charged by the UPSIDC Ltd. from the industrial Plot Holders in lieu of providing facilities of the industrial area. The UPSIDC, Ltd

operates as a commercial concern on the basis of Profit & Loss. Since, they charge yearly charges, they are bound to maintain the required minimum facilities at the Industrial Areas for continuation of smooth business environment. In order to maintain the facilities at industrial area, they have outsourced the work of Maintenance of Industrial Area at Sarojini Nagar, Lucknow and the cleaning services in respect of drains and Road Side Ptries at Industrial Area Faizabad and Oral to the party on payment of the amount mentioned above. It is needless to say that the services have been provided to Commercial and Industrial concern by a Commercial & Industrial concern for up-keeping the Industrial Area, where the Commercial and Industrial concern are engaged in Commercial and Industrial activities Thus, from every angle, the services provided by the party are taxable under their respective heads.

28.2.2. The party, in this regard, had claimed that they have provided the services to government of Uttar Pradesh for executing its industrial projects hence, not chargeable to service tax. I do not agree with the submission of the party, as the service has not been provided to the government of Uttar Pradesh. I have already recorded above that the service has been provided to Limited Corporation hence, their taxability cannot be disputed on argument placed by the party. Secondly, for the argument of the party that the work has been performed for benefit of public at large hence, they are not liable to tax, I have failed to find any legal provision in support of their claim seeking exemption. In this regard, I have placed reliance on the case of M/s Graphite India Ltd. vs. CCE, Nashik 2014 (036) STR 0948 (Tri Mumbai). A Service Tax demand has been confirmed in respect of Commercial or Industrial Construction Services undertaken by M/s Graphite India Ltd., for Gujarat Industrial Development Corporation, which was a corporation set up to establish and organize industry in Industrial areas and industrial estates and for

establishing commercial centers. In other words, it was held that the activities undertaken by the GIDC are related to commerce or industry. In light of the facts discussed above and also relying upon the case law, I find that the exemption claimed by the party is not admissible to them and I also hold that the services provided by them to M/s UPSIDC Ltd. are taxable and the service tax amounting to is Rs.7,555/-, 28,578/- and 62,116/-, are demandable from the party.

28.3. I have noticed that the party had also claimed exemption on the services provided to Baghla Canal Division, Allahabad relating to construction of CC lining of canal for which the party had received Rs.14,99,085/-and the service tax involved on said amount is Rs.50,954/-, after allowing abatement. This means that the nature of service provided is not under dispute and also the fact that the construction work has been performed with material is not under dispute. It is also not under dispute that the services have been provided to Government and not to any private entity, as, on verification from concerned website http://irrigation.up.nic.in/all_chief_engineer.htm, I have noticed that the Baghla Canal Division, Alahabad, is the part of irrigation department of UP.Government headed by Executive Engineer, However, from perusal of facts described in the demand notice, I have noticed that the department had classified the said work performed by the party under the category of "Commercial & Industrial Construction Service". In this regard, I have considered the Central Board of Excise and Customs vide Circular No. 116/10/2009 dt. 15.09.2009, which is as under-

"the essence of the definition of "Commercial or Industrial Construction Service" is that the commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. As the canal

system built by the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal system is built by private agencies and developed as a revenue generating measure, then such construction should be charged to service Tax.

28.3.1. The work of construction of CC lining in the canal is also a work for canal system. These systems of canal are in the nature of projects to provide irrigation amenities to the farmers and to augment agriculture. This is sovereign function of Government to provide facilities for betterment of agriculture sector. This cannot be termed as commercial activity, in as much as, the government has not developed these canal systems for generating revenue and earning profit or for furtherance of any business. As per the clarification issued by CBEC vide Circular No. 116/10/2009 dt. 15.09.2009 (reproduces supra), the canal system built by Government, cannot be termed as commercial activity. Accordingly, any construction service provided for construction of canal cannot be considered as "commercial or industrial construction" service so as to charge service tax.

28.3.2 From the above, it gets clarified that the exemption from payment of Service tax can be denied only if the services are used for the structures that are used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry, which is not the case here. I agree with the contention of the party. In light of the facts discussed above, I hold that the party is not liable to pay any service tax on the services provided to Baghla Canal Division, Allahabad for construction of CC lining of canal. I also hold that the service tax amounting to Rs.50,954/- is not demandable from the party.

28.4. Further, the party had claimed exemption from the service tax liable to be paid on the service provided to Mis

U.P.Processing & Construction Cooperative Federation Ltd., Allahabad [PACCFED), which they have claimed to have been provided for construction of NM Centers in rural areas of Allahabad district. The amount received from the said service is Rs.31,51,316/- and after allowing abatement, the taxable amount has been worked out to Rs.1.07,113/-. Once again the nature of services provided by the party are not under dispute and also the fact that the construction work has been performed with material, is not under dispute. The facts mentioned above clearly suggest that the department had classified the work performed by the party under the category of Commercial & Industrial Construction Service.

