



केंद्रीय सीमा शुल्क एवं केंद्रीय कर प्रधान आयुक्त का कार्यालय

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS & CENTRAL TAX

विशाखापट्टणम केन्द्रीय वस्तु एवं सेवाकर आयुक्तालय

VISAKHAPATNAM CENTRAL GST COMMISSIONERATE

पत्तन क्षेत्र, विशाखपट्टणम - 530035.

GST BHAVAN, PORT AREA, VISAKHAPATNAM - 530035.

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पत्र सं.C.No:V/15/30/2020-Adj.

दिनांक Date:31.03.2022

ORDER-IN-ORIGINAL No.VSP-EXCUS-COM-12-21-22 dated 31.03.2022

Passed by Shri S.FAHEEM AHMED, I.R.S., Principal Commissioner.

प्रस्तावना / PREAMBLE

1. इसेजिस व्यक्ति को जारी किया गया है, यह प्रति निजी प्रयोग केलिए बिना मूल्य के दी जाती है।
1. This copy is granted free of charge for the private use of the person to whom it is issued.
2. कोई भी व्यक्ति जोवित्तअधिनियम, 1994 की धारा 86 (1) के अन्तर्गतइस आदेशसेपीडित होताहो तोवहइसकेविरुद्ध सीमा शुल्क, उत्पाद शुल्क एवंसेवा कर अपीलीय अधिकरण के क्षेत्रीय न्यायपीठ, प्रथम तल, एच एम डब्लू एस एस बी भवन, खैरताबाद, हैदराबाद-500004के समक्ष अपील प्रस्तुत करसकताहै।
2. Under section 86 (1) of the Finance Act, 1994, any person aggrieved by this order can prefer an appeal before **the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, 1ST Floor, HMWSSB Building Rear Portion, Khairatabad, Hyderabad - 500004.**
3. इस आदेश केसूचितहोने के तीन माह के अन्दर निर्धारित प्रपत्र एस.टि.-5 में अपील दर्ज करसकताहै।
3. Appeals must be filed in the prescribed form S.T-5 as required within three months from the date of receipt of this order.
4. अपील चार प्रतियों में निम्नलिखित दस्तावेजों केसाथ दर्ज कीचाहिए :
4. Appeal must be filed in quadruplicate and must be accompanied by:
 - अ). चार प्रतियों में इस आदेश की प्रति (जिनमें कम से कम एक प्रमाणित प्रति होनीचाहिए) ।
 - a) A copy of this order in quadruplicate (one of which at least should be certified copy).
 - ब). सेवा करके रूप में वांछितराशि का राष्ट्रीयकृत बैंकसे लिया गया रेखित बैंक ड्राफ्ट सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवंसेवा कर अपीलीय अधिकरण केक्षेत्रीय पीठ, हैदराबादके नाम पर हैदराबाद में देय होनाचाहिए।
 - b) A crossed Bank draft for amount as prescribed in Section 86 of the Finance Act, 1994 from a Nationalized Bank drawn in favour of **the Assistant Registrar of the Customs, Excise and Service Tax Appellate Tribunal, Hyderabad** payable at **Hyderabad** has to be paid as appeal fees.
 - स). यदि अपील अधिकृत प्रतिनिधि द्वाराहस्ताक्षरितहोताहै तोकेन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35(क्यू) के अन्तर्गतविनिर्दिष्ट अधिकृत प्रतिनिधि की अपीलकर्ता की ओरसेहस्ताक्षर करने एवं उपस्थित होनेसंबंधीअधिकृत करनेवाले दस्तावेज।
 - c) The documents authorizing the representative to sign and appear on behalf of the appellant if the appeal is signed by an authorised representative, specified under Section 35(Q) of the Central Excise Act, 1944.

**(THIS ORDER MAY BE READ WITHIN TERMS OF SECTION 174 OF THE
CENTRAL GOODS AND SERVICES ACT, 2017 (NO. 12 OF 2017))**

Sub.:- Service Tax – Non-payment of Service Tax by M/s. GDR Infratech,
Rajahmundry during the period April' 2016 to June' 2017 – Passing of
Order-in-Original – Regarding.

* * * * *

1. M/s GDR Infratech, Flat No.: 501, Shanthi Residency, Door No.: 78-12-2, Behind RTC Complex, Syamala Nagar, Rajahmundry-533101 [hereinafter referred to as 'M/s GDR Infratech' or as 'the assessee'] were, *inter alia*, engaged in the business of undertaking civil construction works in the nature of works contract services to different government departments within the States of Andhra Pradesh and Telangana. M/s GDR Infratech were a partnership firm having Income Tax PAN No.: AAefd2703P and were not registered with Service Tax Department for payment of service tax.
2. On gathering Intelligence, officers of the Directorate General of Goods & Service Tax Intelligence, Visakhapatnam Zonal Unit (hereinafter referred to as 'officers') have registered a case against M/s GDR Infratech for rendering taxable services in the nature of works contract services involving civil repair and maintenance works along with painting works of Government model primary schools located within the State of Andhra Pradesh during January' 2017 to June' 2017 on sub-contract basis to M/s KMV Projects Ltd., Hyderabad and for not registering with the jurisdictional Service Tax Department. The assessee had also not declared and paid applicable service tax in respect of the taxable services provided by them during the disputed period and thereby evaded payment of service tax.
3. In view of the above intelligence, the officers conducted verification of Rajahmundry office premises of M/s GDR Infratech on 01.11.2019 in terms of the Search Warrant dated 29.10.2019 issued by the Joint Director, DGGI, Visakhapatnam Zonal Unit, Visakhapatnam. Preliminary verification of records available in the premises of M/s GDR Infratech revealed that the assessee had provided works contract services involving civil repair and maintenance works along with painting of 3886 model primary schools within the State of Andhra Pradesh during the period January' 2017 to June' 2017 to Andhra Pradesh Sarva Siksha Abhiyan, Government of Andhra Pradesh on back-to-back sub-contract basis in terms of the work order, dated 27.12.2016 issued by M/s KMV Projects Ltd., Hyderabad. On Verification of records officers noticed that M/s GDR Infratech had billed service tax in respect of these taxable services provided on sub-contract basis to M/s KMV Projects Ltd., Hyderabad during the period January' 2017 to June' 2017 and that M/s GDR Infratech have neither registered with the jurisdictional Service Tax Department nor paid applicable service tax in respect of taxable services provided by them. In view of the same, the officers have recovered certain records / documents from the office premises of the assessee as detailed in the Panchanama dated 01.11.2019 in form GST INS-02 (**Annexure-01**) drawn at the premises for detailed verification.
4. The officers had also issued summons dated 05.11.2019 (**Annexure-02**) to Shri G. Sivaram Kumar, Managing Partner of M/s GDR Infratech for producing documents / information, *inter alia*, in connection with providing different taxable services along with

relevant copies of work orders, RA Bills / invoices, income ledgers, etc for verification and for recording of his statement. In response to summons, Shri G. Sivaram Kumar, Managing Partner of M/s GDR Infratech appeared before the officers with summoned documents / information and a voluntary statement dated 08.11.2019 (**Annexure-03**) of Shri G. Sivaram Kumar, Managing Partner of M/s GDR Infratech was recorded under Section 14 of the Central Excise Act, 1944 as made applicable to the Service Tax vide Section 83 of the Chapter-V of the Finance Act, 1994 read with Section 174 of the Central GST Act, 2017 wherein, Shri G. Sivaram Kumar has, *inter alia*, deposed that:

