



केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर  
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX

प्लॉट नं. 6776-बी/1, 'सिद्धि सदन' बिल्डिंग,  
PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,  
नारायण उपाध्याय मार्ग, भावनगर-364001  
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.  
दूरभाष : (0278) 2523627 फैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा

By R.P.A.D.

फाईल सं. VI/15-05/Dem-ST/HQ/2012-13

F. No.

आदेश की तारीख : 30/04/2013.

Date of Order :

जारी करने की तारीख: 30/04/2013.

Date of Issue :

पारितकर्ता

Passed by

श्री एन के मुजबल

SHRI N. K. BHUJABAL

आयुक्त, केन्द्रीय उत्पाद शुल्क एवम सेवा कर, भावनगर

Commissioner, Central Excise and Service Tax, Bhavnagar

मूल आदेश संख्या Order-in-Original No : 07/BVR/Commissioner/2013

1. यह प्रति उस व्यक्ति को, जिसके लिए यह आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।
2. इस मूल आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित ढंग से कर सकता है :  
सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील :
3. वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत अपील निम्न को की जा सकती है।

1। पश्चिम क्षेत्रीय पीठ, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) ओ20, न्यू मेन्टल अस्पताल कंपाउण्ड, मेघाणीनगर, अहमदाबाद 380016।

2। अपीलीय न्यायाधिकरण का वित्त अधिनियम, 1994 की धारा 86 की उप धारा (1) के अंतर्गत अपील, सेवाकर नियमावली, 1994 के नियम 9(1) के अंतर्गत निर्धारित एस.टी.5 में, चार प्रतियों में आदेश प्राप्ति के दिनांक से तीन माह के भीतर की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निर्धारित किए अनुसार शुल्क लगा होना चाहिए। जिस स्थान पर न्यायाधिकरण की न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायापीठ के सहायक रजिस्ट्रार के नाम में निर्धारित फीस रेखांकित बैंक ड्राफ्ट के रूप में भेजनी होगी।

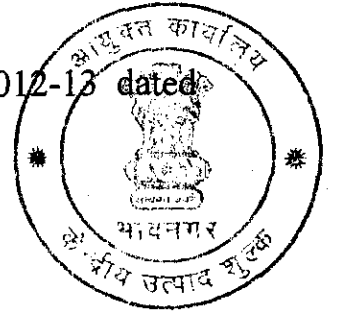


- 3। वित्त अधिनियम, 1994 की धारा 86 की उपधाराओं (2) एवं (2ए) के अंतर्गत सेवाकर नियमावली, 1994 के नियम 9(2) के अंतर्गत निर्धारित किए गए फॉर्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क या आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश के प्रति (उनमें से एक प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उपआयुक्त, केन्द्रीय उत्पाद शुल्क को अपीलीय न्यायाधिकरण में आवेदन करने के आदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड / आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।
4. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची 1 के अंतर्गत निर्धारित किए अनुसार यथास्थिति मूल आदेश या न्यायनिर्णयनकर्ता प्राधिकारी के आदेश की प्रति पर रुपये 6.50/ का न्यायालय टिकट लगा होना चाहिए।
5. ब्यौरापूर्ण करने हेतु सीमाशुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 की ओर ध्यान आकर्षित किया जाता है।

**BY RPAD**

To,  
M/s. M/s G. S. Dodia,  
1/2, Ghanshyam Shopping Centre,  
Hatkeshwar Temple,  
Tower Road,  
Surendranagar

Subject: Show Cause Notice F. No. V/15-05/Dem-ST/HQ/2012-13 dated  
17.04.2012.



**BRIEF FACTS OF THE CASE :-**

M/s G. S. Dodia having their office at 1/2, Ghanshyam Shopping Centre, Hatkeshwar Temple, Tower Road, Surendranagar (hereinafter referred to as the Noticee) are engaged in providing taxable services of "Management Maintenance or Repair" to Gujarat Water Resources Development Corporation Limited, Narmada Water Resources Water Supply & Kalpsar Department, Gujarat Water Supply & Sewerage Board and various Municipal Bodies working under Government of Gujarat and Nagar Panchayats .

2.1 On the basis of information that the Noticee is not paying Service Tax on the taxable services provided by them, an investigation was started against them in Summons proceedings and their records of last five years, such as written contracts/work orders, Service Tax returns filed, ledger accounts, invoices raised were called for from them.

2.2 On 13.10.2011, Shri G. S. Dodia, proprietor of the Noticee appeared before the Superintendent (A.E.) of Central Excise and produced various documents under his statement recorded under Section 14 of the Central Excise Act, 1944 applicable to Service Tax under Section 83 of the Finance Act, 1994. The relevant portion of the statement of Shri G. S. Dodia which was recorded in Hindi is translated and reproduced below-

*Q. No.1 : What work is carried out by your company M/s G. S. Dodia?*

*Answer : My Company M/s G. S. Dodia is carrying out the work of Construction of building & structure and maintenance & repair for various departments of Government of Gujarat.*

*Q. No. 2 : Please explain in detail & specifically that what work is carried out by you under construction of building and structure?*

*Answer : I carry out the following work for various departments of Gujarat Government-*

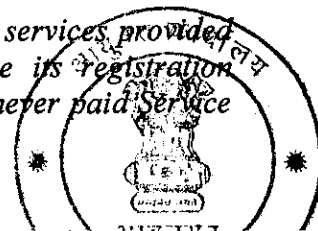
- (1) Maintenance & repair of pipe lines for Gujarat Water Supply and Sewerage Board*
- (2) Maintenance and repair of electro-mechanical work of pumping machines for Gujarat Water Supply and Sewerage Board*
- (3) Maintenance & repair of pipe lines for Gujarat Water Resources Development Corporation*
- (4) Maintenance & repair of pipe lines for Narmada Water Resources, Water Supply & Kalpsar Department.*
- (5) Construction of Water treatment plant for Gujarat Water Supply and Sewerage Board under which work of construction of office building, installation & maintenance of machinery & pump required for water treatment plant*
- (6) Maintenance and repair of water pump house for Ahmedabad Municipal Corporation*

*Q. No. 3 : On the basis of your above statement it appears that you are a service provider whose services come under maintenance & repair services. Is it true?*

*Answer : Yes, it is true.*

*Q. No. 4 : Have you ever taken Service Tax registration for the services provided by your company M/s G. S. Dodia? If yes then produce the certificate.*

*Answer : Yes, I have taken Service Tax registration for the services provided by my company M/s G. S. Dodia, I'll produce its registration certificate before you within 15 days. But I have never paid Service*



Tax on the services provided by me nor have I filed any Service Tax return.

