कार्यालय आयुक्त, केन्द्रीय वस्तु एवं सेवाकर,
117/7, सर्वोदय नगर, कानपुर – 208005

पत्र संख्या -V(15)Off./Adj./ST/122/2013 दिनांक - 08.03.2021

**DIN-20210353ZW0000008E9A**

**मूल आदेश सं०** 08/ JC/ ST/2020-21 **दिनांक** : 08.03.2021

**श्री जीतेन्द्र सिंह, संयुक्त आयुक्त, केन्द्रीय वस्तु एवं सेवाकर आयुक्तालय, कानपुर द्वारा पारित**
ISSUED BY SHRI JITENDRA SINGH, JOINT COMMISSIONER,
CGST COMMISSIONERATE, KANPUR

प्रस्तावना / PREAMBLE

1. **आदेश की यह प्रति उस व्यक्ति के निजी प्रयोग के लिये निःशुल्क प्रदान की जाती है जिसे यह जारी की गयी है।**
   Copy of this order is granted free of charge for private use of the person to whom it is issued.

2. **इस आदेश से प्रभावित व्यक्ति वित्त अधिनियम,** 1994 **की धारा** 85 **अथवा केन्द्रीय उत्पाद शुल्क अधिनियम,** 1944 की धारा 35 ( जो भी लागू हो) के अन्तर्गत ऐसे निर्णय या आदेश की सूचना की तारीख से साठ दिनों के अंदर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवाकर एवं केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील), 38, एम०जी०मार्ग, सिविल लाइन्स, इलाहाबाद को अपील कर सकता है।
   Any person deeming himself aggrieved by this order may appeal under Section 85 of the Finance Act, 1994 or under Section 35 of the Central Excise Act, 1944 (as may be applicable), against the same to the Commissioner (Appeals), CGST & Central Excise (Appeal) Commissionerate, 38, M.G. Marg, Civil Lines, Allahabad. The appeal must be filed within sixty days from the date of communication of the above.

3. **सेवाकर की अपील फॉर्म** S.T.-4/ **एवं उत्पाद शुल्क की अपील फॉर्म** E.A.-1 **में निर्धारित प्रारूप में दो प्रतियों में की जानी चाहिये। इसके साथ में जिस आदेश के विरुद्ध अपील की जा रही है, उसकी एक प्रति भी होनी चाहिए।**
   The Service Tax appeal is required to be filed in Form S.T.-4 & Central Excise appeal is required to be in Form E.A.-1 in specified format in duplicate. It shall be accompanied by the copy of the order appealed against.

4. जहाँ सेवाकर / उत्पाद शुल्क विवादित हो अथवा सेवाकर / उत्पाद शुल्क एवं पेनाल्टी दोनों विवादित हों या पेनाल्टियां **विवादित हों या फिर केवल पेनाल्टी ही विवादित हो तो उसकी / उनकी** 7.5% **धनराशि जमा करने के उपरान्त ही इस आदेश के विरुद्ध आयुक्त (अपील) के समक्ष अपील की जाएगी।**
   An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the Service Tax / Excise Duty demanded where Service Tax / Excise Duty or Service Tax / Excise Duty and penalty are in dispute or penalty are in dispute or penalty, where penalty alone is in dispute.

**To,**

M/s Raunaq International Ltd.
C/o M/s Utility Energy Tech & Engineers (P.) Ltd.,
Paricha Thermal Power,
Jhansi

**THE PROCEEDINGS IN RESPECT OF SHOW CAUSE NOTICE C.NO. V(15)OFF/ ST/122/2013/17249-17253 DATED 18.10.2013 TO M/s. RAUNAQ INTERNATIONAL LIMITED, JHANSI**

**ORDER–IN–ORIGINAL NO. 08/JC/ST/2020-21 DATED 08.03.2021**

**BRIEF FACTS OF THE CASE:-**

M/s. Raunaq International Ltd. C/o M/s. Utility Energy Tech. & Engineers (P.) Ltd. Parichha Thermal Power, Jhansi were engaged in providing taxable service of "Erection, Commissioning & Installation Service" to their clients and were registered with the Department under the category of "Erection, Commissioning & Installation Service" having registration certificate number AAA5747CST010.