- i) He was a graduate in civil engineering and started partnership firm in the name of M/s G. Dorayya & Co in 2003 for undertaking civil construction works and the firm's name was changed into M/s GDR Infratech in 2016-17 and he was the Managing Partner of the firm;
- ii) As Managing Partner of M/s GDR Infratech, he was looking after entire management of the firm including execution of different works provided by their firm, its finances, maintenance of books of accounts, taxation matters, etc;
- iii) He had submitted documents / information viz., copies of 26AS TDS statements, copies of IT returns along with audited financial statements, tally printouts of balance sheet / profit & loss account / trail balance, income ledgers, copies of work agreements issued by their clients, etc in response to summons for verification;
- iv) M/s GDR Infratech were operating from their registered office premises located at Rajahmundry besides having branch office at Hyderabad and all business operations of the firm during last five years were provided within the States of Andhra Pradesh and Telangana;
- v) M/s GDR Infratech were mainly engaged in providing various civil construction works directly to different government departments of Govt. of AP / Telangana. These civil construction works mainly involve works relating to canals, drains to irrigation department within Andhra Pradesh besides one work within Telangana and relating to road works for Panchayat Raj department and Road & Buildings Department within Andhra Pradesh;
- vi) In addition to direct government works, their firm in few cases have also provided works on sub-contract basis to Government department viz., irrigation canal work at Sangambanda Makthal in Telangana to M/s Coromandel Infrastructure Pvt. Ltd. and repair and painting of primary and upper primary schools within the State of Andhra Pradesh to M/s KMV Projects Ltd. during the period;
- vii) The clients for different works provided by their firm are different State Government departments of Andhra Pradesh / Telangana and issue of service bills / invoices against these works were based on works certified by the concerned engineering personnel of these departments by way of record in the work measurement book or M Book. The works executed by their firm were certified by the personnel of their clients at periodical intervals and accordingly they

- receive bill copies along with pay orders from the clients covering the works certified and basing on these bill copies received from their clients, they prepare / issue RA bills / tax invoices on their clients. These RA Bills / tax invoices are prepared by their Manager (Accounts) under his supervision and guidance;
- viii) The financial books of accounts of M/s GDR Infratech were being maintained in their Rajahmundry office premises using tally accounting software by their Manager (Accounts) under his supervision and control;
- ix) The service turnover of M/s GDR Infra was Rs.31,04,38,049/- for 2014-15, Rs.74,12,45,749/- for 2015-16, Rs.120,45,91,115/- for 2016-17, Rs.128,51,04,328/- for 2017-18 and Rs.99,47,76,274/- for 2018-19 and he has submitted copies of audited financial statements for the period along with printouts of tally income ledgers for the period;
- x) M/s GDR Infratech were not registered with Service Tax department as most of the works provided by their firm till June' 2017 were in relation to irrigation works and road works;
- xi) To a specific question asking to provide details of repairs and painting works provided on sub-contract basis during the period April' 2014 to June' 2017 to M/s KMV Projects Ltd., Hyderabad, he stated that their firm had provided services involving civil repairs and painting works to 3886 model primary schools within the state of Andhra Pradesh in terms of work order dated 27.12.2016 issued by M/s KMV Projects Ltd. The work was originally received by M/s KMV Projects Ltd. from the Chief Engineer, Andhra Pradesh Sarva Siksha Abhiyan, Amaravathi vide agreement dated 1/2016-17, dated 14.12.2016 with a total value of Rs.106,73,13,030/- and the same was received from M/s KMV Projects Ltd. by their firm on back-to-back basis after deduction of 3% sub-contract margin. In terms of the work order, dated 27.12.2016 their firm has undertaken civil repair works and painting works of 3886 number of model primary school located in different districts of Andhra Pradesh and the work was completed by 30th June' 2017;
- xii) To another specific question asking reasons for not taking service tax registration and non-payment of Service Tax in respect of services involving civil repairs / painting of different primary schools provided by their firm to the Chief Engineer, Andhra Pradesh Sarva Siksha Abhiyan, Govt. of AP, Amaravathi on sub-contract basis during the period January' 2017 to June' 2017 in terms of work order dated 27.12.2016 issued by M/s KMV Projects Ltd. though these works were neither covered under negative list nor covered under mega exemption notification number 25/2012-ST, dated 20.06.2012, he has stated that they have not taken service tax and accordingly not paid service tax in respect of the works provided on back-to-back sub-contract basis by their firm in terms of the work order dated 27.12.2016 issued by M/s KMV Projects Ltd. as their principal contractor has reportedly paid service tax and also as by the time their firm has completed the

work against the work order, service tax provisions were replaced by GST provisions;

- xiii) To another specific question, he has stated that para (1)(i) of the work order dated 27.12.2016 issued by M/s KMV Projects Ltd. provides for reimbursement of service tax towards the services provided by their firm against the work order and that as detailed in the tally printouts of income ledgers covering the transaction and party ledger of M/s KMV Projects Ltd. in their financial books of accounts for the year 2016-17 and 2017-18, service tax of Rs.1,74,75,912/- against RA Bill No.: 1, dated 23.02.2017, service tax of Rs.3,40,09,190/- against RA Bill No.: 2, dated 31.03.2017, service tax of Rs.3,69,30,987/- against RA Bill No.: 3, dated 30.06.2017, service tax of Rs.1,90,78,873/- against RA Bill No.: 4, dated 30.06.2017 and service tax of Rs.1,17,56,038/- against RA Bill No.: 5, dated 30.06.2016 was billed against the services provided by their firm;
- xiv) He has also stated that though their firm have billed service tax vide five RA Bills issued on their client, the service tax was not reimbursed by their client i.e., M/s KMV Projects Ltd. to their firm and the same was retained and not paid to their firm. On enquiry, M/s KMV Projects Ltd. have informed that they had paid applicable service tax in the capacity of principal contractor against the services provided by their firm to M/s KMV Projects Ltd. on sub-contract basis and that he will submit a confirmation letter from M/s KMV Projects Ltd. covering the work, along with necessary evidence of making payment of applicable service tax in respect of the works provided by their firm by 25.11.2019 for verification. He has also submitted copies of four payment memos issued by the Deputy Executive Engineer, AP Sarva Siksha Abhiyan covering the work received through M/s KMV Projects Ltd. for verification and has undertaken to submit copies of five RA Bills raised by their firm on M/s KMV Projects Ltd. as detailed in their financial books of accounts for verification by 25.11.2019;
- xv) To another specific question he has stated that the total service tax liability involved in respect of works executed by their firm to M/s KMV Projects Ltd. against the work order dated 27.12.2016 as per the five RA Bills detailed in their income ledger covering 23.02.2017 to 30.06.2017 was Rs.5,14,85,102/- for the year 2016-17 and Rs.6,77,65,898/- for the year 2017-18 (upto June' 2017);
- xvi) Their firm have received entire amount of service consideration billed by their firm on M/s KMV Projects Ltd., vide five RA Bills accounted for in their financial books of accounts towards works provided against work order dated 27.12.2016, after retention of service tax amounts by their client on the ground that their client will pay service tax amount directly to the government;
- xvii) Their firm had paid Seigniorage charges to Government of Andhra Pradesh towards allowing usage of natural resources like metal, gravel, etc for undertaking various civil works undertaken by their firm in relation to different irrigation and road works;

- xviii) To a specific question whether M/s GDR Infratech have paid service tax in respect of Seigniorage charges paid to Government of Andhra Pradesh during the period April' 2016 to June' 2017, while informing that services provided by Govt. of Andhra Pradesh to business entities by collecting amounts in the name of Seigniorage, etc were liable for payment of service tax under reverse charge mechanism, he stated that they were not aware that the payments made to Government of AP by their firm in the name of Seigniorage charges were liable for payment of service tax under reverse charge mechanism with effect from 1st April' 2016 onwards and that he will examine the issue in consultation with their tax consultants and will come back about payment of service tax, legally payable if any by their firm on Seigniorage charges;
- xix) To another specific question asking when M/s GDR Infratech will pay service tax of Rs.11,92,51,000/- payable in respect of taxable services provided to M/s KMV Projects Ltd. and service tax at applicable rates under reverse charge mechanism on the amount of Seigniorage charges paid during 1st April' 2016 to 30th June' 2017 along with applicable interest, he stated that service tax in respect of services provided by M/s GDR Infratech was already paid by M/s KMV Projects Ltd. and payment of service tax again by their firm will amount to double taxation. He has undertaken to submit supporting evidence of making payment of service tax by M/s KMV Projects Ltd. for verification by 25.11.2019. As per their understanding, their firm need not pay service tax covering services provided by their firm against the work order dated 27.12.2016 to M/s KMV Projects Ltd. Further, though their firm has billed service tax, the same was never received by from M/s KMV Projects Ltd. and as such they cannot pay the same in view of the amount involved in the case and he has undertaken to consult their tax consultant and will come to in by 25.11.2019.