**Q. No. 5** : Please peruse the Section-G mentioned on page No. 85 of Volume-I "Post Qualification and Technical Specification" of Tender Notice issued by the Gujarat Water Supply and Sewerage Board in the year 2007-08, in which in total expense of Rs. 1,17,95,870/- for Dharoi Regional Water Supply Scheme, Service Tax of Rs. 12,97,587/- at the rate of 12.36% is included with the expenditure of Rs. 1,04,98,280/-. From this it appears that you have collected the Service Tax leviable on the above said work, from Gujarat Water Supply and Sewerage Board but have not paid the same to the Governemnt. Is it true?

**Answer** : I peruse the above said page and in token of this I put my dated signature on it. In this regard I state that I have not collected any Service Tax from Gujarat Water Supply and Sewerage Board. The above Tender Notice in which the estimated cost of project was Rs. 1,17,95,870/-, my company had quoted the bid of project as Rs. 90,00,000/- in which the component of Service Tax was zero, this can be verified from the Volume-II "Price Bid" of the above said Tender Notice.

**Q. No. 6** : When the service recipient unit had mentioned the Service Tax in their Tender Notice then why did you not show it in your bid? Does it mean that the Service Tax at the rate of 12.36% had already been included in the bid of Rs. 90,00,000/- quoted by you.

**Answer** : I had not shown the Service Tax in my bid as the above said work was of public sector and in my knowledge there is no Service Tax on the work of public sector.

**Q. No. 7** : Have you not paid Service Tax on the services provided by you for the reason that in your knowledge No Service Tax is required to be paid on the services given to public sector?

**Answer** : Yes.

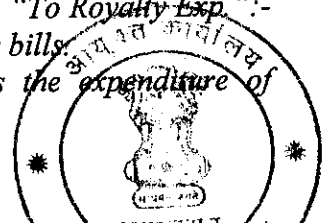
**Q. No. 8** : Please produce the copies of bills raised for the services provided by your company M/s G. S. Dodia to all the services recipients during the last five years.

**Answer** : I haven't brought the copies of the said bills with me today but I'll produce the same before you within 15 days.

**Q. No. 9** : Please peruse the page of Audit Report of your company M/s G. S. Dodia for the financial year 2009-10 containing details of contract works account and state that what is depicted by the entries "To Sub Contract Exp.", "To Centering Work Exp.", "To Water Transportation Exp." etc.?

**Answer** : I peruse the above said page and in token of it I put my signature therein. The details of various Exp. On this page are as under-

- (i) "To Sub Contract Exp." :- This is the entry of payment made to labour for their work.
- (ii) "To Centering Work Exp." :- The work of centering is carried out in construction of a civil structure in which centering plates, bamboo, poles etc. are used with the help of labour. It is the entry of the payment made for the said work.
- (iii) "To water transportation Exp." :- I'll be able to clarify this after asking my accountant.
- (iv) "To Labour Cess Exp.", "To T.O.T. Exp." "To Royalty Exp." :- These expenditures are deducted from our bills.
- (v) "To Water Pipeline Maint. Exp." :- This is the expenditure of maintenance of water pipelines.



- (vi) "To Khodan Work Exp.":- This is the expenditure of the digging work for laying new pipelines.
- (vii) "To Chantar Work Exp.":- This is the expenditure for brick work.
- (viii) "To Land Foundation Exp.":- This is the entry for expenditure for laying foundation.
- (ix) "To Masonry Work Exp.":- This is expenditure of masonry for R.C.C.
- (x) "To Digging Work Exp.":- This is expenditure of designing work but by mistake typed as digging work.

*Q. No. 10* : Please produce the ledger accounts of above said expenditures for the last five years separately.

*Answer* : I haven't brought the said ledger accounts today with me but I'll produce the same within 15 days.

*Q. No. 11* : During the last five years what worth of services have you rendered for construction of civil structures and what worth of services have you rendered for maintenance & repair work? Please produce the details.

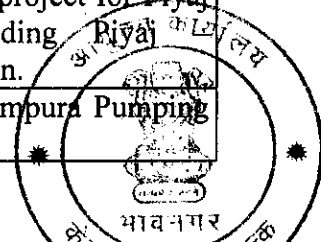
*Answer* : This information is not ready with me as of now, but on the basis of my documents, I'll produce the same within 15 days.

*Q. No. 12* : Do you want to say anything else in this matter?

*Answer* : No.