**2.** Section 65(39a) of the Finance Act, 1994 defines the Service of "Erection, Commissioning & Installation" as any service provided by a commissioning and installation agency, in relation to, -

*(i)* *erection, commissioning or Installation of plant, machinery, equipment or structure whether pre-fabricated or otherwise; or*

*(ii)* *Installation of-*

*(a)* *electrical and electronic devices, including wirings or fitting therefore; or*

*(b)* *Plumbing, drain laying or other installations for transport of fluids; or*

*(c)* *Heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work; or*

(d) *thermal insulation ,sound insulation , fire proofing or water proofing ;or*

(e) *lift and escalator, fire escape staircases or travelators; or*

(f) *such other similar* services

**3.** M/s Parichha Power Projects, Jhansi (through their Project planning, Monitoring and Management unit, Headquarter, Shakti Bhawan, Lucknow) had given the initial Work order for the supply, Erection, Testing & Commissioning of complete BOP Package to M/s Reliance Infrastructure Ltd. Mumbai (Formally known as Reliance Energy Ltd.). Thereafter M/s. Reliance Infrastructure had sublet the BOP Package to different firms. The erection contract was awarded to M/s. Utility Energy tech & Engineers Pvt. Ltd. and supply of L. P. Pipe contract to the party. Later on, the Erection Contract was further sublet to the party by M/s. Utility Energy tech & Engineers Pvt. Ltd. Thus, eventually, both the erection contracts as well as the L.P. Piping Contract were given to the party. For the work order between M/s. Utility Energy tech and Engineers Pvt. Ltd. and the party, an agreement dated 22.5.2008 for Rs.7,43,33,739/- (inclusive of all taxes and duties) was entered into.

**4.** The party vide purchase order MO1/23023218 dated 22.05.2008 from M/s. Reliance Infrastructure Ltd. had supplied material of Rs.8,06,66,262/- to the latter. M/s. Reliance Infrastructure Ltd. vide their letter dated 20.07.12 had further informed that the material supplied by M/s. Raunaq International Ltd. to them were sold in transit to M/s. Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. (UPRVUNL) which in turn had been supplied free of cost to M/s. Utility Energy tech and Engineers Pvt. Ltd. who again in turn had further supplied that material free of cost to M/s. Raunaq International Ltd. for execution of work contract at Parichha Thermal Power project, Jhansi.

**5.** During the audit it was observed that the party paid service tax on the value which was not the gross value of services rendered by them. However, it was noticed by the Audit that the party had not paid service tax correctly in as much as they had not included the cost of the material supplied free of cost during the execution of the work contract. Thus, the composite contract had been deliberately bifurcated into two parts i.e. contract for supply of material and contract for rendering the services. Thereby suppressing the actual gross value of taxable services rendered with a malafide intent to evade payment of service tax due thereon.

**6.** Section 67 of the Finance Act, 1994 contains provisions relating to valuation of taxable service for charging service tax. As per clause (i) of Sub section 1 of Section 67 of the Act ibid, in a case where the provisions of service for a consideration in money, the value shall be the 'gross amount' charged by the service provider for the service provided or to be provided. As per clause (ii), (introduced with effect 18.4.2006), in a case where the provision of service is for a consideration not wholly or partly consisting of money, the value shall be the money value equivalent to the consideration. Thus, the free supply of material, accessories, auxiliaries and ancillaries are the part of the consideration received by the party for rendering service and hence, the gross amount for payment of service tax shall be Rs.7,43,33,738/-+(Cost of material supplied free of cost) as Section 67 of the Act ibid clearly provides that for calculation of the value of a service, consideration in monetary as well as not-monetary terms were required to be taken into account.