28.4.1. The party in this regard has submitted in its defence reply dated 17-01-2015 that the said services have been provided for construction of small hospitals in villages of Allahabad District, which provide health services to villagers hence, the amount received on account of construction of said small hospitals is not liable to tax in terms of circular no.80/2004-ST dated 17-09-2004.

28.4.2. The relevant portion of clarification issued in para 13 of the said Circular No 80/10/04-ST dated 17.09.2004 has been mentioned in para 27.3. supra. Para 13.2 categorically clarifies the scope of applicability and non applicability of service tax with regard to this service. If we look at the said para, it is mentioned therein that "The leviability of service tax would depend primarily upon whether the building or civil structure is used, or to be used for commerce or industry. In para 13.2, of the said circular, it has specifically been clarified that "Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature." Therefore, before seeking any exemption, it is mandatorily required to

establish that the construction in question was for use in providing services of non-commercial nature. However, from perusal of the relied upon documents and the reply submitted by the party, I have failed to find any such document on record that proves or substantiates the party's claim that the construction services were provided for construction of buildings that were meant for use in non-commercial or non-industrial purposes.

28.4.3. On the contrary, the services appear to have been provided to a commercial concern viz. Mis UP.Processing & Construction Cooperative Federation Ltd., Allahabad, as the name suggests that the recipient is a Limited concern. Thus, in absence of any cogent evidence to support the contention of the party, I do not find any reason to allow exemption from levy of service tax, as has been claimed by the party. Under the circumstance, I hold that the services provided by the party taxable and the service tax amounting to Rs. 1,07,113/-, is liable to be confirmed.

SERVICES PROVIDED DURING THE FINANCIAL YEAR 2012-13 [up to December, 2012):

29. While considering the tax liability for the financial year 2012-13, I have noticed that the period covered falls under two tax regimes Le pre-negative list [effective up to 30-06-2012) and negative list (effective from 01-07-2012) The structure of classification of services and the taxability of the service has also changed accordingly. As such, I am discussing the taxability and classification as per the provisions effective during the respective regime.

SERVICES PROVIDED UPTO 30-06-2012 [PRE-NEGATIVE LIST REGIME!

30. I have noticed that during the period from April, 2012 to June 2012, the party had provided Commercial & Industrial construction services to M/s HAL, Korwa, M/s Harish Chandra Research Institute, Allahabad, Mis Power Grid Corporation Ltd., Jamshedpur & Bachhau and M/s U.P.Processing & Construction Cooperativa Federation Ltd.,

Allahabad. I have noticed that the party has not disputed the taxability on the amount received for the services provided to Mis Power Grid Corporation Lid., in respect of construction of boundary wall and residential quarters. However, on the receipts from remaining three parties, the party had claimed exemption: Now, I am taking the issue of each party individually.

30.1.1. The first in series is the service provided by the party to M/s Hindustan Aeronautics Limited at Korwa, which is in relation to construction of RCC roads within the factory premises, around the factory and at the township (residential premises] for which an amount of Rs.4,74,758/- & 15,91,153/- has been charged The service tax involved thereon is Rs 19,364/- and Rs.64,900/-, in this regard, the facts suggest that the service recipient in this case is a Limited Company. The unit at Korwa is Avionics Division, It is a well known fact that the recipient is a commercial establishment engaged in commercial activities of manufacturing and selling of aircrafts and also providing maintenance services relating to air craft. They are registered with the Central Excise department, as manufacturer and with service tax department, as service provider and are paying central excise duty and the service tax, as the case may be. This issue relating to taxability or otherwise of the commercial & Industrial construction services provided for road construction prior to the pre-negative list regime have already been discussed in detail in para 28.1 to para 28.1.5 and for the sake of brevity are not being reproduced again. The relevant provisions have also been reproduced in the said paragraphs for ready reference.

30.1.2. As per the definition of the "commercial or industrial construction service" under Section 65(105)(zoo) of the Finance Act, 1994, as reproduced in para 26 5.7 above, the clarification contained in para 14.4. & 14.5 of the letter of JS(TRU) dated 27-07-2005 and the

clarification contained in CBEC circular no. 110/4/2009-ST dated 23-02-2009. I have observed that the services provided for construction of roads have been exempted from levy of service tax, as the same have not been considered as service, as per the exclusion clause. Further, the definition of "work contract", prior to 30-06-2007, as defined in section 65(105)(zzzza) also excluded the service provided to any person, by any other person in relation to the execution of a works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams from the levy of service tax, as the same have not been treated as service under the exclusion clause. In light of the facts and provisions discussed above and also those discussed in preceding paragraphs, it can be seen that the standalone construction services provided by the party in respect of construction of RCC roads in the factory premises, outside the factory and the residential premises at M/s HAL, Korwa shall not be liable to service tax Accordingly, I hold that the services provided by the party to M/s HAL, Korwa are not taxable. I also hold that the service tax amounting to Rs. 19,364/- and Rs.64,900/-, is not demandable from the party and is liable to be set-aside.