2.3 In the above said statement, Shri G. S. Dodia, Proprietor of the Noticee has deposed that he is a Service Provider who provides services of Maintenance and Repairs. Although he also claimed that they carry out the construction work also but could not produce any record in this regard. The Noticee has also claimed that they have taken Service Tax registration and would produce its certificate within fifteen days but they had failed to do so. The records submitted by him alongwith the statement clearly show that the Noticee have provided services of Management, Maintenance or Repairs to various department, a comprehensive study of bid documents/work orders submitted by the Noticee to understand the nature of work carried out by them is as under-

Sr. No.	Bid Document/Work Order Description	Name of Work
1.	Bid Document issued by Gujarat Water Supply & Sewerage Board, Gandhinagar.	Comprehensive Operation, Maintenance & Repair of Electro-Mech works of all Pumping Machinerics located at Laxmisagar Intake, Laxmisar H/w Limadi, Vadala, Vadod, Dudhrej, Khodu, Karangadh, Raigadh&Dholidhaja Taluka: Limadi, Wadhvan, under S-2 Package, A Part of S2-S3 RWSS Dist: Surendranagar
2.	Bid document issued by Gujarat Water Resources, Development Corporation Limited, Gandhinagar.	Operation Maintenance and Repairs of Civil, Electrical Mechanical Works: Civil Structures, M.S. Pipe Line including proper supply of water to all outlets required under the project for Adundra- S.S.S.C.(Kherwa) Pipe Line including Adundra Pumping Stations.
3.	Agreement No. C/8 of 2007-08, Narmada Water Resources, Water Supply & Kalpsar Department.	Operation Maintenance and Repairs of Civil, Electrical Mechanical Works: Civil Structures, M.S. Pipe Line including proper supply of water to all outlets required under the project for Piyaj - Dharoi Pipe Line including Lodra&Rampura Pumping Station.
4.	Work Order No. Drg.Dn/AB/ TC/ 1024 dated 10.05.2007 issued by	O& M work @ PiyajLodra&Rampura Pumping Station.

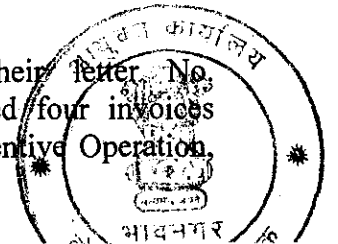


	Executive Engineer, Drainage Division, State Water Data Center Building, Sector-8, Gandhinagar.	
5.	Work Order No. SSDN-2/Gandhinagar/ AB/ Adundra/ 674/ 2011 dated 30.04.2011 issued by Gujarat Water Resources, Development Corporation Limited, Gandhinagar.	Operation Maintenance and Repairs of Civil, Electrical Mechanical Works: Civil Structures, M.S. Pipe Line including lubricant, spares, tackles, tools & consumable etc. required for it, Proper supply of water to all outlets at network planning system completely required under the project for Adundra- S.S.S.C.(Kherwa) Pipe Line Project including Adundra Pumping Station for 1 (ONE) Year.
6.	Work Order No. 2294 dated 07/09/2010 issued by Ahmedabad Municipal Corporation.	Operation and Maintenance of 295 MLD Raw Water Pump House, 300 MLD Clear Water Pump House, various Civil Structures located at Jaspur Water Works compound, ESR at Vaishnav Devi Junction, M.S. Rising main from Plant to ESR and MS, CI, DI and HDPE Pipe Line Gravity mains up to the reservoirs located at different places in New West Zone are by maintaining all the required records.
7.	Letter No. GTW1/SK/O&M/ KSPL/1614/10 dated 28/06/2010 issued by Gujarat Water Resources Development Corporation Ltd. Gandhinagar regarding acceptance of tender.	Operation and Maintenance and Repair of civil electrical mechanical works, civil structures, M.S. Pipeline including proper supply of water to all outlets required under the projects for KhorsamSaraswati Pipeline including Khorasam and Hasanpur pumping station..
8.	Work Order No. DD/AB-TC/967 dated 18/03/2010	Operation Maintenance and Repairs of Civil Structures, M.S. Pipe Line including all types of valves including proper supply of water to all types of valves including proper supply of water to all outlets with network planning system completely required under the project for Hathmati Guhai Pipe Line.

It appeared on the scrutiny of above documents that the Noticee have carried out the work of Management, Maintenance or Repairs of Pipe Lines & Civil Structures for various Departments.

2.4.1 M/s Gujarat Water Supply & Sewerage Board vide their letter No. AB/G.S.Dodiya/Bill/1621/2011 dated 01/07/2011 have submitted the bid documents issued by them to the Noticee for "Preventive Operation, maintenance and repairs of civil works, civil structures, pipeline etc. to proper supply of potable water to all 217 villages/161 hemlets/20 private connection/ two urban centre covered under Dharoi/ Kheralu/ Vadnagar/ Visnagar Groups under Dharoi Regional Water Supply Scheme. (For 24 Months)". These bid documents are in two parts named as Volume-I "Post Qualification and Technical Specification" and Volume-II "Price Bid". On page No. 85 of the Volume-I "Post Qualification and Technical Specification", under Section-G, it is observed that in total expense of Rs. 1,17,95,870/- for Dharoi Regional Water Supply Scheme, Service Tax of Rs. 12,97,587/- at the rate of 12.36% is included with the expenditure of Rs. 1,04,98,280/-. Therefore it is clear that the service recipient was well aware that the service being received by them are liable to Service Tax and they brought this fact in the knowledge of the Noticee vide the said Bid document.

2.4.2 M/s Gujarat Water Supply & Sewerage Board vide their letter No. AB/G.S.Dodiya/Bill/1621/2011 dated 01/07/2011 have also submitted four invoices raised by the Noticee against the service rendered by them for "Preventive Operation,



maintenance and repairs of civil works, civil structures, pipeline etc. to proper supply of potable water to all 217 villages/161 hemlets/20 private connection/ two urban centre covered under Dharoi/ Kheralu/ Vadnagar/ Visnagar Groups under Dharoi Regional Water Supply scheme. (For 24 Months)". These invoices are 9th RA Bill dated 05/01/2010, 10th RA Bill dated 05/04/2010, 11th RA Bill dated 10/08/2010 and 12th RA Bill dated 27/10/2010. It is observed that in none of the invoices the Noticee have shown the component of Service Tax whereas the service recipient had brought the fact of leviability of Service Tax on these services in the knowledge of the Noticee vide the bid documents for this work as discussed in above para.