**7.** It was alleged that the party had taken the value of the gross amount without considering other provisions provided in Section 67 of Finance Act, 1994 as well as Service Tax (Determination of Value) Rules, 2006. The fact that, it was not only the supplies of material (consumables) used by the party which form a part of the service but also other consideration which were non-monetary in nature, were also required to be taken into account.

**8.** Rule 3 of Service Tax (Determination of Value) Rules, 2006 reads as under:-

**Rule 3:** Manner of determination of Value; Subject to the provisions of Section 67,the value of taxable service, where the consideration received is not wholly or partly consisting of money, shall be determined by the service provider in the following manner:

a. The value of such taxable service shall be equivalent to the gross amount charged by the service provider for similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration.
b. Where the value cannot be determined in accordance with the clause (a), the service provider shall determine the equivalent money value of such taxable service.

Thus, Rule 3 of Service Tax (Determination of Value) Rules, 2006 squarely applied to the instant case and supply of LP piping along with all accessories, auxiliaries and ancillaries free of cost, which were essential components and essentially required for providing erection, commissioning & installation service, had to be treated as consideration, other than in the form of money and such value had to be included.

**9.** It was alleged that the party had not declared the fact of free supply of goods and its value either in the ST-3 returns, for the period October' 2008 to March' 2012 or through any letter.

**10.** From the above, it was alleged that M/s. Raunaq International should had included the value of material supplied free of cost to them in the gross value of service provided for computation of service tax liability and they should had paid service tax at the rate of 12% @ on the value of free supply of material of Rs.8,06,66,262=00 amounting to Rs.96,79,951.00 (Service Tax)+ Rs.1,93,599.00 (Education Cess)+Rs.96,800.00( Higher/Secondary Edu. Cess) = Rs.99,70,350, which was not paid by them, hence the same is demandable and recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994.

**11.** From the foregoing paras, it was alleged that M/s. Raunaq International Ltd. with intent to evade payment of Service tax had willfully suppressed the gross value of the service rendered by them by not including the value of the material supplied free of cost. The composite contract had been deliberately bifurcated into 2 parts i.e. contract for supply of material and contract for rendering the services to suppress the total taxable value of the service. They had not disclosed the fact in the half yearly return for the period October' 2008 to March'2009 and the fact came in the knowledge of the department only during audit of their records and accounts on 10.02.2011. Hence, extended period for recovery of Service tax under the proviso to Section 73(1) of the Finance Act, 1994 is invokable. Interest on such amount of service tax not paid by the party is also liable to be demandable under the provisions of Section 75 of Finance Act, 1994.

**12.** From the above, it was alleged that M/s. Raunaq International Ltd had contravened the following provisions of the Act and the Service tax rules 1994 as amended

i. Section 67 of the Finance Act, 1994 in as much as they had wrongly computed the taxable gross value by excluding the value of free supply of material.

ii. Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they failed to make payment of Service Tax to the tune of Rs.99,70,350=00(Rs.96,79,951=00+Rs.193,599=00+Rs. 96,800=00) as explained in the forgoing paras, to the credit of the government within the specified time limit.

iii. Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules,1994 in as much as they did not themselves assess the tax appropriately on the services provided by them and did not furnish the half yearly return properly and correctly to the department.

**13.** From the aforesaid paras, it was alleged that the party with intent to evade payment of Service tax suppressed and concealed the value of taxable service provided by them and had failed to disclose wholly or truly all the material facts and had contravened various provisions of the Finance Act 1994 and the rules made there under as discussed here- in-above, as such they are liable to penal action under Section 78 of Chapter V of the Finance Act, 1994. Further, they are also liable to a penalty under Section 76 & 77 of Finance Act, 1994 separately for failure to make payment of duty as well as for delay in payment of Service Tax and interest due thereon.