5. On the basis of documents resumed from M/s GDR viz., copies of five RA Bills with Sl. No.: 1 to 5 raised on M/s KMV Projects Ltd. towards providing services involving repair, additional amenities and painting to 3886 Model Primary Schools in Andhra Pradesh. From verification of documents / information viz., copy of work order dated 27.12.2016(**Annexure-04**) entered between M/s GDR Infratech and M/s KMV Projects Ltd., copies of five RA Bills (**Annexure-05**) issued by M/s GDR Infratech on M/s KMV Projects Ltd. in respect of services providing during January' 2017 to June' 2017, copies of income ledgers (**Annexure-06A**) and expenditure ledgers including ledger account of M/s KMV Projects Ltd. (**Annexure-06B**) in the financial books of accounts of M/s GDR Infratech for 2016-17 and 2017-18, and from the statement dated 08.11.2019 of Shri G. Sivaram Kumar, Managing Partner of M/s GDR Infratech, the officers of DGGSTI Unit Visakhapatnam alleged that:

- i. M/s GDR Infratech have undertaken civil works involving providing repairs, additional amenities and painting of 3886 number of Model Primary Schools in Andhra Pradesh during the period January' 2017 to June' 2017 on sub-contract

- basis in terms of the work order, dated 27.12.2016 issued by M/s KMV Projects Ltd., Hyderabad;
- ii. The work order for repairs, additional amenities and painting of 3886 number of Model Primary Schools in Andhra Pradesh was originally received by M/s KMV Projects Ltd., Hyderabad vide Agreement dated 01/2016-17, dated 14.12.2016 entered between M/s KMV Projects Ltd. and Chief Engineer (FAC), Andhra Pradesh Sarva Siksha Abhiyan, Government of Andhra Pradesh, Amaravati and the entire work was sub-contracted on back to back basis by M/s KMV Projects Ltd., Hyderabad to M/s GDR Infratech, Rajahmundry after deduction of 3% margin on the gross contract value vide work order dated 27.12.2016;
 - iii. The services provided by M/s GDR Infratech during the period January' 2016 to June' 2017 in terms of work order dated 27.12.2016 involving provision of repairs, additional amenities and painting of 3886 number of Model Primary Schools appears to be taxable services in the nature of works contract services being neither covered under the negative list of services as defined under Section 66D of the Chapter V of the Finance Act, 1994 nor covered under the Mega Exemption Notification No.: 25/2012-ST, dated 20.6.2012, as amended;
 - iv. The para 1(i) of the work order / agreement dated 27.12.2016 entered between M/s KMV Projects Ltd. and M/s GDR Infratech **provides for reimbursement of service tax** at the rates notified by Government from time to time against the running bills to M/s GDR Infratech;
 - v. M/s GDR Infratech have billed service tax in the periodical RA Bills issued on their client i.e., M/s KMV Projects Ltd., Hyderabad during the period January' 2017 to June' 2017. It appears that the service tax is worked out in the RA Bills @ of 10.5% of the value of the work done i.e., 15% (consisting of 14% service tax plus 0.5% swachh bharat cess plus 0.5% krishi Kalyan cess) of the 70% of work value [i.e., taxable value of other than original works in terms of Rule 2A(ii)(B)(ii) of the Service Tax Valuation Rules, 2006];
 - vi. M/s GDR Infratech have billed service tax of Rs.1,74,75,912/- against RA Bill No.: 1, dated 23.02.2017, service tax of Rs.3,40,09,190/- against RA Bill No.: 2, dated 31.03.2017, service tax of Rs.3,69,30,987/- against RA Bill No.: 3, dated 30.06.2017, service tax of Rs.1,90,78,873/- against RA Bill No.: 4, dated 30.06.2017 and service tax of Rs.1,17,56,038/- against RA Bill No.: 5, dated 30.06.2016 issued on their client i.e., M/s KMV Projects Ltd., Hyderabad towards works contract services provided by them in terms of the work order dated 27.12.2016 as evidenced by copies of these five RA Bills submitted by the assessee during the course of investigation;
 - vii. M/s GDR Infratech have accounted for the details of service tax billed against these five RA Bills in their financial books of accounts maintained for the years 2016-17 & 2017-18 using tally accounting software;

- viii. The total service tax accounted for by M/s GDR Infratech in their financial books of accounts against these five RA bills as evidenced by the RA Bills and financial books of accounts for the period June' 2017 to June' 2017 is Rs.11,92,51,000/- (consisting of Rs.5,14,85,102/- during Jan' 2017 to March' 2017 and Rs.6,77,65,898/- during April' 2017 to June' 2017);
- ix. The gross service consideration adopted for working out service tax in the RA Bills appears to be incorrectly worked out by M/s GDR Infratech by omitting certain deductions like IT TDS, FSD, etc shown in these five RA Bills. It appears that service tax needs to be worked out on the total gross consideration of work done excluding VAT component;
- x. Though works contract services provided by M/s GDR Infratech to M/s KMV Projects Ltd. during the period January' 2017 to June' 2017 in terms of the work order dated 27.12.2016 were taxable services liable for payment of service tax and though the work order dated 27.12.2016 provides for reimbursement of service tax to M/s GDR Infratech by their client, the assessee had neither registered with jurisdictional Service Tax Department for payment of service tax nor made payment of applicable service tax during the period on ground the principal contractor i.e., M/s KMV Projects Ltd. had withheld and not reimbursed service tax billed against the RA Bills issued by them and that the principal contractor had made payment of applicable service tax in respect of the services provided to the ultimate service receiver;
- xi. The sub-contractor was essentially a taxable service provider and the fact that services provided by such sub-contractors were used by the main / principal service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors are in the nature of input services to the principal / main contractor. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. It, therefore, appears that the contention of M/s GDR Infratech for non-payment of service tax in respect of taxable services provided to M/s KMV Projects Ltd., Hyderabad on back to back sub-contract basis in terms of work order dated 27.12.2016 during the period January' 2017 to June' 2017 is not legally acceptable as M/s GDR Infratech are taxable service providers under the provisions of the Service Tax law and accordingly person liable for making payment of service tax under Section 68(1) of the Chapter V of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994. Further, the services provided by M/s GDR Infratech appears to be independently liable for service tax as per applicable classification of services irrespective of liability of the services in turn provided by their client viz., M/s KMV Projects Ltd., Hyderabad;

- xii. M/s GDR Infratech being a partnership firm providing works contract services to a registered company or a body corporate viz., M/s KMV Projects Ltd. was liable to pay only 50% of the total service tax payable on the value of works contract services provided by them and the balance 50% service tax is liable to be paid under reverse charge mechanism by the service receiver i.e., M/s KMV Projects Ltd. in terms of Section 68(2) of the Chapter V of the Finance Act, 1994 and Rules 2(1)(d) of the Service Tax Rules, 1994 read with Notification No.: 30/2012-ST, dated 20.06.2012 as amended;
- xiii. M/s GDR Infratech has paid service charges in the name of Seigniorage charges to the Mines & Geology Department, Government of Andhra Pradesh towards allowing usage of natural resources like metal, gravel, sand, etc for undertaking various civil constructions works undertaken by their firm during the period April' 2016 to June' 2017. It appeared that activity of permitting usage of natural resources like metal, gravel, sand, etc within the State of Andhra Pradesh on which the Government of Andhra Pradesh has exclusive legal right for revenue consideration in the name of Seigniorage charges appears to be in the nature of service activity liable for payment of service tax under revenue charge mechanism in the hands of a business entity paying these charges being not covered under negative list of services and also not covered under Mega Exemption notification during the period 1st April' 2016 to 30th June' 2017;
- xiv. M/s GDR Infratech have incurred expenditure of Rs.2,45,39,800/- and Rs.1,55,27,214/- during the period 2016-17 and 2017-18 (upto June' 2017) towards Seigniorage charges as evidenced by relevant Seigniorage Expenses ledgers (**Annexure-07**) maintained in their financial books of accounts for the period using tally accounting software; and
- xv. M/s GDR Infratech have neither registered with jurisdictional Service Tax Department nor made payment of applicable service tax under revenue charge mechanism on the amount of Seigniorage charges paid by them in respect of taxable services received by them during the period April' 2016 to June' 2017 from the Government of Andhra Pradesh.