2.5 Whereas, further statement of Shri G. S. Dodia, Proprietor of the Noticee was recorded before the Superintendent of Central Excise recorded under Section 14 of the Central Excise Act, 1944 applicable to Service Tax under Section 83 of the Finance Act, 1994 on 13.02.2012. The relevant portion of the statement of Shri G. S. Dodia which was recorded in Hindi is translated and reproduced below-

*Q. No. 1 : Have you brought the information as per summons dated 16/01/2012. If yes than please produce.*

*Answer : The information called for by you under summons dated 16/01/2012 is produced herewith by me under my signature in two pages. I have tried to produce the information as per the given proforma.*

*Q. No. 2 : In the information produced, you have kept the column of work carried out by you as blank, why is it so?*

*Answer : The details of the works carried out by me are as per the work orders issued to me which I have submitted already. Nevertheless if any work order has not been produced by me then whenever you will say I'll produce the same.*

*Q. No. 3 : Have you provided the services of value as shown in the above said proforma only or you have provided your services somewhere else also?*

*Answer : I have provided the service of the worth shown in the above said proforma only. Apart of it, I have neither given any other service nor have I received any amount except of what shown in the above said proforma.*

*Q. No. 4 : What services have you provided against the amount received as shown in the above said proforma? Please explain in detail.*

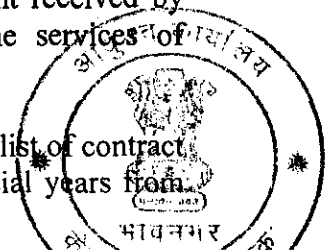
*Answer : Against the amount received by me as shown in the above said proforma, I have provided services to Gujarat Water Supply & Sewerage Board, various Municipal bodies working under Government of Gujarat and Nagar Panchayats for supply of water. I have provided these services for maintenance & repair of pipelines laid for supply of water to various districts and villages of Gujarat State. Apart of this, I've not provided any other service.*

*Q. No. 5 : Do you want to say anything else in this matter?*

*Answer : No.*

2.6 In the above said statement dated 13.02.2012, Shri G. S. Dodia, Proprietor of the Noticee, categorically had accepted that they have provided services of maintenance & repair of pipelines laid for supply of water to various districts and villages of Gujarat State and apart from this, they have not provided any other service. Shri G. S. Dodia also submitted a list containing contract wise and year wise details of amount received by them during the financial years from 2006-07 to 2010-11 against the services of maintenance & repair of pipelines provided by them.

2.7 Whereas, in a letter dated 05.04.201, the Noticee submitted revised list of contract wise and year wise details of amount received by them during the financial years from



2006-07 to 2010-11 against the services of maintenance & repair of pipelines provided by them. They also submitted the half yearly bifurcation of amount received in the year 2006-07 and a copy of balance sheet for the year 2010-11 under the said letter. The amounts received in the said list were found in order when compared with the balance sheets of the financial years from 2006-07 to 2010-11, submitted by the Noticee.

3 From the documents submitted by the Noticee, received from M/s Gujarat Water Supply & Sewerage Board, statements of Shri G. S. Dodia, Proprietor of the Noticee as discussed hereinabove, it appeared that –

- (i) The Noticee have provided services of Management, Maintenance and Repairs of pipelines to Gujarat Water Resources, Development Corporation Limited, Narmada Water Resources, Water Supply & Kalpsar Department, Gujarat Water Supply & Sewerage Board, Municipal Corporation, Ahmedabad etc.
- (ii) The Noticee have suppressed the value of Taxable Services rendered.
- (iii) The Noticee have not shown the value of Service Tax payable on their invoices.
- (iv) The Noticee have not taken Service Tax registration for the services provided by them.
- (v) The Noticee have not filed any Service Tax return.
- (vi) The Noticee have not paid any Service Tax on the taxable services of Management, Maintenance or Repairs provided by them.

4.1 Whereas, "Management, Maintenance or Repairs" service has been defined under Section 65(64) of the Finance Act, 1994 (hereinafter referred to as the Act). For the sake of brevity the same is reproduced herein as below-

*"management, maintenance or repair" means any service provided by—*

- (i) *any person under a contract or an agreement; or*
- (ii) *a manufacturer or any person authorised by him, in relation to,—*
  - (a) *management of properties, whether immovable or not;*
  - (b) *maintenance or repair of properties, whether immovable or not; or*
  - (c) *maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;]*

*Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this clause,—*

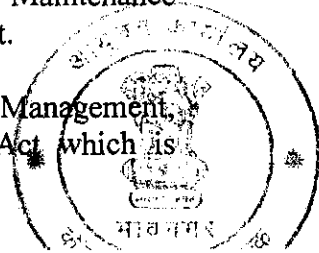
- (a) *"goods" includes computer software;*
- (b) *"properties" includes information technology software;*

4.2 Whereas, the applicability of Service Tax on "Management, Maintenance or Repair" has been laid down in Section 65 (105) (zzg) of the Act, which is reproduced herein below-

*the taxable service is "any service provided or to be provided to any person, by any person, in relation to management, maintenance or repair;*

4.3 From the foregoing paras it appeared that the act of Operation, Maintenance and Repair of pipelines by the Noticee falls within the ambit of "Management, Maintenance or Repair" which is a taxable service under Section 65 (105) (zzg) of the Act.