**14. CASE FOR THE DEPARTMENT:-**

Accordingly, Show Cause Notice No. V(15)OFF/ST/122/2013/17249-17253 dated 18.10.2013 was issued to M/s. Raunaq International Ltd., C/o M/s. Utility Energy Tech & Engineers Ltd., Parichha Thermal Power, Jhansi, initially answerable to the Commissioner, Central Excise & Service Tax, Kanpur, later made answerable to the Additional/Joint Commissioner, CGST & C. Excise, Kanpur, asking them as to why:

i. Service tax amounting toRs.99,70,350=00(Service tax Rs.96,79,951=00+ Education Cess Rs.1,93,599=00+ Higher

/Secondary Cess Rs.96,800=00) should not be demanded and recovered from them under the proviso of Section 73(1) of the Finance Act 1994.

ii. Penalty should not be imposed upon them under Section 76 & 77 of the Finance Act,1994 separately for failure to make the payment of Service Tax payable by them as discussed here-in-above.

iii. Penalty should not be imposed upon them under Section 78 of the Finance act 1994 for suppression of the facts and the value of taxable service and for contravention of various provisions of the Act and the rules made there under.

iv. Interest at the applicable rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act,1994.

**CASE FOR THE PARTY**

In response to the SCN No. V(15)off/ST/Adj.1222013/17250 dated 18.10.2013, party have submitted following grounds for consideration in their written submission dated 20.11.2013 :-

15. M/s. Rqunaq International Ltd. is a company incorporated under the Companies Act, 1956 having its registered office at 20 KM, Mathura Road P.O. Amar Nagar Faridabad(Haryana) & site office at C/o Utility Energy tech and Engineers (Pvt.) Limited, PTPP Parichha, P.O. Parichha Thermal Power, Jhansi (U.P.) and engaged in the business of providing taxable service of "Erection, Commissioning and Installation Service" & are registered with the Department under the category of "Erection, Commissioning and Installation Service" having registration certificate number AAA5747CST010.

16. The party submitted that Parichha Thermal Power Project, Jhansi, a unit of M/s. U.P. Rajya Vidyut Utpadan Nigam Limited had given an initial work order for supply, Erection, Testing and Commissioning of

complete BOP package to M/s. Reliance Infrastructure Limited, Western Express Highway, Mumbai, formerly known as Reliance Energy Limited. Subsequently, M/s. Reliance Infrastructure Limited has, in-turn, sub-letted the aforesaid contract to different entities. It is submitted that the "Erection Contract" was awarded to M/s. Utility Energy tech and Engineers Pvt. Ltd. Out of the contract awarded by M/s. Reliance Infrastructure Limited to M/s. Utility Energy tech and Engineers Pvt. Ltd, a part of the contract namely erection, Installation & Commissioning of LP/CV/ Piping package for Rs.7,43,33,738/- ( including of taxes & duties) was awarded by M/s. Utility Energy tech and Engineers Private Limited to the Noticee Company.

17.They submitted that in respect of the supply of LP piping, the Noticee has raised the invoices upon M/s. Reliance Infrastructure Limited. It was the sale in transit as permitted under Section 6(2) of the Central Sales tax, 1956 by the Noticee Company to M/s. Reliance Infrastructure Limited. M/s. Reliance Infrastructure Limited, further, in-turn, sold the aforesaid goods to M/s. Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited. M/s. Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited, in-turn, supplied free of cost the pipes to M/s Utility Energy tech and Engineers (P) Ltd. A copy of the Certificate issued by M/s. Utility Energy tech and Engineers Pvt. Limited certifying that they have received the pipes free of cost from M/s. U.P. Power Corporation Limited, who have in- turn, supplied the said Pipes FREE OF COSTS to M/s. Raunaq International Limited. The Noticee Company has raised invoices (as Declared in the service tax returns ST-3), all aggregating to Rs.6,22,74,301/- and on which, the Service Tax aggregating to Rs.68,88,675/- at the applicable rates along with Secondary and Higher Education Cess has been paid by the Noticee Company.