Legal Provisions relating to Taxability of Services:

6. As per clause (44) of Section 65B of the Chapter V of the Finance Act, 1994 'Service' means any activity carried out by a person for another for consideration, and *includes a declared service*, but shall not include –

- a) an activity which constitutes merely, -
 - i. a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - i. (a) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of the article 366 of the Constitution; or
 - ii. a transaction in money or actionable claim;
- b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- c) fees taken in any court or tribunal established under any law for the time being in force.

Explanation 1:

Explanation 2:

Explanation 3:

Explanation 4:

7. As per clause (22) of Section 65B of the Chapter V of the Finance Act, 1994, 'declared service' means any activity carried out by a person for another person for consideration and declared as such under Section 66E of the Finance Act, 1994. Further, as per clause (h) of Section 66E of Chapter V of the Finance Act, 1994, "service portion in the execution of a works contract" shall, *inter alia*, constitute declared service. As per clause (54) of Section 65B of the Chapter V of the Finance Act, 1994 works contract means, " a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property".

8. Further, as per clause (51) of Section 65B of the Chapter V of the Finance Act, 1994 'taxable service' means "any service on which service tax is leviable under Section 66 B" of the Finance Act, 1994.

9. As per Section 66B of the Finance Act, 1994, there shall be levied a tax (hereinafter referred to as the service tax) at the prescribed rate on the value of services, *other than those services specified in the negative list*, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed. It, therefore, appears that with effect from 1.7.2012 (up to June' 2017) all services, other than those covered under negative list of services as defined under Section 66D of the Finance Act, 1994 are chargeable to service tax under the provisions of Section 66B of the Act, 1994 unless specifically exempted under the cover of an exemption notification.

Nature of services provided by M/s GDR Infratech and their taxability:

10. It alleged that M/s GDR Infratech during the period January' 2017 to June' 2017 have provided services involving civil repairs and painting works to 3886 model primary schools located within the State of Andhra Pradesh in terms of the work order dated 27.12.2016 issued by M/s KMV Projects Ltd., Hyderabad. The work was originally received by M/s KMV Projects Ltd. from the Chief Engineer, Andhra Pradesh Sarva Siksha Abhiyan, Amaravathi vide agreement dated 01/2016-17, dated 14.12.2016 with a total contract value of Rs.106,73,13,030/- and the same was in turn subcontracted by M/s KMV Projects Ltd. to M/s GDR Infratech on back-to-back basis vide work order dated 27.12.2016 after deduction of 3% sub-contract margin and the work. It also appeared that works involving civil repairs and painting of 3886 number of model primary school located in different districts of Andhra Pradesh undertaken by M/s GDR Infratech in terms of the work order dated 27.12.2016 was completed by 30th June' 2017 and the entire service consideration was received by M/s GDR Infratech against five RA Bills as detailed in **Annexure-A** to the Show Cause Notice and accordingly accounted for in the financial books of accounts of M/s GDR Infratech for the period 2016-17 and 2017-18.

11. The services by way of repair and maintenance including painting of various model primary school buildings belonging to Govt. of Andhra Pradesh provided by M/s GDR Infratech on sub-contract basis during the period January' 2017 to June' 2017 in terms of the work order dated 27.12.2016 issued by M/s KMV Projects Ltd., Hyderabad appeared to be taxable services in the nature of works contact services under the provisions of Section 66B read with clauses (51) and (44) of Section 65B of the Chapter V to the Finance Act, 1994 being neither covered under the negative list of services as defined under Section 66D of the Act nor covered under Mega Exemption Notification No.: 25/2012-ST, dated 20.6.2012, as amended.

12. It alleged that the these services were not eligible for exemption under serial number 12A(b) of Notification No.: 25/2012-ST, dated 20.06.2012, as amended. As exemption to services provided to Government, local authority or a governmental authority by way of construction, repair, maintenance, etc of structures predominantly used as educational institutions, etc covered under Sl. No.: 12(c) of the Mega exemption Notification No.: 25/2012-ST, dated 20.06.2012 was withdrawn with effect from 01.04.2015 vide Notification No.: 06/2015-ST, dated 01.03.2015. Further, it also appears that the exemption to the services provided to Government, local authority or a governmental authority by way of construction, repair, maintenance, etc of structures predominantly meant for use as educational institutions, etc covered under 12A(b) of the Mega exemption Notification No.: 25/2012-ST, dated 20.06.2012 inserted vide Notification No.: 9/2016-ST, dated 01.03.2016 (effective from 01.03.2016) is available *where these services are provided under a contract which had been entered into prior to 1st March' 2015* and on which appropriate stamp duty, where applicable, had been paid prior to such date, subject to conditions. However, as the services involving repairs & maintenance including painting works of various model primary school buildings (which are structures used as educational institutions) belonging to Govt. of Andhra Pradesh were provided by M/s GDR Infratech in terms of the work order dated 27.12.2016 issued by M/s KMV Projects Ltd., *which was entered subsequent to the cut-off date of 01st March' 2015* prescribed under serial number 12A(b) of Notification No.: 25/2012-ST, dated 20.06.2012, as inserted vide Notification No.: 9/2016-ST, dated 01.03.2016 effective from 01.03.2016.

13. It also alleged that M/s GDR Infratech have worked out service tax @ of 10.5% of the value of the work done i.e., 15% (consisting of 14% service tax plus 0.5% swachh bharat cess plus 0.5% krishi Kalyan cess) of the 70% of work value [i.e., adopting taxable value in terms of Rule 2A(ii)(B)(ii) of the Service Tax Valuation Rules, 2006] vide the five RA bills issued by them on M/s KMV Projects Ltd. by treating the services provided by them during the period January' 2017 to June' 2017 in terms of the work order dated 27.12.2016 as works contract services (other than original works).

14. From the foregoing, it is alleged that the services involving repair and maintenance including painting of various model primary school buildings belonging to the Govt. of Andhra Pradesh provided by M/s GDR Infratech on sub-contract basis during the period January' 2017 to June' 2017 in terms of the work order dated 27.12.2016 issued by M/s KMV Projects Ltd., Hyderabad as detailed in **Annexure-A** to the Show Cause Notice were service activity for a consideration as defined under Section 65B (44) of the Finance Act, 1994 discussed *supra* and is a taxable service in terms of Section 65B (51) of the Finance Act, 1944 being neither covered under the negative list of services as defined under Section 66D nor exempted services under the mega notification No.: 25/2012-ST, dated 20.6.2012 as amended.

15. Further, it was alleged that M/s GDR Infratech who have actually executed or provided the above detailed taxable services on back to back sub-contract basis during the period January' 2017 to June' 2017 in terms of the work order dated 27.12.2017 issued by M/s KMV Projects Ltd. was essentially a taxable service provider and as such service tax is leviable on any taxable service provided by them irrespective of the fact that the services are provided by them in their capacity as a sub-contractor or as a main or principal contractor.