4.4 The Noticee are liable to pay Service Tax on the services of "Management, Maintenance or Repair" rendered by them as per Section 66 of the Act which is reproduced as below-





**66. Charge of service tax –**

*There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. of the value of taxable services referred to in sub-clauses (a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zh), (zi), (zj), (zk), (zl), (zm), (zn), (zo), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz), (zza), (zzb), (zzc), (zzd), (zze), (zzf), (zzg), (zzh), (zzi), (zzk), (zzl), (zzm), (zzn), (zzo), (zzp), (zzq), (zzr), (zss), (zzt), (zzu), (zzv), (zzw), (zzx), (zzy), (zzz), (zzza), (zzzb), (zzzc), (zzzd), (zzze), (zzzf), (zzzg), (zzzh), (zzzi), (zzzj), (zzzk), (zzzl), (zzzm), (zzzn), (zzzo), (zzzp), (zzzq), (zzzr), (zzzs), (zzzt), (zzzu), (zzzv), (zzzw), (zzzx), (zzzy), (zzzz), (zzzza), (zzzzb), (zzzzc), 4[(zzzzd), (zzzze), (zzzzf), (zzzzg), (zzzzh), (zzzzi), 5[(zzzzj), (zzzzk), (zzzzl), 6[(zzzzm), (zzzzn), (zzzzo), (zzzzp), (zzzzq), (zzzzr), (zzzzs), (zzzzt) and (zzzzu) of clause (105) of section 65 and collected in such manner as may be prescribed.*

4.5 Whereas, as per provisions stated under Section 69 of the Act read with Rule 4 of the Service Tax Rules, 1994 (hereinafter referred to as “the Rules”), a person liable to pay Service Tax is required to take Service Tax registration. The relevant portions of the Section 69 of the Act and Rule 4 of the Rules are reproduced as below-

**Section 69. Registration: -**

*(1) Every person liable to pay the service tax under this chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*

*(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.*

**Rule 4. Registration –**

*(1) Every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax under section 66 of the Finance Act, 1994(32 of 1994) is levied:*

*Provided that where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement:*

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4.6 Whereas, as per Rule 4A of the Rules, taxable service is to be provided or credit to be distributed on invoice, bill or challan. The relevant portion of Rule 4A of the Rules is reproduced as below –

*(1) Every person providing taxable service shall, not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely:-*

- (i) the name, address and the registration number of such person;



- (ii) *the name and address of the person receiving taxable service;*
- (iii) *description, classification and value of taxable service provided or to be provided; and*
- (iv) *the service tax payable thereon.*

4.7 Whereas, Section 67 of the Act provides the determination of value of taxable service for charging Service Tax. The relevant portion of Section 67 of the Act is reproduced below for the sake of brevity-

Valuation of taxable services for charging Service Tax

- (1) *Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,—*
  - (i) *in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;*
  - (ii) .....
  - (iii) .....
- (2) .....
- (3) *The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.*
- (4) *Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.*

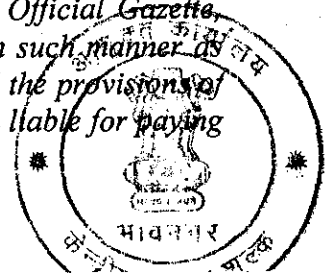
*Explanation.—For the purposes of this section,—*

- (a) *“consideration” includes any amount that is payable for the taxable services provided or to be provided;*
- (b) *“money” includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;*
- (c) *“gross amount charged” includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes .....*

4.8 Whereas, Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 provide provisions for payment of Service Tax. The relevant portions of Section 68 of the Act and Rule 6 of the Rules are reproduced as below-

Section 68:- Payment of service tax.—

- (1) *Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.*
- (2) *Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.*



**Rule 6. Payment of service tax –**

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

*(i) by the 6th day of the month, if the duty is deposited electronically through internet banking;  
and*

*(ii) by the 5th day of the month, in any other case,  
immediately following the calendar month in which the payments are received,  
towards the value of taxable services:*

*Provided that where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5<sup>th</sup> day of the month, as the case may be, immediately following the quarter in which the payments are received, towards the value of taxable services:*

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.....

*Provided also that the service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.*

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4.9 Whereas, Section 70 of the Act read with Rule 7 of the Rules provide provisions for furnishing returns consequent to payment of Service Tax. The relevant portions of Section 70 of the Act and Rule 7 of the Rules are reproduced as below-

**Section 70:-Furnishing of Returns. –**

*(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding two thousand rupees, for delayed furnishing of return, as may be prescribed.*

*(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.*

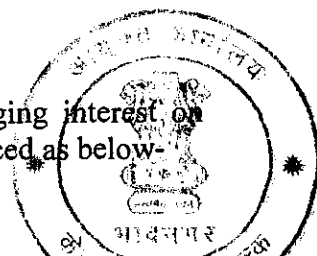
**Rule 7. Returns –**

*(1) Every assessee shall submit a half yearly return in Form 'ST-3' or 'ST-3A', as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return.*

*(2) Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.*

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.....

4.10 Whereas, Section 75 of the Act provides provisions for charging interest on delayed payment of Service Tax, the relevant portion of which is reproduced as below-



**Interest on delayed payment of Service Tax—**

*Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed.*

4.11 Whereas, Section 73 of the Act provides provision for recovery of Service Tax not levied or paid or short levied or short paid or erroneously refunded, the relevant portion of which is reproduced herein below—

**Recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded —**

*(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :*

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

- (a) fraud; or*
- (b) collusion; or*
- (c) wilful mis-statement; or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted.*

*Explanation. — Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.*

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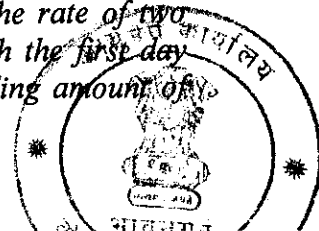
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4.12 Whereas Section 76 of the Act provides provision for penalty for failure to pay Service Tax, which is reproduced as below (For relevant period in this case)

**Penalty for failure to pay service tax**

*Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two percent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax:*



*Provided that the total amount of the penalty payable in terms of this section shall not exceed the service tax payable.*

4.13 Whereas, Section 78 of the Act provides provisions for penalty for suppressing value of taxable service, which is reproduced (for the relevant period) as below –