18.The party also stated that it has been alleged by the Department that the Notice company has not included the cost of the material supplied free of costs i.e. pipes. It is, however, specifically denied that the composite contract has been deliberately bifurcated into two parts i.e.

contract for supply of material and contract for rendering the services, thereby suppressing the actual gross value of taxable services rendered with a malafide intent to evade payment of service tax due thereon.

19.The party submitted that the above mentioned observations are purely incorrect and against the provisions of Service Tax Act/Rules, 1994 and Cenvat Credit Rules, 2004. Accordingly, They referred Section 65(39a) of the Finance Act, 1994 defines the Service of "Erection, Commissioning or installation".

20.The party also submitted that:-

a. We are paying service tax as per provision of Section 66 of service Tax Act 1994 at full rate of tax (as applicable from time to time) on the entire value of the abovementioned service order. The Section 66 read as under".

b. The value indicated in the service order amounting to Rs. 7,43,33,738/-(inclusive of taxes & duties) is the total consideration in terms of money for providing taxable services and no other monetary or non monetary or in kind or any consideration has been received or to be received against providing the taxable services under the said service order.

c. The assessable value is derived in accordance with the provisions of Section 67(2) of the service tax Act. 1994. Hence, there is no violation of service tax Act/ Rules, 1994.

d. That it has been alleged by the department that the service order for services received from M/s. Utility Energy tech and Engineers Private Limited and supply order from another Public Limited Company M/s. Reliance Infrastructure Limited for supply of material i.e. pipes, both the orders cannot be read in isolation and the gross amount for the purpose of payment of service tax under the service category of "Erection, Installation & Commissioning" shall be after addition of the amount of both the contracts eve the same were received from two different company is not correct and against the provisions of service tax Act/Rules. However, for a while, if we put both the orders together, it becomes the orders for supply of material under sale and services then it falls under the category of works contract, as per definition given at clause (zzzza) of clause 105 of Section 65 of Finance Act, 1994.

e. The procedure for valuation of taxable services under the works contract at clause (zzzza) is prescribed under the Service Tax (determination of value) Rules, 2006 read as "Subject to the provisions of sub-sections (1), (2) and (3), of service tax Rules, 1994, the value shall be determined in such manner that may be prescribed. As per these Rules the value is determined under Rule 2A. The determination of value of services involved in the execution of a works contract: (1) Subject to the provisions of Section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in sub-clause (zzzza) of clause (105) Section (105) Section 65 of the Act, shall be determined by the service provider.

Hence, under the supply contract they have transfer the property in goods by raising the sales invoices and by charging of sales tax as applicable on the transaction of sales. As per the above Rules the gross value including sales tax involved in the supply contract shall be deducted from the total value of works contract. Resulting of this, the remaining part of the works contract will be equal to the amount as per service order. Therefore, it is incorrect and against the provisions of service tax Act/Rules.

**f.** The party stated that the allegation that the free issued material i.e. pipes that was purchased by the owner under a separate contract is become part of the consideration in term of non-monetary consideration for rendering taxable services. In this connection, it is already clarified above that the Noticee Company are paying service tax as per provision of section 66 of service tax Act, 1994 i.e. at the full rate of tax as applicable from time to time on the entire value i.e. at the full rate of tax as applicable from time to time on the entire value of the service order. Further, it is stated that neither they have availed any benefits of abatement as per *Notification*

*No.1/2006 ST dated 01.03.2006 nor opted composition scheme jar payment of service tax at lower rate of tax as per notification No. 32/2007 ST dated 22.05.2005.* The explanation at serial No.5 of notification 1/2006 ST dated 01.03.2006 *"The gross amount charged from the recipient of service shall include the value of plant, machinery, equipment, structures and parts and any other material sold* by *the commissioning and installation agency, during the course of providing* erection, *commissioning* or *installation service."* is not applicable on them at all because it is an optional and depends upon the option of the service provider. They have not opted for availing the benefits of abetment as per these notifications. Hence, there is no scope for adding the value of free issue material as a non-monetary consideration for payment of service tax.