16. Though M/s GDR Infratech were liable for payment of service tax in respect of the taxable services provided by them during the period January' 2017 to June' 2017 and though the value of taxable services provided by them during the period 2016-17 is much higher than the threshold limit of small service provider exemption, the assessee have neither applied for and taken service tax registration nor paid service tax on the value of taxable services provided by them during the period. It also appeared that the work order / agreement dated 27.12.2016 entered between M/s GDR Infratech and M/s KMV Projects Ltd. provides for reimbursement of service tax at applicable rates to M/s GDR Infratech and accordingly M/s GDR Infratech had billed and accounted for the service tax liability details in the periodical RA bills issued by them on M/s KMV Projects Ltd. and in their financial books of accounts covering the works contract services provided during the period January' 2017 to June' 2017 in terms of the work order dated 27.12.2016.

17. Further, from the work order dated 27.12.2016 issued by M/s KMV Projects Ltd. in favour of M/s GDR Infratech and from the five RA bills issued by M/s GDR Infratech on M/s KMV Projects Ltd. for collecting service consideration in respect of the services provided during January' 2017 to June' 2017 including from the statement dated 08.11.2019 recorded from the Managing Partner of M/s GDR Infratech, it appeared that M/s GDR Infratech were the service provider who have actually executed the works on sub-contract basis in terms of the work order dated 27.12.2016 issued by M/s KMV Projects Ltd. and accordingly issued RA Bills on their client by billing service tax as provided vide the work order and as such, it appeared that M/s GDR Infratech were the actual service provider who had provided the services.

18. Further, on the question of whether service tax was liable to be paid by the service provider known here as sub-contractor who undertakes only part of the whole work, it was mentioned in the SCN that the CBEC vide its circular No.: **96/7/2007-ST, dated 23.8.07** (refer reference code 999.03/23.8.07) had clearly clarified, inter alia, that "A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services." It also appeared that the CBEC vide its Circular No.: **138/7/2011-ST, dated 6.5.11** on the issue of levability of service tax on services of sub-contractors availed in execution of exempted works contracts, while

reiterating the clarification dated 23.8.07, has once again clarified that *the services provided by sub-contractors / consultants and other service providers are classifiable as per the Section 65A of the Finance Act, 1994 and accordingly chargeable to service tax*. It appeared that these clarifications by the Board on the subject of taxability of the services provided by sub-contractors were issued in the light of extension of the benefit of Cenvat Credit under the provisions of Cenvat Credit Rules to Service Tax with effect from 2004. In view of the above, it also appeared that payment or non-payment of service tax by the main-contractor does not change the legal position about the leviability of service tax on the taxable services provided by the assessee on sub-contract basis or otherwise. It, therefore, appeared that under the provisions of service tax law for the period whosoever provided taxable services was the person liable to pay service tax on the consideration received by him towards the taxable services, irrespective of capacity in which service was rendered and it also appears that payment of service tax by main or principal contractor, if any is irrelevant.

19. As against this legal position, it was alleged that Managing Partner of M/s GDR Infratech vide his statement dated 08.11.2019 has claimed that their firm need not pay service tax covering the services provided to M/s KMV Projects Ltd. during January' 2017 to June' 2017 against the work order dated 27.12.2016 as the principal contractor i.e., M/s KMV Projects Ltd. have paid applicable service tax by not reimbursing the service tax component billed by them on their client and payment of service tax again by their firm will amount to double taxation and accordingly refused to pay service tax in respect of the taxable services provided by them during the period January' 2017 to June' 2017. Further, it alleged that there is undervaluation in the gross value of service consideration adopted by M/s GDR Infratech for working out total service tax liability vide the five periodical RA Bills issued on M/s KMV Projects Ltd. during the period January' 2017 to June' 2017 as detailed in **Annexure-A** to the Show Cause Notice. In view of the above position, it appeared that M/s GDR Infratech being the actual service provider of various taxable services during the period January' 2017 to June' 2017 and accordingly person liable to pay service tax, in terms of the provisions of Section 68(2) of the Chapter V of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994, were liable to pay service tax on the service consideration received by them towards providing these taxable services, following the provisions of point of taxation rules.

20. Further, alleged as per the Section 69 of the Finance Act, 1994 read with the Rule 4 of the Service Tax Rules, 1994 every service provider who is liable to pay service tax has to apply for registration within 30 days from the date of commencement of providing taxable services. As against these provisions, it appears that M/s GDR Infratech though engaged in the business of providing taxable services during the period 2016-17 onwards beyond the threshold limit of small service provider exemption as evidenced by their books of accounts, have not applied for and taken service tax registration for payment of service tax. It also appears that the assessee have not applied for service tax registration even after the officers of DGGI have initiated investigation against M/s GDR Infratech and explained about the provisions of service tax law including leviability of service tax on taxable services provided by them on sub-contract basis.

Value of services provided by M/s GDR Infratech as per tally books of accounts / RA Bills & the Service Tax payable thereon:

21. The value of taxable services has to be ascertained in terms of the provisions of Section 67(1) of the Chapter V of the Finance Act, 1994 as amended. It appears that the Section 67(1)(i) & (ii) of the Act, 1994 provides that the value of taxable service will be the total of gross amount charged by the service provider both as money consideration plus non-money consideration for such service provided or to be provided. Further, it appeared that as per Section 67(1)(iii) of the Act, 1994, if the value of taxable service could not be ascertained in terms of the Section 67(1)(i) & (ii) of the Act, 1994, the same need to be ascertained in terms of the provisions of the Service Tax (Determination of Value) Rules, 2006.

22. Further, the Rule 2A of the Service Tax (Determination of Value) Rules, 2006 provides for determination of value of service portion in the execution of works contracts. The Rule 2A provides two options for ascertaining the value of service portion in the execution of works contract – viz., Rule 2A(i) : it shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said work contract, subject to conditions and Rule 2A(ii) : where the value cannot be determined under Rule 2A(i), the taxable value has to be determined as 40% of the total amount charged for the works in the nature of original works and 70% of the total amount charged for the works other than original works, as the case may be. It also appeared that the “total amount” for the purpose of the Rule 2A(ii) was defined under the Rules, 2006 and it meant the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting the amount charged for such goods or services, if any and the value of VAT or Sales Tax, if any, levied thereon.

23. It alleged that the civil repair works including painting works of immovable properties i.e., model primary school buildings in the nature of works contract services executed by M/s GDR Infratech during the period January’ 2017 to June’ 2017, on sub-contract basis to M/s KMV Projects Ltd. in terms of the work order dated 27.12.2016 issued by them, as detailed *supra*, are other than original works and accordingly taxable value of the service portion of the works contract services provided by M/s GDR Infratech was to be worked out as 70% of the ‘total amount’ charged for the works contract as per Rule 2A(ii)(B)(ii) of the Service Tax (Determination of Value) Rules, 2006 for payment of service tax.

24. Further mentioned that from verification of copies five RA Bills viz., No.: 1, dated 23.02.2017 / No.: 2, dated 31.03.2017 / No.: 3, dated 30.06.2017 / No.: 4, dated 30.06.2017 / No.: 5, dated 30.06.2017 and M/s KMV Projects Ltd. A/c in the financial books of accounts of M/s GDR Infratech for the financial years 2016-17 and 2017-18, the total gross amount charged by the assessee for providing works contract services to M/s KMV Projects Ltd. in terms of the work order dated 27.12.2016 during the period January’ 2017 to June’ 2017 works out to Rs.128,93,53,167/- as detailed in **Annexure-A** to the Show Cause Notice. It also appeared that

M/s GDR Infratech had charged total amount of Rs.5,67,86,190/- towards VAT against these five RA Bills as detailed in the **Annexure-A** to the Show Cause Notice. It therefore appears that the net total amount charged by M/s GDR Infratech for providing works contract services from M/s KMV Projects Ltd. works out to Rs.123,25,66,977/- (i.e., gross bill amount minus VAT billed) and the total taxable value on which service tax is liable to be paid by M/s GDR Infratech @ 70% of the total amount charged in terms of Rule 2A(ii)(B)(ii) of the Service Tax (Determination of Value) Rules, 2006 works out to **Rs.86,27,96,884/-** as detailed in the **Annexure-A** to the Show Cause Notice. It appeared that Service Tax was liable to be paid on the taxable value of **Rs.86,27,96,884/-** at applicable service tax rates prescribed under Section 66B of the Chapter V of the Finance Act, 1994.