**Penalty for suppressing value of taxable service. –**

*Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of –*

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

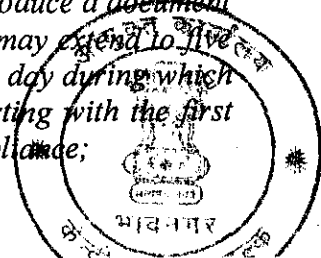
*the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall not be less than, but which shall not exceed twice, the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded:]*

4.14 Whereas, Section 77 of the Act reads as under-

**Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. —**

*(1) Any person,—*

- (a) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;*
- (b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made there under, shall be liable to a penalty which may extend to five thousand rupees;*
- (c) who fails to—*
  - (i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made there under; or*
  - (ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made there under; or*
  - (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;*



- (d) *who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to five thousand rupees;*
- (e) *who issues invoice in accordance with the provisions of the Act or rules made there under, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to five thousand rupees.*
- (2) *Any person, who contravenes any of the provisions of this Chapter or any rules made there under for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to five thousand rupees.*

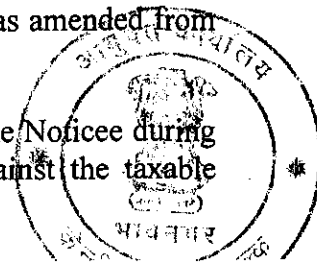
5.1 From the foregoing paras, it appeared that the Noticee, by their acts of omission and commission have contravened the following provisions of the Chapter V of the Finance Act, 1994 and Service Tax Rules, 1994 framed thereunder with an intent to evade payment of service tax:-

- (i) Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 in as much as they have failed to obtain Service Tax registration;
- (ii) Rule 4A of the Service Tax Rules, 1994 in as much as they have failed to show the Service Tax payable on their invoices;
- (iii) Section 67 of the Finance Act, 1994 in as much as they have suppressed the value of Taxable Services rendered;
- (iv) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they failed to pay the appropriate service tax on the gross value of taxable services rendered by them;
- (v) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they failed to correctly assess, pay service tax due thereon and to file a return in such form with correct details about services rendered and in such manner and at such frequency as prescribed;

5.2 From the foregoing paras, it also appeared that the Noticee has admittedly not paid the Service Tax on the services provided by them under category "Management, Maintenance or Repairs" when they were due and thereby rendered themselves liable to penalty under Section 76 of the Finance Act, for non-payment of Service Tax and liable for interest under section 75 of the Finance Act.

5.3 All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of the said service provider appears to have been committed by way of suppression of facts, with an intention to evade payment of service tax, as a matter of fact that this evasion would not have come to light until the inquiry was initiated by the department and therefore, the Service Tax not so paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994, as amended from time to time, by invoking the extended period of five years. Further, all these acts of contravention of the provisions of Sections 69, 68 and 70 of the Finance Act, 1994, as amended from time to time read with Rules 4, 6 and 7 of the Service Tax Rules, 1994 appears to be punishable under the provision of Section 76, 77 and 78 of the Finance Act, 1994 as amended from time to time.

6.1 The quantification of Service Tax on the amounts received by the Noticee during the period of last five years i.e. from 1-Oct-2006 to 31-03-2011 against the taxable



services of "Management, Maintenance or Repair" provided by them to various recipients is based on the list of contract wise and year wise details of amount received by them during the financial years from 2006-07 to 2010-11 against the services of maintenance & repair of pipelines, submitted by the Noticee under their letter dated 05.04.2012 and Audit Reports of the Noticee for the financial years from 2006-07 to 2010-11. This was worked out as under-

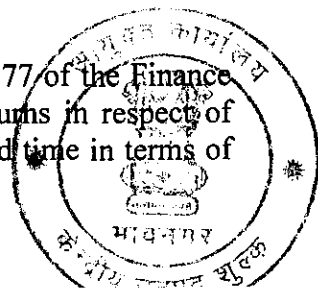
(Amount in Rs.)

Financial Year	Amount Received against Management, Maintenance or Repair	Rate of Service Tax	Service Tax	Edu. Cess @ 2% of ST	S&H Edu. Cess @ 1% of ST	Total Service Tax
2006-07 (From OCT-06 to Mar-07)	146,87,265	12%	17,62,472	35,249	0	17,97,721
2007-08	3,86,42,667	12%	46,37,120	92,742	46,371	47,76,233
2008-09	2,60,09,582	12%	31,21,150	62,423	31,212	32,14,785
2009-10	5,14,65,346	10%	51,46,535	1,02,931	51,465	53,00,931
2010-11	4,77,35,163	10%	47,73,516	95,470	47,735	49,16,721
<b>TOTAL</b>	<b>17,85,40,023</b>		<b>1,94,40,793</b>	<b>3,88,815</b>	<b>1,76,783</b>	<b>2,00,06,391</b>

Therefore, it appeared that the Noticee have rendered the service of "Management, Maintenance or Repair" amounting to Rs.17,85,40,023/- over a period of last five years as shown above and have evaded payment of the Service Tax totally amounting to Rs.2,00,06,391/- as calculated above.