30.2. The next is the construction service related to construction of Married Block Apartment at Harish Chandra Research Institute, Allahabad. The amount received by the party on this account is Rs.5,89,932/- and the service tax involved thereon is Rs 24,062/ The Harish-Chandra Research Institute (HRI) is a premier institution dedicated to research in mathematics and in theoretical physics and is funded by the Department of Atomic Energy, Government of India. The governing council of the institute comprises of the members nominated by the Government of India in the Department of Atomic Energy, the Uttar Pradesh Government and academicians of repute nominated by the department of atomic energy. Thus, the

facts show that this is a Government Institute engaged in imparting specialized higher education. I have also noticed that there is no dispute about the work performed by the party and about the uses of constructed building. There are no allegations regarding use of constructed building for commercial or industrial purposes. Under the circumstances, it gets confirmed that the constructed building is under the possession of the institute and is being used by the staff/students of the institute for residential purposes.

30.2.1. The issue of imposing service tax on the services of commercial and industrial construction provided to the institutions imparting higher education has already been dealt with in para 27. 1 to 27.11, while discussing the issue of leviability of service tax on services provided to Vision Institute of Technology, Aligarh and Kanpur. In the paras supra, the definition of "Commercial & Industrial Construction Services", as defined in Section 65(105) (zzq) of the Finance Act, 1994, para 13.1 & 13.2 of CBEC circular no.80/10/2004 dated 17-09-2004 and the clarification in CBEC circular no. 116/10/2009-ST dated 15-09-2009 have been considered and on consolidating the facts, the provisions and the clarifications, it has been concluded that the exemption from payment of Service tax can be denied only if the services are used for the civil structures/buildings that are used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. In this case, the facts are that the constructed building is being used by the students/employees of the institute, which by any stretch of imagination cannot be considered as use of building for commercial or industrial purposes.

30.2.2. In light of the facts discussed above, I hold that the party is not liable to pay any service tax on the services provided to Harish-Chandra Research Institute (HRI) for construction of Married Block Apartment. I also

hold that the demand of service tax amounting to Rs.24,062 on the aforesaid services is not maintainable and liable to be set aside.

30.3. The next exemption has been claimed by the party on the service provided to M/s U.P.Processing & Construction Cooperative Federation Ltd., Allahabad, which they have claimed to have been provided for construction of NM Centers in rural areas of Allahabad district. The amount received from the said service is Rs.1,02.183/- and after allowing abatement, the service tax amount has been worked out to Rs.4,168/-. This issue has already been discussed and decided by me in the preceding paragraph no. 28.4 to 28.4.3. Discussing the same once again shall only be repetition, as the facts and the provisions have not changed. Hence, keeping in view the aforesaid discussion and findings, I hold that the party is not eligible for exemption and is liable to pay the service tax amounting to Rs.4,168/-

SERVICES PROVIDED W.E.F.01-07-2012 (NEGATIVE LIST REGIME]

31. During the period under consideration, the party had provided service of construction with material and services of maintenance without material to the service recipients like HAL, Korwa; Harish Chandra Research Institute, Allahabad; Meza Urza; UPSIDC Ltd., Baghla Canal Division, Allahabad and Mis U.P.Processing & Construction Cooperative Federation Ltd., Allahabad and had claimed exemption from payment of service tax by referring Notf. No.25/2012-ST dated 20-06-2012 (Mega Exemption Notification] but, without referring the relevant point/para/clauses/sub-clauses under which the exemption is sought. The issue relating to taxability or otherwise, of the services provided to aforesaid service recipients, has already been discussed in the preceding paragraphs and proper findings have also been recorded but the same are

for the period earlier to introduction of negative list regime therefore, their applicability cannot be considered for the period effective from 01-07-2012 Accordingly, I am discussing the issue of taxability or otherwise of the services, afresh for the negative list regime, as the provisions relating to exemption and taxability have changed to great extent.

32. I have noticed that in the delence reply dated 17-01-2015, the party has again claimed exemption from service tax by referring Nott. No.25/2012-ST dated 20-06-2012 [Mega Exemption Notification] but, again without referring the relevant point/para/clauses/sub-clauses under which the exemption is sought I am therefore considering the services provided to all the aforesaid service recipients one-by-one, for discussion and recording appropriate findings.