25. It appeared that as per Section 66B of the Chapter-V of the Finance Act, 1994, Service Tax is leviable at the rate of 14.5% (Service Tax @ 14% and Swachh Bharat Cess @ 0.5%) during the period 15.11.2015 to 30.05.2016 and at the rate of 15% (i.e., Service Tax @ 14%, Swachh Bharat Cess @ 0.5% and Krishi Kalyan Cess @ 0.5%) from 01.06.2016 to 30.06.2017.

26. It was alleged that the total Service Tax payable in respect of works contract services provided by M/s GDR Infratech to M/s KMV Projects Ltd. during the period January' 2017 to June' 2017 in terms of the work order dated 27.12.2016 on the taxable value of **Rs.86,27,96,884/-** at the above mentioned tax rates works out to **Rs.12,94,19,533/-** (including SB Cess of Rs.43,13,564/- and KK Cess of Rs.43,13,984/-) as detailed in **Annexure-A** to the Show Cause Notice. As against total service tax liability of Rs.12,94,19,533/- M/s GDR Infratech in their RA Bills and financial books of accounts have worked out the total service tax liability of **Rs.11,92,51,000/-** as detailed in **Annexure-A** to the Show Cause Notice.

27. As per Section 68(1) of the Finance Act, 1994 *every person providing taxable services* shall pay service tax in such manner and *within such period* as may be prescribed. Further, it appears that the Section 68(2) of the Chapter V of the Finance Act, 1994, as amended provides for liability to pay service tax, at the rates specified under Section 66B by a person other than service provider in case of certain specified services notified by the Central Government and all the provisions of the Finance Act, 1994 shall apply to such person as if he was the person liable for paying the service tax in relation to such service. It appeared that different services were notified under the reverse charge mechanism (either partial or full reverse charge) for the purpose of Section 68(2) of the Chapter V of the Finance Act, 1994 as detailed in the Notification No.: 30/2012-ST, dated 20.6.12 as amended. These specified services include partial reverse charge mechanism in case of works contract services provided by individuals / firms or LLPs to registered companies or body corporates, as detailed in the notification viz.,

i) (1)(A)(v): Taxable services provided or agreed to be provided by way of service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory.

28. It also appeared that under the provisions of the Notification No. 30/2012-ST, dated 20.6.12 as amended, applicability of reverse charge mechanism in respect of certain specified services is absolute while in some other cases, the same depends upon the status of service provider and / or the status of the service receiver. As per the serial number 9 of the table given under paragraph (II) of the notification No.: 30/2012-ST, dated 20.6.12 as amended, the service receiver is, *inter alia*, liable to pay the following percentage of service tax payable towards the receipt of the services:

Sl. No.	Description of Service	% of service tax payable <u>by the person providing service</u>	% of service tax payable <u>by any person liable for paying service tax other than the service provider</u>
9	In respect of services provided or agreed to be provided in service portion in execution of works contract.	50%	50%

29. It appeared that M/s GDR Infratech, a partnership firm located in taxable territory, have provided taxable services in the nature of works contract services in terms of work order dated 27.12.2016 to M/s KMV Projects Ltd., which was a business entity registered as a body corporate also located in the taxable territory during the period January’ 2017 to June’ 2017, as detailed supra. Accordingly, it appeared that the **service provider i.e., M/s GDR Infratech were the person liable for payment of first 50% of the total service tax payable, under partial reverse charge mechanism in terms of Section 68(2) of the Finance Act, 1994 read with Notification No.: 30/2012-ST, dated 20.6.12 as amended** while the service receiver i.e., M/s KMV Projects Ltd. are the person liable for payment of *balance* 50% of the total service tax payable.

30. From the foregoing, it appeared that M/s GDR Infratech were the person liable for payment of service tax on the 50% of the amounts received towards providing works contract services to M/s KMV Projects Ltd. in terms of work order dated 27.12.2016 during the period 01.01.2017 to 30.6.2017 at the Service Tax rates prescribed under Section 66B of the Finance Act, 1994.

31. Further, as per Rule 6 (1) of the Service Tax Rules, 1994 the Service Tax, shall be paid to the credit of the Central Government by 6th of the month (or quarter ending in case one person company / individuals / partnership firms) or 5th of the month (or quarter ending in case one person company / individuals / partnership firms), as the case may be, immediately following the calendar month (or quarter in case of one person company / individuals / partnership firms) in which the *service was deemed to be provided as per the rules framed in this regard.*

32. Further, as per Rule 3(a) of the Point of Taxation Rules, 2011 it appeared that the point of taxation for payment of service tax is *raising of the invoice or receipt of an advance whichever is earlier* and in cases where invoice were not issued within the time period specified in Rule 4A of the Service Tax Rules, 1994, the service tax would be payable at the point of completion of service (in case of continuous services the point of completion is completion of an event as per

the terms of contract) and in terms of clause (b) in a case where the person providing the service receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

33. In the present case, M/s GDR Infratech were a partnership firm and therefore, from the above provisions of Rule 6(1) of the Service Tax Rules, 1994 it appeared that the assessee were required to pay service tax by the 6th of the month *immediately following the quarter* (except for the quarter ending March in which case tax was required to be paid by 31st March) in which the service is deemed to be provided as per the point of taxation i.e., raising of the invoice or receipt of an advance whichever is earlier. However, it appeared that M/s GDR Infratech as against these provisions have not paid applicable service tax (i.e., their share of 1st 50% of the total service tax) in respect of works contract services provided in terms of work order dated 27.12.2016 to M/s KMV Projects Ltd. within the time limits prescribed.

34. Accordingly, the total service tax payable by the service provider i.e., M/s GDR Infratech, as the person liable to pay service tax under Section 68(1) of the Chapter V of the Finance Act, 1994 read with Section 68(2) of the Finance Act, 1994 and Notification No.: 30/2012-ST, dated 20.6.12 as amended, works out to **Rs.6,47,09,766/-** (including SB Cess of Rs.21,56,992/- and KK Cess of Rs.21,56,992/-) being the first 50% of the total Service Tax liability of Rs.12,94,19,533/-, as detailed in **Annexure-A** to the Show Cause Notice. Thus, the total service tax payable by M/s GDR Infratech in respect of the works contract services provided on sub-contract basis during January' 2017 to June' 2017 to M/s KMV Projects Ltd. in terms of work order dated 27.12.2016 is worked out to **Rs.6,47,09,766/-** (including SB Cess / KK Cess).

Non-payment of Service Tax on Seigniorage charges paid to Govt. of Andhra Pradesh by M/s GDR Infratech under reverse charge mechanism:

35. Verifications of financial statements including financial books of accounts / expenditure ledgers (maintained using tally accounting software) resumed from M/s GDR Infratech during the course of investigation revealed that the assessee had paid Seigniorage charges in connection with undertaking various civil construction works and road works for different Government departments, etc during the period 1st April' 2016 to 30th June' 2017. These Seigniorage charges appeared to be in the nature of royalty payments made by M/s GDR Infratech to the Mines & Geology Department, Government of Andhra Pradesh for allowing usage or consumption of minor minerals like aggregate, sand, gravel, etc for undertaking various construction works during the period.