**21.** It is further submitted that M/s. Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited had supplied Pipe to the Noticee Company to enable the Noticee to carry out execution work. Further, it may please be noted that for execution of the erection contract, Noticee has purchased various duty paid input (consumables) such as electrodes, coal tar primer, paint, and other consumable etc. and the value of which has been included in the work order and in turn in the assessable value and the service tax has been paid.

**22.** They relied upon a judgment delivered on 07.10.2013 in the case of *Sanjiv Sahai Sharma Vs. CCE MANU/CE/0394/2013* by Hon'ble Tribunal.

**23.** They also relied upon the judgment of Division Bench of Hon'ble Tribunal in the case of *S.B.Patel Builders (P) Ltd Vs. CCE MANU/CE/0251/2013.*

**24.** Further, they relied upon order of the Larger Bench of the Hon'ble Tribunal in the case of *Bhayana Builders (P) Ltd Vs. CCE MANU/CE/0343/2013.*

25.Party submitted the Division Bench of Delhi High Court in the case of *Intercontinental Consultants & Technocrats (P) Ltd Vs. Union of India MANU/DE/6376/2012.*

26. In view of the above, it is most humbly and respectfully submitted that the Noticee is not liable to pay the following amount:-

i. Service Tax amounting to Rs.99,70,350.00 (Service Tax Rs.96,79,951=00+Education Cess Rs.1,93,599.00+Higher/Secondary Cess Rs.96,800.00) should not be demanded and recovered from them under the proviso of Section 73(1) of the Finance Act, 1994.

ii. Penalty should not be imposed upon them under Section 76 & 77 of the Finance Act, 1994 separately for failure to make the payment of Service tax payable by them as discussed herein-in- above.

iii. Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppression of the facts and the value of taxable service and for contravention of various provisions of the Act and the rules made there under.

iv. Interest at the applicable rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994.

**RECORD OF PERSONAL HEARING:**

**27.** Shri Pradeep Kumar Mittal, Advocate on the behalf of M/s. Raunaq International Limited, Jhansi attended the personal hearing (through video conferencing) on 27.10.2020 and reiterated the submission already tendered vide their defence reply.

**DISCUSSION & FINDINGS:**

**28.** I have carefully gone through the case records i.e. show cause notice, the defence replies of the party, the submissions made at the time of personal hearing and the provisions of law. Before proceeding to analyze each issue on merits, I find it necessary to reiterate the details of the case, albeit in brief only. The party M/s. Raunaq International Pvt. Limited has provided Erection Commission & Installation services for which they received some goods i.e. pipes, free of cost. While paying service tax on the services rendered by them, the party did not include value of such pipes into gross taxable value of service tax and paid service tax on the value of service portion of the 'contract' without availing abatement. The department was of the view that the party should include the value of such pipes (FOC) for payment of service tax, which was not being done.

**29.** The party, besides relying their point of view on section 65(39A) of the Finance Act 1994, submitted that they were paying service tax on entire value of service at full rate. The pipe was supplied free of cost on which trade tax/sales tax was paid and hence its value was not includable in the gross value of taxable service. In support of their contention, the party relied upon the observation of larger bench of Tribunal in the case of *Bhayana Builders (P) Ltd Vs. CCE [2013(9)TMI 294-CESTAT NEW DELHI (LB)]* Further, I observe that they also relied upon the following citations during the course of Personal hearing dated 27.10.2020, the party relied upon the following:-

i. Hon'ble Supreme Court in CCE Vs. Bhayana Builders (P.) Ltd.
ii. Division Bench of Hon'ble Tribunal in the case of S.B. Patel Builders (P.) Ltd. Vs.CCE.
iii. Hon'ble Tribunal in the case of Sanjiv Sahai Sharma Vs. CCE.
iv. Hon'ble CESTAT in the case of Sharpoorji Pallon Ji & Co. Ltd. Vs. CCE.
v. Hon'ble CESTAT, Chandigarh in the case of Ace Build(P.) Ltd.Vs. CCE & ST, Chandigarh.
vi. Hon'ble CESTAT, Bangalore in the case of Kunnel Engineers and Contractors Pvt. Ltd. Vs. CC., C.E. & S.T. – Cochin.