32.1.1. The first are the services provided to M/s HAL Korwa in relation to construction of Patrolling track inside the factory boundary wall and RCC roads around the factory and in the township. The amount received on this account are Rs 31,76,023/- and Rs.5,46,734/- and the service tax involved thereon after allowing the abatement are Rs.1,57,023/- and Rs 27,031/-, respectively. The nature of service provided has not been disputed by the party, which means that they have provided "works contract" service with material. The valuation has also not been disputed hence, the amount of abatement is also not under dispute. The status of recipient being a commercial and industrial concern (Limited Company engaged in providing services in aviation sector has already been discussed in preceding paragraph no.28. 1 & 28.1.1, in detail. The unit at Korwa is Avionics Division and at Kanpur is Transport Aircraft Division. It is a well known fact that the recipient is a commercial establishment engaged in commercial activities of manufacturing and selling of aircrafts and also providing maintenance services relating

to air craft. They are registered with the Central Excise department, as manufacturer and with service tax department, as service provider and are paying central excise duty and the service tax, as the case may be

32.1.2. I have considered the provisions of Section 65B(54) that defines "Works Contract, Section 66E that defines declared services, Section 56D for "Negative List of Services", of the Finance Act, 1994 and the notification no. 25/2012 dated 20.06.2012, explicitly the Point number 12, 13, 14, 25 and 29(h) that covers the exemption related to Works Contract services. No exemption to the services provided by the party is provided under negative list. The exemption provided in St No 12 is applicable only to the services which are provided to the Government, Local Authority or Governmental Authority. The term government is not defined in the Finance Act, 1994 however, the recipient party (HAL) is not government in terms of section 3(23) of General Clauses Act, as the same is not the Central or State government. The recipient is also not a local authority, as defined under Section 658 (31) of the Finance Act. The recipient is also not a government authority, which has been defined in the notification itself. Therefore, for the said reason the exemption provided at Sl. No.12 of the notification is not applicable to the party, as the services have not been provided to the Government, Local Authority or Governmental Authority

32.1.3. At point no. 13 (a) of the Mega Exemption notification the services provided by way of construction. Erection, Commissioning, Installation, Completion, Fitting out, Repairs, Maintenance, Renovation of a road, bridge, tunnel, or terminal for road transportation for use by general public, have been exemplified. In this case, the services of construction of road have been provided to HAL, Korwa but, the same are for restricted use by the

recipient and their staff working in the factory or the staff residing at the township, which cannot be equated with road for use by general public so as to claim exemption. The term 'general public has been defined in the notification itself as 'The body of people at large sufficiently defined by some common quality of public or impersonal nature and the same is not applicable in this case. It has clearly been explained at para 7.9.3 of the Education Guide dated 20-06-2012 published by CBEC that "construction of roads for general public is exempt from service tax but, construction of roads which are not for general public use e.g. construction of roads in factory, residential complex would not be taxable". The Sl.No.14, 25 and 29(h) of the notification are in relation to other services, which are not related to the recipient or the party hence, discussing the same is Irrelevant. Under the circumstances, I find that the services of construction of road provided by the party to M/s HAL, Korwa are taxable services and liable to appropriate service tax at appropriate rates. I hold that the service tax amounting to Rs.1,57,023/- and Rs.27,031/-, is demandable from the party.

32.2.1. The next is the construction service in relation to construction of Married Block Apartment at Harish Chandra Research Institute, Allahabad. The amount received by the party on this account is Rs. 16,07,762/- and the service tax involved thereon is Rs.79,488/-, The Harish-Chandra Research Institute (HRI) is a premier institution dedicated to research in mathematics and in theoretical physics and is funded by the Department of Atomic Energy, Government of India. The facts are verifiable from the official site of the institute. The governing council of the institute comprises of the members nominated by the Government of India in the Department of Atomic Energy, the Uttar Pradesh Government and academicians of repute nominated by the department of atomic energy Thus, the

facts show that this is a Government Institute engaged in imparting specialized higher education, I have also noticed that there is no dispute about the work performed by the party and about the uses of constructed building.

32.2.2 In this regard, on considering the provisions of St. No. 12 of the Mega Exemption Notification, which are reproduced herein below, I have noticed that services of construction of "a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession", "a structure meant predominantly for use as an educational establishment" and "a residential complex predominantly meant for self-use or the use of their employees" provided to government are exempted from service tax.

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*
- (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (ii) an art or cultural establishment;*
- (d) canal, dam or other irrigation works;*
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in*

the Explanation 1 to clause 44 of section 65 B of the said Act;

32.2.3. In this regard, to consider the fact, as to whether, the Harish Chandra Research Institute, Allahabad is a Government of India Institute and has to be treated as Government for extending benefit of exemption provided under the mega exemption notification, I have visited the site of the Institute and have noticed that it is an autonomous institute funded by Department of Atomic Energy, Government of India. I have noticed that in terms of clause (23) of Section 3 of the General Clauses Act, 1887, the institute is not a part of government, in as much as, the executive powers are not exercised by the President of India or the officers subordinate to him in accordance with the Constitution. In terms of article 77 of the Constitution all executive actions of the Government of India shall be expressed to be taken in the name of the President of India, which is not the case here, in fact the Central Government means the President of India and the officers subordinate to him while exercising the executive powers of Union vested in the President and in the name of the President. Similar is the condition with the State Governments, where the executive powers are vested in the Governor or the officers subordinate to him who exercise the executive power of the state in the name of Governor. Similarly, the recipient of services is also not a local authority or government authority because, no such powers are vested in them, as has been defined in clause (31) of Section 65B of the finance Act. In this regard, I would also like to refer to the para 7.9.4 of the Education guide dated 20-06-2012 published by CBEC, wherein it has been clarified that exemption shall be granted only to the services, which have been provided to government, a local authority or a governmental authority otherwise no exemption shall be granted. In light of the facts discussed above, I conclude that the services discussed hereinabove

provided by the party are not exempted services, as has been claimed by them and the same are liable to service tax. I hold that the party is liable to pay service tax amounting to Rs.79,488/- on the aforesaid services provided to Harish Chandra Research Institute, Allahabad.