36. It was alleged that every person using minor minerals like aggregate, sand, gravel, granite, etc. in connection with undertaking civil construction activities, etc within the State of Andhra Pradesh shall pay prescribed amount of royalty in the name of Seigniorage fee to the Mining and Geology Department of Govt. of Andhra Pradesh under the provisions of the Andhra

Pradesh Minor Mineral Concession Rules, 1966 read with Section 15 of the Mines & Minerals (Development and Regulation) Act, 1957. It appeared that these Seigniorage charges are collected by the Government of Andhra Pradesh for allowing usage of natural resources (i.e., minor minerals) belonging to the State like aggregate, gravel, sand, etc from contractors for revenue consideration within the State of Andhra Pradesh, on which the Government of Andhra Pradesh has exclusive legal right in terms of Section 15 of the Mines & Minerals (Development and Regulation) Act, 1957.

37. Further, it was alleged that the activity of permitting usage of natural resources like metal, gravel, sand, etc within the State of Andhra Pradesh to a business entity by the Government on which the Government of Andhra Pradesh has exclusive legal right, for revenue consideration in the name of Seigniorage charges, appeared to be in the nature of service activity provided by the Government of Andhra Pradesh as defined under Section 65B(44) of the Chapter V of the Finance Act, 1994. It also appeared that these services provided by Government of Andhra Pradesh were taxable services as defined under Section 65B(51) of the Finance Act, 1994 being not covered under the negative list of services as defined under Section 66D of the Finance Act, 1994 and also not covered under Mega Exemption Notification No.: 25/2012-ST, dated 20.06.2012 as amended during the period 1st April' 2016 to 30th June' 2017 and accordingly liable for payment of service tax under reverse charge mechanism in the hands of a business entity paying these service charges.

38. As per Section 65B(51) of the Finance Act, 1994 'taxable service' means any service on which Service Tax is leviable under Section 66B of the Act, 1994 and per Section 66B of the Finance Act, 1994 there shall be levied a Service Tax at the rate of 14% on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

39. It appeared that under Section 66D of the Finance Act, 1994 only the following services provided by Government are covered under the negative list of services:

- a. Services by Government or local authority *excluding the following services to the extent they are not covered elsewhere-*
 - i. services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
 - ii. services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - iii. transport of goods or passengers; or
 - iv. **any service**, other than services covered under clauses (i) to (iii) above, provided to business entities.

40. It appeared that the phrase 'any service' in clause (iv) of Section 66D(a) of the Finance Act, 1994 was substituted for the phrase 'support services' with effect from 1st April' 2016 vide Notification No.: 06/2016-ST, dated 18.2.2016. Thus, it appeared that prior to 01.4.2016 by virtue of Section 66D(a) of the Finance Act, 1994 only specific services provided by Government, such as services by Department of Posts, services in relation to aircraft or vessel, transport of goods or passengers and support services were taxable, since were excluded from the negative list of services. However, in view of replacement of the phrase 'support service' with the phrase 'any service' with effect from 1st April' 2016 vide Notification No.: 06/2016-ST, dated 18.2.2016 *it appears that* all services provided by the Government to business entities are taxable, unless specifically exempted under a notification.

41. It was alleged that M/s GDR Infratech were a business entity being, *inter alia*, engaged in undertaking civil construction works for business consideration with profit motive. It also appeared that the activity of permitting or allowing usage or consumption of minor minerals like aggregate, sand, gravel, etc mined within the State of Andhra Pradesh on which Andhra Pradesh State Government has exclusive legal right for mining these natural resources for revenue consideration in the form of Seigniorage charges collected from M/s GDR Infratech appears to be in the nature of service activity as defined under Section 65B(44) of the Finance Act, 1994 and also appeared to be not covered under the definition of the negative list as defined under Section 66D of the Finance Act, 1994.

42. Further, it was mentioned that from the mega exemption Notification No.: 25/2012-ST, dated 20.6.2012 as amended, the following services provided by Government against serial numbers 39, 48, 54 to 63 are only exempted from payment of Service Tax:

- i. **Sl. No.: 39:** Services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution;
- ii. **Sl. No.: 48:** *Services provided by Government or a local authority to a business entity with a turnover up to rupees ten lakh in the preceding financial year.*

[Explanation: For the purpose of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to the following services, viz.,-

(a) Services specified in sub-clauses (i), (ii) and (iii) of clause (a) of Section 66D of the Finance Act, 1994;

(b) Services by way of renting of immovable property];

iii. **Sl. No.: 54:** Services provided by Government or a local authority to another Government or local authority. Provided that nothing contained in this entry shall apply to services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994;

iv. **Sl. No.: 55:** Services provided by Government or a local authority by way of issuance of passport, visa, driving license, birth certificate or death certificate;

v. **Sl. No.: 56:** *Services provided by Government or a local authority where the gross amount charged for such services does not exceed Rs.5000/-*. Provided that nothing contained in this entry shall apply to services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section

66D of the Finance Act, 1994. Provided further that in case where continuous supply of service, as defined in clause (c) of rule 2 of the Point of Taxation Rules, 2011, is provided by the Government or a local authority, the exemption shall apply only where the gross amount charged for such service does not exceed Rs.5000/- in a financial year;

vi. **Sl. No.: 57:** Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract;

vii. **Sl. No.: 58:** Services provided by Government or a local authority by way of –

(a) *registration required under any law for the time being in force;*

(b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force;

viii. **Sl. No.: 59:** Services provided by Government or a local authority by way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture;

ix. **Sl. No.: 60:** Services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution;

x. **Sl. No.: 61:** Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016. Provided that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in instalments, for assignment of right to use such natural resource;

xi. **Sl. No.: 62:** Services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radiofrequency spectrum during the financial year 2015-16 on payment of license fee or spectrum user charges, as the case may be;

xii. **Sl. No.: 63:** Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT).

43. From the foregoing, it, alleged that the service activity of the State Government by allowing consumption of minor minerals like aggregate, sand, gravel, etc mined within the State of Andhra Pradesh for revenue consideration in the form of Seigniorage from business entities like M/s GDR Infratech are not covered either under the negative list as defined under Section 66D of the Finance Act, 1994 nor exempted under any of the above mentioned serial numbers of the mega exemption Notification No.: 25/2012-ST, dated 20.6.2012 as amended.

44. Further, mentioned that the CBEC vide serial number 5 of its Circular No.: 192 / 02 / 2016-ST, dated 13.4.2016 issued vide F. No.: 334/8/2016-TRU while stating that any service provided by Government or local authority to a business entity has been made taxable with effect from 1st April' 2016 has issued clarifications on several issues regarding levy of Service Tax on the services provided by Government or a local authority to business entities. It appears that the

clarification issued vide serial number 5 of the table to the Circular is relating to 'services provided in lieu of fee charged by Government or a local authority and the same is as follows:

5.	Services provided in lieu of fee charged by Government or a local authority.	It is clarified that any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a <i>quid pro quo</i> for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that Service Tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority.
		2. However, services provided by the Government or a local authority by way of : (i) <i>registration required under the law</i> ; (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law, have been exempted vide Notification No. 25/2012-S.T., dated 20-6-2012 as amended by Notification No. 22/2016-S.T., dated 13-4-2016 [Entry 58 refers].
		3. Further, services provided by Government or a local authority where the gross amount charged for such service does not exceed Rs.5000/- have been exempted vide Notification No. 25/2012-S.T., dated 20-6-2012 as amended by Notification No. 22/2016-S.T., dated 13-4-2016 [Entry 56 refers]. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. Further, in case of continuous service, the exemption shall be applicable where the gross amount charged for such service does not exceed Rs.5000/- in a financial year.
		4. It is also clarified that Circular No. 89/7/2006-Service Tax, dated 18-12-2006 [2007 (5) S.T.R. C3] and Reference Code 999.01/23-8-07 in Circular No. 96/7/2007-S.T., dated 23-8-2007 [2007 (7) S.T.R. C69] issued in the pre-negative list regime are no longer applicable.