7 Above observations and outcome of the investigation resulted into issue of Show Cause Notice No. V/15-05/Dem-ST/HQ/2012-13 dated 17.04.2012 requiring the Noticee to show cause as to why: -

- (i) The Service Tax totally amounting to Rs.2,00,06,391/- (Two Crore Six Thousand Three Hundred & Ninety One) including Service Tax of Rs.1,94,40,793/- plus Education Cess of Rs.3,88,815/- plus Secondary & Higher Education Cess of Rs.1,76,783/- as calculated in para 6.1 of this notice should not be demanded and recovered under proviso to Section 73(1) of the Act;
- (ii) interest at appropriate rate on delayed payment of Service Tax from the due date of payment of Service Tax to the actual payment of the same should not be charged and recovered under Section 75 of the Act.
- (iii) penalty should not be imposed upon them under Section 76 of the Act for the failure to assess service tax as required under Section 70 of the Act and make the payment of service tax within the period and in the manner prescribed under Section 68 of the Act read with rule 6 of the Rules.
- (iv) penalty should not be imposed upon them under section 77 of the Finance Act, 1994, as they failed to obtain Service Tax registration in terms of the provisions of Rule 4 of the Service Tax Rules, 1994;
- (v) penalty should not be imposed upon them under section 77 of the Finance Act, 1994, as they failed to file the prescribed ST-3 returns in respect of above said services rendered by them within the stipulated time in terms of the provisions of Rule 7 of the Service Tax Rules, 1994;



- (vi) penalty should not be imposed upon them under section 77 of the Finance Act, 1994, as they failed to issue invoices showing the component Service Tax payable as prescribed in Rule 4A of the Service Tax Rules, 1994.
- (vii) penalty should not be imposed upon them under Section 78 of the Act for the Service Tax not levied and not paid by them by suppressing the facts and for the contravention of the provisions of the Act and the Rules made there under with intent to evade payment of Service Tax.

#### WRITTEN SUBMISSION:

8. The Noticee filed reply to the show cause notice vide letter dated 02.07.2012, in which it was inter alia, stated that :

8.1 By the above referred Show Cause Notice issued to us under the proviso to Section 73(1) of the Finance Act, 1994 as amended from time to time, an amount of Rs.2,00,06,391 /- as service tax is demanded on the ground that we were required to pay service tax under "Management, Maintenance or Repair Service" for various turnkey contracts executed by us for entities like Gujarat Water Resources Development Corporation Ltd., Narmada Water Resources Water Supply and Kalpsar Department, Gujarat Water Supply & Sewage Board as well as various Municipal Bodies working under the Government of Gujarat and Nagar Panchayats. The above demand for service tax is made for the period from 1st October, 2006 to 31.3.2011, and proposals for charging interest and imposing penalties under Sections 76, 77 and 78 of the said Act are also levelled against us.

8.2 We have noted that the case of the Revenue is that we have provided services of Management, Maintenance or Repairs of pipelines for the above entities (hereinafter referred to as the "clients") and that we had suppressed the value of the taxable service and we have also not shown the amount of service tax payable in our invoices raised on the above clients. We have also noted the reference given to the extracts of our statement in the Show Cause Notice, the reference given to various provisions of the said Act and we have also noted that the issue raised on the basis of the statements, the contents of the turnkey contracts and the provisions of the said Act is that our activity of maintenance and repairs of pipelines laid for supply of water to various districts and villages in the State of Gujarat attracted liability of service tax under the above "Management, maintenance or Repair service".

8.3 At the outset, we submit that the Show Cause Notice is ex-facie illegal and without jurisdiction because maintenance and repairs of pipelines meant for supply of water to public at large is not a taxable service, and therefore proposal to levy and collect service tax for such activity could never be made by the Revenue. Supply of water is a sovereign function of the State and any activity connected with discharging the coristitutional obligation of the State like providing water to citizens is not a taxable service covered under the Service Tax legislation. There is also no suppression of facts or willful misstatement or any such ill-intention on our part in undertaking maintenance and repairs of such pipelines and not charging any amount as service tax from the clients who are all Government or Semi-Government Bodies; and therefore the larger period of limitation could also never be 'invoked against us by resorting to the proviso to Section 73(1) of the said Act. We therefore submit that the Show Cause Notice and the proposals levelled thereudner are wholly illegal and without jurisdiction, and we therefore request you to withdraw this Show Cause Notice in the interest of justice.

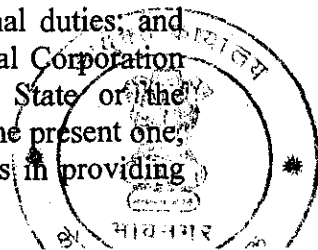
8.4 At the outset, we may emphasis that the Revenue has accepted that our activities were only with regard to maintenance and repairs of pipelines laid for supply of water to various districts and villages of Gujarat State; and thus we have





undertaken all the activities as regards maintenance and repairs of pipelines for water supply is an admitted fact in this proceedings. We may also emphasise at the outset that all the clients for whom we have undertaken such activities are Government Boards, Government Corporations and local self government bodies like Gram Panchayats, Nagar Panchayats also an admitted fact in this proceedings; and thus the activities of maintenance and repairs of water supply pipelines are undertaken by us for such Government and Semi-Government Bodies (and not for any private individual) is also a matter without any dispute in this case. Moreover, we have not charged any service tax from the above clients and we have also treated the execution of all such turnkey contracts for repairs and maintenance of water supply pipelines as activities not attracting levy of service tax is also an admitted fact in this case. Further, a perusal of the work contracts/turnkey contracts executed between us and the above clients also shows that the contracts have been for the works namely (1) Comprehensive Operation, Maintenance & Repair of Electro-Mech works of all pumping machineries located at Laxmisagar Intake, Laxmisar H/w Limadi, Vadala, Vadod, Dudhrej, Khodu, Karangadh, Raigadh & Dholidhaja Taluka, Limadi, Wadhvan, under S-2 Package, A part of S2-S3 RWSS Dist: Surendranagar, (2) Operation Maintenance and Repairs of Civil Electrical Mechanical Works: Civil Structures, M.S. Pipe Line including proper supply of water to all outlets required under the project for Adundra-S.S.S.C. (Kherwa) Pipe Line including Adundra Pumping Stations; (3) Operation Maintenance and Repairs of Civil, Electrical Mechanical Works; Civil Structures, M.S. Pipe Line including proper supply of water to all outlets required under the project for Piyaj-Dharoi Pipe Line including Piyaj-Lodra&Rampura Pumping Station; (4) O&M Work @ Piyaj Lodra & Rampura Pumping Station, (5) Operation Maintenance and Repairs of Civil, Electrical Mechanical Works: Civil Structures, M.S. Pipe Line including lubricant, spares, tackles, tools and consumable etc. required for it, Proper supply of water to all outlets at network planning system completely required under the project for Adundra-S.S.S.C.(Kherwa) Pipe Line Project including Adundra Pumping Station for 1 (ONE) year, (6) Operation and Maintenance of 295 MLD Raw Water Pump House, 300 MLD Clear Water Pump House, various Civil Structures located at Jaspur Water Works compound ESR at Vaishnav Devi Junction, M.S. Rising main from Plant to ESR and MS, CI DI and HDPE Pipe Line Gravity mains upto the reservoirs located at different places in New West Zone are by maintaining all the required records, (7) Operation and maintenance and Repair of civil electrical mechanical works, civil structures, M.S. Pipeline including proper supply of water to all outlets required under the projects for Khorsam Saraswati Pipeline including Khorasam and Hasanpur pumping station and (8) Operation Maintenance and Repairs of Civil Structures, M.S. Pipe Line including all types of valves including proper supply of water to all types of valves including proper supply of water to all outlets with network planning system completely required under the project for Hathmati Guhai Pipe Line; and thus all these contracts have been in the nature of turnkey works and they have been as regards water pipelines meant for supplying water for the people at large. In this view of the matter, we submit that the whole basis of this Show Cause Notice that the above activities attracted levy of service tax is without any justification.