32.3.1. The next is the service provided to Meja Thermal Power Station, which is a coal-based thermal power plant located in Meja Tehsil in Allahabad district, Uttar Pradesh. The power plant is owned by the Meja Urja Nigam Private Limited (MUNPL) a joint venture between NTPC Limited and Uttar Pradesh Rajya Vidyut Utpadan Nigam. As the name suggests, service recipient is a commercial and industrial entity. The services provided to the party are in relation of construction of guest house involving amount of Rs. 18,54,070/- on which service tax amounting to Rs. 91,685/- has been worked out. The party had claimed exemption from service tax under mega exemption notification.

32.3.2. I have considered the provisions of negative list under Section 66 D of the Finance Act, 1994 and clause 12, 13, 14, 25 and 29(h) of Notf. No. 25/2012-ST dated 20-06-2012, which cover the exemption related to Works Contract services. No exemption has been granted in Section 66D to the entities like the Meja Urja Nigam Private Limited. Clause 12 of the notification relates to exemption to Government and Governmental Authorities, which is not the case here, as the recipient party is not government, a local authority or a governmental authority. Clause 13, 14, 25 and 29(h) also does not apply in this case, in as much as, the same relate to services provided for construction of specific structures or provision of other types of services, which again is not the case here. I have failed to find any provision that exempts the services provided by the party to the Meja Urja Nigam Private Limited. Under the circumstances, I find that the party is not eligible for

exemption on the said services provided to Meja Urza and hold that the amount of service tax of Rs. 91,665/- is demandable from the party.

32.4.1. The next are the services provided by the party to M/s UPSIDC at various locations at Lucknow and Faizabad. The services provided at Lucknow are in relation to maintenance of Industrial Area at Sarojini Nagar, Lucknow and the amount received on this account is Rs.34,42,940/- Involving service tax of Rs. 2,97,883/- after allowing abatement. The nature of service provided by the party to UPSIDC at Faizabad is cleaning of drains and Road Side Parties at Industrial Area, the amount received on that account is Rs. 58,31,770/- and the service tax involved thereon is Rs.7,20,807/-. The service tax has been demanded on full amount because the services were not work contract services with supply of material alongwith. These are the simple services not involving any material and thus liable to be classified as services defined under Section 658(44) of the Finance Act, 1994 and the entire gross receipts are taxable in terms of Section 67 of the Act Ibid., readwith the provisions Service Tax Valuation Rules

32.4.2. I have examined the matter in light of the provisions. The recipient of the services in this case is a limited corporation engaged in development and maintenance of Industrial Area in the state of Uttar Pradesh. The land in the developed industrial area is transferred to the industrialists under lease agreement by charging the cost of developed plots on the rates fixed by their management Apart from the said amount, certain yearly maintenance charges are also charged by the UPSIDC Ltd. from the Industrial Plot Holders in lieu of providing facilities at the industrial area. The UPSIDC, Ltd. operates as a commercial concern on the basis of Profit & Loss. Since, they charge yearly charges, they are also liable to maintain the required minimum facilities at the

Industrial Areas for providing smooth business environment. In order to maintain the facilities at industrial area, they have outsourced the work of Maintenance of Industrial Area at Sarojini Nagar, Lucknow and the cleaning services in respect of drains and Road Side Ptries at Industrial Area Lucknow & Faizabad to the party on payment of the amount mentioned above. It is needless to say the services have been provided to Commercial and industrial concern by a Commercial & industrial concern for the up-keeping the Industrial Area, where the commercial and Industrial concerns are engaged in Commercial and Industrial activities. Thus, from every angle, the services provided by the party are taxable under the respective services.

32.4.3. The party, in this regard, had claimed that they have provided the services to government of Uttar Pradesh for executing its industrial projects hence, not chargeable to service tax. I do not agree with the submission of the party, as the service has not been provided to the government of Uttar Pradesh, I have already recorded above that the service has been provided to Limited Corporation hence, their taxability cannot be disputed on argument placed by the party. Secondly, for the argument of the party that the work has been performed for benefit of public at large hence, they are not liable to tax, I have tailed to find any legal provision in support of their claim seeking exemption. In this regard I would like to place reliance on para 2.4.10 of the Education Guide dated 20-06-2012 published by CUEC on the matters of service tax. It has been clarified therein that various entities like a statutory body, corporation or an authority constituted under an Act passed by the Parliament or any of the State Legislatures cannot be considered as "Government or "local authority". Such statutory body, corporation or an authority are normally created by the Parliament or a State Legislature in exercise of the powers conferred under

article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a settled position of law Government (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1), Such a statutory body, corporation or an authority as a juristic entity is separate from the state and cannot be regarded as Central or State Government and also do not fall in the definition of "local authority. Thus, regulatory bodies and other autonomous entities which attain their entity under an act would not comprise either government or local authority.