**30.** I have carefully gone through the facts of the case, and I observe that the sole matter to be decided here is whether the free of cost supplies are includable in the taxable value of service.

**31.** I observe that the said issue was in dispute for a long time, with varied conflicting views of different authorities on it. Thereafter, the matter was referred to the larger bench of CESTAT, which has "by holding that the value of the goods/materials cannot be added for the purpose of aforesaid notification dated September 10, 2004, as amended by notification dated March 01, 2005."

**32.** I observe that the larger bench of CESTAT in its order dated 6 September 2013 had held thus-

**(a)** The value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the gross amount charged, within the meaning of the later expression in Section 67 of the Finance Act, 1994; and

**(b)** Value of free supplies by service recipient do not comprise the gross amount charged under Notification No. 15/2004-ST, including the Explanation thereto as introduced by Notification No. 4/2005-ST.

**33.** I further observe that the views taken in the aforesaid judgment of the larger bench dated 06.09.2013 were referred to the Hon'ble Supreme Court. In its judgment, I observe that the Apex Court had analyzed the said judgment of larger bench (supra) and also analyzed the various statutory provisions of the Finance Act, such as those related to the definition of "commercial or industrial construction service", Section 67 of the Finance Act, 1994 (before and after its amendment), Notification Nos. 12/2003-ST, 15/2004-ST, 04/2005-ST of the Finance Act, 1994 as well as the Circular dated 17.09.2004 issued by the Board.

**34.** In the said judgment, I observe that the Apex Court Case No. *[2013(9)TMI 294-CESTAT NEW DELHI (LB)]* after giving its elaborate findings on the issue, from Paras 11 to 20, held that –

It is clear that both prior and after amendment, the value on which service tax is payable has to satisfy the following ingredients:

a. Service tax is payable on the gross amount charged:- the words "gross amount" only refers to the entire contract value between the service provider and the service recipient. The word "gross" is only meant to indicate that it is the total amount charged without deduction of any expenses. Merely by use of the word "gross" the Department does not get any jurisdiction to go beyond the contract value to arrive at the value of taxable services. Further, by the use of the word "charged", it is clear that the same refers to the amount billed by the service provider to the service receiver. Therefore, in terms of Section 67, unless an amount is charged by the service provider to the service recipient, it does not enter into the equation for determining the value on which service tax is payable.

b. The amount charged should be for "for such service provided": Section 67 clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act. By using the words "for such service provided" the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply goods provided by the service recipient to the service provider is neither an amount "charged" by the service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined.

**35. "For the aforesaid reasons, we find ourselves in agreement with the view taken by the Full Bench of CESTAT in the impugned judgment dated September 6, 2013 and dismiss these appeals of the Revenue."**

**36.** In view of the aforesaid decision of Apex Court, I am of the considered opinion that the present judgment of the Apex Court (supra) is squarely applicable in the facts of the instant case. I am of the considered view that the value of the goods / material supplied or provided free of cost cannot be included in computation of gross amount charged by the service receiver, for valuation of taxable service under Section 67 of the Act.

**ORDER**

I drop the proceedings initiated vide Show Cause Notice C. No. V(15)Off/ST/122/2013/17250 dated 18.10.2013.

08.03.2021

**(जीतेन्द्र सिंह / Jitendra Singh)**

संयुक्त आयुक्त (निर्णय न्याय)
JOINT COMMISSIONER (ADJ.)

केन्द्रीय वस्तु एवं सेवा कर आयुक्तालय
CENTRAL GOODS & SERVICE TAX COMMISSIONERATE

कानपुर /KANPUR

**To,**

**M/s Raunaq International Ltd.**
**C/o M/s Utility Energy Tech & Engineers (P.) Ltd.,**
**Paricha Thermal Power,**
**Jhansi**

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9/3/21