8.5 The Revenue has acted without jurisdiction in suggesting that the activity of executing the above works by us was a taxable service, because the works executed for the said clients would come within the ambit of "sovereign function" of the State. All the activities of the State or the Instrumentalities of the State stand excluded from the purview of levy of service tax if the activities were in the nature of discharging their constitutional obligations as well as statutory obligations. Under the Constitution of India, it is the duty of the State and the Instrumentalities of the State to provide clean water, clean air and clean environment to citizens and therefore, all the activities aimed at achieving these objectives were in the nature of discharging constitutional duties; and under the provisions of the Statutes like the Bombay Provincial Municipal Corporation Act, the GWSSB Act, etc. also, the statutory duty is cast on the State or the Instrumentalities of the State like Municipal Corporations, the Board like the present one, provide for clean water for the citizens. The activities of the said clients; in providing



water to various Municipalities Gram Panchayats, Industries, etc. was therefore, in the nature of an activity aimed at discharging the constitutional as well as statutory obligations cast on the said Board it being an Instrumentality of the State, and therefore, the Revenue could not have suggested these activities to be service for the purpose of levying service tax on execution of works for this purpose. The purpose for which we have executed the works for the said clients was in the nature of constitutional and statutory obligations of the said clients for which no service tax was attracted.

8.6 It is observed in the Show Cause Notice that the clients were required to render all necessary services in regard to water supply to the State of Gujarat, local bodies and thus it is found by the Revenue also that these were the statutory duties and obligations cast on the said clients. Any activity including allowing a full-fledged water works by any Board or Corporation or a local Self Government body, therefore, could not have been considered to be the industrial or commercial activity, and therefore, the proceeding is wholly illegal and unauthorized.

8.7 The CBEC has issued a Circular No. 80/10/2004-ST dated 17.9.2004, wherein, vide paragraph 13.2, it is clarified that if a structure was used for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit, then construction of such structure was not taxable, being non-commercial in nature. Thus, the Government has also recognized the fact that levy of service tax was attracted only when use of a structure was for commercial or industrial purposes, that is to say - the use should be for profit and not for purposes like health, sanitation etc.

8.8 Paragraph 13.4 of the above Circular refers to the exclusions provided under the definition contained under Section 65(25b) of the Act, and these exclusions also make it clear that the objective of the legislature in providing for levy of service tax under this Section was only for those structures which were used for commerce and industry, but not for the structures which were constructed for providing various services to the people at large, and for the purposes which were basically the obligations of the State or State Authorities under various statutes. The definition excludes construction of roads, airports, railway, transport terminals, bridge, tunnel, long distance pipelines and dams; and these exclusions also make it clear that the objective was not to levy service-tax on construction of any structures which were basically meant for purposes like health, sanitation etc. and also for the structures which were for the public at large and were constructed for discharging the duties and obligations of the Government, local self-government bodies and other statutory authorities.

8.9 In the present case also, the pipelines for water are for the purpose of discharging statutory obligations of State and the State Authorities. Under the Bombay Provincial Municipal Corporation Act, 1949 governing various matters regarding Municipal Corporations, Chapter XII deals with drains and drainage. The provisions from Section 153 onwards make it clear that it was the statutory duty of the Municipal Corporation to construct drains and to maintain drains and drainage for sewage disposal. Section 176 of the above Act also provides that the Commissioner may appoint places for emptying of drains and disposal of sewage. Chapter XIII of the above Act, deals with 'water supply', and provisions of Section 189 onwards also clarify that it was the obligation of the Commissioner (i.e. the Municipal Corporation) to construct and maintain in good repair water works. Therefore, services provided by us to such authorities and bodies is not covered under the taxable category of "Management, Maintenance or Repair service".

8.10 To live in a healthy environment being a fundamental right is a fact recognized by the Hon'ble Supreme Court also in the cases like Dr. B.L. Wadehra Vs. Union of India, reported in AIR 1996 SC 2969 and Indian Council for Enviro and Legal Action, reported in AIR 1996 1446, wherein the Hon'ble Supreme Court has held that right to life under Article 21 of the Constitution of India included the right to enjoyment of pollution free water. In this view of the matter, all pipelines and conduit meant for carrying water were basically a part of fundamental right of a citizen, and construction of such structure was also a part of the statutory duties and obligations of the Instrumentalities of the State like