32.4.4. In this regard, I have also considered the case of M/s Graphite India Ltd vs. CCE, Nashik 2014 (038) STR 0948 (Tri Mumbai). In the said case a Service Tax demand has been confirmed in respect of Commercial or Industrial Construction Services undertaken by Mis Graphite India Ltd, for Gujarat industrial Development Corporation, which was a corporation set up to establish and organize industry in industrial areas and industrial estates and for establishing commercial centers. In other words, it was held that the activity undertaken by the GIDC was related to commerce or industry hence, was taxable, Also, I have failed to find any statutory provision In Section 66 D of the Finance Act, 1994 and clause 12, 13, 14, 25 and 29(h) of Notf. No. 25/2012-ST dated 20-06-2012, which provide exemption to the services provided by the party. In light of the facts discussed above and also relying upon the clarification in taxation guide and the case law, I find that the exemption claimed by the party is not admissible to them I also hold that the services provided by them to M/s UPSIDC Ltd. are taxable and the service tax amounting to is Rs.2,97,883/- and Rs.7,20,807/- are demandable from the party.

32.5.1. I have noticed that the party had also claimed exemption on the services provided to Baghla Canal Division, Allahabad relating to construction of CC lining of canal in terms of Notf.No. 25/2012-ST dated 20-06-2012 for which the party had received Rs.6,38,371/- and the service tax involved on said amount is Rs.31.561/alter allowing abatement. This means that the nature of service provided is not under dispute and also the fact that the construction work has been performed with maternal is not under dispute. It is also not under dispute that the services have been provided to Government and not to any private entity. Thus, the facts mentioned above make it ample clear that the department had classified the work performed by the party under the category of "Work Contract Service", In this regard, I have considered the clause (d) of point no. 12 of the Mega Exemption Notification No. 25/2012-ST dated 20-06-2012, which is in respect of "Services provided to the Government, a local authority or a governmental authority by way of construction of canal, dam or other irrigation works.

32.5.2. The work of construction of CC lining in the canal is also a work for canal system and certainly it is not a commercial activity, in as much as, the same has not been developed by the government as a source of generating revenue. These systems of canal are in the nature of projects to provide civic amenities or to segment irrigation and are in discharge of sovereign function. These cannot be considered as projects of Industrial or commercial purpose thus, would be outside the scope of taxability.

32.5.3. From the above, it gets clarified that the exemption from payment of Service tax cannot be denied in light of the facts that specific exemption has been provided. Thus for the reasons discussed above, I hold that the party is not liable to pay any service tax on the services provided to Bagla Canal Division, Allahabad for construction of CC lining of canal. I also hold that the

service tax amounting to Rs.31.561/-is not demandable from the party.

32.6.1. The next service relating to construction has been provided to M/s U.P.Processing & Construction Cooperative Federation Ltd., Allahabad (PACCFED), which they have claimed to have been provided for construction of NM Centers in rural areas of Allahabad district. The amount received from the said service is Rs.1,08,096/- and after allowing abatement, the taxable amount has been worked out to Rs 5,374/- The nature of services provided by the party are not under dispute and also the fact that the construction work has been performed with material, is not under dispute. The facts mentioned above clearly suggest that the department had classified the work performed by the party under the category of "Work Contract Service The party had claimed exemption from service tax under Notf. No. 25/2012-ST dated 20-06-2012 by arguing that the services have been provided to Government.

32.6.2 I have considered the provisions of negative list under Section 66 D of the Finance Act, 1994 and clause 12, 13, 14, 25 and 29(h) of Notf. No. 25/2012-ST dated 20-06-2012, which cover the exemption related to Works Contract services. No exemption has been granted in Section 66D to the entities like Mis UP Processing & Construction Cooperative Federation Ltd., Allahabad Clause 12 of the notification relates to exemption to Government and Governmental Authorities, which is not the case here. The detailed discussion in this regard has already been recorded in para 32.1.2, 32.2.3 and 32.4.3, as to how such creations of government are not government in themselves Clause 13, 14, 25 and 29(h) also does not apply in this case, in as much as, the same relate to services provided for construction of specific structures or provision of other types of services, which again is not the case here. I have failed to find any provision that exempts the services provided by the party to M/s U.P.Processing & Construction

Cooperative Federation Ltd., Allahabad (PACCFED), Again, I am referring to the clarification recorded in para 7.9.4 of the CBEC education guide on service tax matters, wherein it has been explained that exemption shall be granted only to the services, which have been provided to government, a local authority or a governmental authority otherwise, no exemption shall be granted. Under the circumstances, I find that the party is not eligible for exemption on the said services provided to M/s U.P.Processing & Construction Cooperative Federation Ltd., and hold that the amount of service tax of Rs. 5,374/- is demandable from the party.

CONSOLIDATION OF DEMAND:

33. In light of the facts discussed in para 27.1 to 32.6.2, I have arrived at the conclusion that the actual liability of service tax for the period declared in the VCES-1 was Rs.34,38,007/-, which has been arrived at after deducting the exempted tax liability of Rs.4,38,895/- in light of the facts discussed in the preceding paragraphs. The total tax liability also includes the differential amount of service tax of Rs. 1,91,877/-on account of calculating the tax liability et rate of 10.30% adv, of the taxable amount instead of calculating at the affective rate of 12:36%. Against the said tax liability the party had filed form VCES-1 only for Rs.12,10,800/- Thus, the facts discussed in the preceding paragraphs clearly specify that the party short declared their actual tax liability by Rs.22,27,201/-[34,38,007/-(-)12,10,806/-), which is about 64.78% of the total tax liability. It can be seen that this is a substantial amount and if the department would not have enquired the matter against the party, this amount would have certainly escaped from being demanded from the party. Thus, the question, as to whether the service tax demanded by the department on the entire receipts of the party was legal and proper or not, stands decided in light of the facts discussed in preceding paragraphs.

34.1 Now coming back to the issue as to whether the Form VCES-1 filed by the party was substantially false or not, have observed that in the entire provisions relating to VCES, as well as, in the entire Finance Act, 1994, the term "substantially false" used in relation to Form VCES-1, has not been defined. However, while going through the Circular No. 170/5/2013-ST dated 08/08/2013, Issued by the TRU in File No. 81/19/2013-TRU (Pt), I have noticed that what constitutes a 'substantially false declaration has been explained and illustrated therein. For the ready reference, the same is reproduced below-

15	<p>Section 111 prescribes that where the Commissioner of Central Excise has reasons to believe that the declaration made by the declarant was substantially false, he may serve a notice on the declarant in respect of such declaration. However, what constitutes a substantially false declaration has not been specified.</p>	<p>The Commissioner would, in the overall facts of the case, taking into account the reasons he has to believe, take a judicious view as to whether a declaration is 'substantially false'. It is not feasible to define the term "substantially false" in precise terms. The proceeding under section 111 would be initiated in accordance with the principles of natural justice.</p> <p>To illustrate, a declarant has declared his "tax dues as Rs 25 lakh. However, Commissioner has specific Information that declaration has been made only for part liability, and the actual "tax dues are Rs 50 lakh. This declaration would fall in the category of "substantially false". This example is only illustrative.</p>
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34.2 Therefore, before deciding the matter, it becomes necessary to record the findings on the issue, as to

whether the declaration filed by the party was substantially false or otherwise. From the facts before me, I have noticed that the entire amount of outstanding tax dues declared by the party in Form VCES-1 was Rs.12,10,806 whereas, the actual liability was Rs.34,38,007/-(including cesses). Thus, the difference between both the amounts is Rs 22,27,201/-(including cesses), which has been short paid by the party. This unpaid amount calculated by the department comes to about 64.78% of the entire liability, which on considering the clarification, direction and Illustration contained in the aforementioned circular and applying the same judiciously, certainly makes the declaration substantially false. Moreover the word "substantially", if considered in its simple terms means "To a great extent or degree" "significantly"; "considerably" and "largely and the 64.78% amount of total tax liability can safely be called a "substantial amount" and consequently, the Form VCES-1 (declaration) can be termed as substantially false declaration. Thus, in view of the facts discussed above, I am of the firm opinion that declaration filed by the party was "substantially false",

35. I have further noticed that for recovery of tax amount, the provisions of Section 111(1) relating to VCES read with Section 73(1) have been invoked for demanding the service tax. In the preceding paragraphs, it has been discussed and proved that how the allegations made by the department that the declaration filed by the party was "substantially false", stand proved. As regards, applicability of the provisions of Section 111 of the Finance Act, 1994, that have been Invoked against the party, I have considered the said provisions and have noticed that Section 111 prescribes that where the Commissioner of Central Excise has reasons to believe that the declaration made by the declarant was 'substantially false, he may serve a notice on the declarant in respect of such

declaration. For the sake of reference, I am reproducing the provisions, which are as under

111. (1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.

(2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.

(3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

*36. From the analysis of the provisions, I have noticed that if the authority has the reason to believe that the declarant had filed a "substantially false" [emphasis supplied] declaration, the notice has to be issued to declarant within one year from the date of filing of declaration in respect of "tax dues not paid or short paid", requiring him to show cause, as to why he should not pay the "tax dues not paid or short paid" and the said notice shall be deemed to have been issued under Section 73 or 73 A, as the case may be and all other provisions of Chapter relating to penalty and interest shall also apply. In simple words, the provisions of Section 111 of the Act *ibid*, are invocable in respect of "tax dues not paid or short paid", if the declaration filed by the declarant is found to be "substantially false". Similarly, the other provisions relating to recovery of tax dues, interest and imposition of penalty shall also be invocable in respect of "Tax dues not paid or short paid". Further, para 4 of the Instructions dated 11/12/2013 issued vide F. No. 81/19/2013-TRU (Pt.) by TRU says that "Only if the Commissioner has reason to believe that the declaration filed by the declarant is substantially false he may, for*

reasons to be recorded in writing, serve notice on the declarant requiring him to show cause why he should not pay the tax dues not paid or short-paid"

*37. Now, I take-up the issue of liability to pay differential service tax alongwith the issue to invoke the provisions for recovery of interest and imposition of penalties, as proposed in the notice. In the paragraphs supra, have discussed the provisions of Section 111 of the Finance Act, 1994. The provisions clearly hold that if the declaration is found to be untrue, the notice has to be issued to declarant in respect of "tax dues not paid or short paid", requiring him to show cause, as to why he should not pay the "tax dues not paid or short paid and the said notice shall be deemed to have been issued under Section 73 or 73 A, as the case may be and all other provisions of Chapter relating to penalty and interest shall also apply. In this case, the declaration has been found to be substantially false to the extent discussed in preceding paragraphs. And for the said reason the department can initiate action for recovery of its legitimate revenue. Considering the aforesaid findings, I would also like to record that once the notice has been issued under Section 111 of the Finance Act, 1994, the proceedings shall have to be concluded. While reading the provisions vis-à-vis, the clarification in circulars supra, I have noticed that the same provide that matter should be decided judiciously and in my opinion, the ends of justice will be met, when the differential tax demanded in the notice is confirmed. And for confirming the same, the Section 111 of the Act *ibid.* itself provides that provisions of Section 73 shall apply alongwith other provisions of the Chapter meaning thereby that the interest under Section 75 can be demanded and penal provisions can also be invoked. However, all the provisions relating to recovery of tax dues, interest and imposition of penalty shall apply only in respect of "Tax dues not paid or short paid in this regard,*

the provisions of Section 108 of the Act ibid, also support my view, which say that immunity from penalty, Interest or any other proceeding under the Chapter shall be allowed and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority of court relating to the amount and period covered under Form VCES-1. Accordingly, I hold that the differential amount of Rs.22,23,132/- (including cesses) is demandable from the party in terms of Section 73 (1) of the Finance Act, 1994, which is applicable for demand & recovery of tax dues."

4.6 It is settled position in law that from the facts it is evident that appellant was during the entire period providing services to mainly HAL, NMDC, UPRUVNL, HRI and Meza Urja (NTPC), UPSIDC and Baghla Canal Division etc. All these organizations are commercial entities though within the ambit of public sector undertakings either of State Government and Central Government. Hon'ble Allahabad High Court in the case of Greater Noida Industrial Dev. Authority [2015 (40) S.T.R. 95 (All.)] has held as follows:

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

32. *Similarly under Clause 999.01 with regard to the sovereign/public duties/functions, it has been clarified that activities assigned to and performed by the sovereign/public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and*

are deposited into the Government account. Such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. Therefore, such activities assigned to be performed by a sovereign/public authority under the provisions of any law, do not constitute taxable services. Any amount/fee collected in such cases are not to be treated as consideration for the purposes of levy of Service Tax.

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

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

4.7 In the present case, we find that there is no dispute with regards to total value of services provided, the only dispute is in respect of the services which appellant have claimed to be exempted during the entire period. Impugned order after discussion and looking into the work order have conclude that the services claimed to be exempted by the appellant are provided to the organizations which cannot be considered as to be exempted in cases where the services were provided to the

organizations for which where the services exempt has been granted there by reducing the demand.

4.8 Thus, we do not find any merits in the submissions made by the appellant in this regard that these service were provided to the government authorities and hence exempt from payment of service tax. The services provided to these public sector undertakings attracts service tax under the category specified after allowing abatement as per Rule 2(a) of Service Tax Valuation Rules as has been held in the impugned order.

4.9 The benefit of amount deposited prior to issuance of show cause notice has been extended by the impugned order to the extent of Rs.12,10,806/-. Appellant claimed that though the same should be allowed the total benefit of Rs.14,02,684/-. We find that appellant had deposited the amount claimed to have been deposited by them, accordingly we modify the demand to Rs.20,35,318/- [(Rs.34,38,007/-)-(Rs.14,02,684/-)]. Penalty imposed under Section 78 is also modified accordingly.

4.10 Apart from the above modification, we uphold the impugned order.

5.1 Appeal is partially allowed.

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

**(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

**(ANGAD PRASAD)
MEMBER (JUDICIAL)**