45. From the serial number 5 of the table to the Circular dated 13.4.16, it appeared that *any activity undertaken by Government against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax*. It also appeared that *it was immaterial whether such activities by the Government were undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service was laid down in a statute or not*. Further, it also appeared that as long as the payment is made (or fee charged) for getting a service in return (i.e., as a *quid pro quo* for the service received), it has to be *regarded as a consideration for that service and taxable irrespective of by what name such payment is called*. It also appeared that Service Tax was leviable on any payment, in lieu of any permission or license granted by the Government.

46. It appeared that the act of allowing clearance or consumption of minor minerals by Government of Andhra Pradesh by collecting service consideration from business entities cannot be treated as similar to registration involving activity of entering something on an official list like registration of companies, registration of births / deaths, registration of vehicles, etc. It

appears that the purpose of registration is to establish a record of individual or business entity in official records and thus having only limited scope while the purpose of grant of permission or authorizing to do something in consideration for a fee and has much wider scope of operation. Further, it appears that the process of registration is generally one time affair at the starting of an event while the process of permitting usage of minor minerals by business entities is a periodical affair by paying prescribed fee on the quantity of minor minerals consumed per transaction / during a period.

47. It, therefore, appeared that the activity of permitting usage of minor minerals by charging royalty in the name of Seigniorage charges by the Government cannot be treated as an activity of registration but an activity of transferring the exclusive right or privilege of the State to business entity for usage of natural resources in consideration for charges collected in the name of Seigniorage charges, etc depending upon the quantity of minor minerals consumed, as detailed *supra*.

48. From the foregoing, it appeared that service activity of the Andhra Pradesh State Government by allowing usage / consumption of minor minerals like aggregate, sand, gravel, etc in connection with undertaking civil construction works by a business entity i.e., M/s GDR Infratech, as detailed *supra* for a service consideration in the form of Seigniorage fee was not covered by the definition of negative list as defined under Section 66D of the Finance Act, 1994 and also not covered by the exemption Notification No.: 25/2012-ST, dated 20.6.2012 as amended and as such the same appears to be a taxable service chargeable to Service Tax under the provisions of Section 66B read with clauses (51) and (44) of the Section 65B of the Finance Act, 1994 effective from 1.4.2016.

49. It appeared that the Section 68(2) of the Chapter V of the Finance Act, 1994, as amended provides for liability to pay Service Tax, at the rate specified under Section 66B by a person other than service provider in case of certain specified services notified by the Central Government and all the provisions of the Finance Act, 1994 shall apply to such person as if he is the person liable for paying the Service Tax in relation to such service. It appears that different services are notified under the reverse charge mechanism for the purpose of Section 68(2) of the Chapter V of the Finance Act, 1994 as detailed in the Notification No.: 30/2012-ST, dated 20.6.12 as amended. These specified services include services provided by Government or local authority to a business entity as detailed in the notification viz.,

i) (I) A(iv)(C): Taxable services provided or agreed to be provided by - (C) Government or local authority excluding – (1) renting of immovable property, and (2) services specified in sub-clause (i), (ii) and (iii) of clause (a) of Section 66(D) of the Finance Act, 1994, to any business entity located in the taxable territory.

50. It appears that Serial number 6 of the table appended to the Notification No.: 30/2012-ST, dated 20.6.12 is amended effective from 1st April' 2016 vide Notification No.: 18/2016-ST, dated 1.3.2016 by omitting the phrase 'by way of support services'. Therefore, it appears that services provided by the Government to business entities by collecting amounts in the name of

Seigniorage Fee, etc are taxable under reverse charge mechanism in the hands of service receivers in the nature of business entities with effect from 1st April' 2016.

51. It appeared that M/s GDR Infratech were engaged in business and also located in the taxable territory engaged in undertaking civil construction activities are a business entity and receiving taxable services (not in the nature of renting of immovable property) provided by Government of Andhra Pradesh, as detailed *supra* are the person liable for payment of Service Tax in terms of Section 68(2) of the Finance Act, 1994 read with Notification No.: 30/2012-ST, dated 20.6.12 as amended effective from 1.4.2016 onwards.

52. It appeared that under the provisions of the Notification No.: 30/2012-ST, dated 20.6.12 as amended, applicability of reverse charge mechanism in respect of certain specified services is absolute while in some other cases, the same depends upon the status of service provider and / or the status of the service receiver. As per the serial number 6 of the table given under paragraph (II) of the notification No.: 30/2012-ST, dated 20.6.12 as amended, the service receiver was, *inter alia*, liable to pay the following % of Service Tax payable towards the receipt of the services:

Sl. No.	Description of Service	% of service tax payable <u>by any person liable for paying service tax other than the service provider</u> (with effect from 01.04.2016)
6	Services (excluding renting of immovable property) provided by Government or local authority to any business entity	100%

53. With the above observations the investigation officer alleged that M/s GDR Infratech were the person liable for payment of Service Tax on the 100% of the amounts paid in the name of royalty or Seigniorage charges towards allowing consumption of minor minerals by the Government of Andhra Pradesh during the period 1.4.2016 to 30.6.2017 at the Service Tax rate(s) prescribed under Section 66B of the Finance Act, 1994.

54. From verification of records resumed under summons as discussed *supra* and from the statement dated 08.11.2019 of Managing Partner of M/s GDR Infratech, it appeared that the assessee had neither registered nor paid applicable Service Tax under reverse charge mechanism in respect of taxable services received by them from the Government of Andhra Pradesh, as detailed *supra* during the period 1st April' 2016 to 30th June' 2017. The details of value of taxable services received by M/s GDR Infratech by making payments of service charges in the name of Seigniorage charges during the period April' 2016 to June' 2017 are detailed in **Annexure-B** to the Show Cause Notice. M/s GDR Infratech have paid a total amount of **Rs.4,00,67,014/-** during the period April' 2016 to June' 2017 to the Government of Andhra Pradesh in the name of

Seigniorage charges towards receipt of taxable services as per their financial books of accounts maintained for the period as detailed in **Annexure-B** to the Show Cause Notice.

55. The total Service Tax payable by M/s GDR Infratech in respect of taxable services received by them during the period 1.4.2016 to 30.6.2017 under reverse charge mechanism in respect of the taxable services received by them from the Government of Andhra Pradesh, as detailed *supra*, in terms of the provisions of Section 68(2) of the Chapter V of the Finance Act, 1994 at the tax rates specified under Section 66B of the Chapter-V of the Finance Act, 1994 is worked out to **Rs.60,10,052/-** (including applicable cesses) on a total taxable value of **Rs.4,00,67,014/-** as detailed in the **Annexure-B** to the Show Cause Notice.

Details of Statutory provisions Violated:

56. From the foregoing, it appeared that M/s GDR Infratech, Flat No.: 501, Shanthi Residency, Door No.: 78-12-2, Behind RTC Complex, Syamala Nagar, Rajahmundry-533101 have evaded payment of Service Tax of **Rs.6,47,09,766/-** (including SB Cess of Rs.21,56,992/- and KK Cess of Rs.21,56,992/-) as provider of taxable services as detailed in **Annexure-A** to the Show Cause Notice during the period January' 2017 to June' 2017 and Service Tax of **Rs.60,10,052/-** (including SB Cess of Rs.2,00,335/- and KK Cess of Rs.2,00,335/-) as receiver of specified taxable services under reverse charge mechanism as detailed in **Annexure-B** to the Show Cause Notice during the period April' 2016 to June' 2017 without following the requisite Service Tax procedures and by way of willful suppression of facts and accordingly they appear to have contravened the following provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder with intention to evade payment of Service Tax :

- i. Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 and Rule 3 of the Pont of Taxation Rules, 2011 inasmuch as they have not paid the appropriate amount of Service Tax on the value of various taxable services provided by them and on the value of specified taxable services received by them;
- ii. Section 69 of the Chapter V of the Finance Act, 1994, read with Rule 4 of the Service Tax Rules, 1994, in as much as they did not take registration *within the time period prescribed* under law;
- iii. Section 67 of the Finance Act, 1994 inasmuch as they have not arrived at the correct taxable value for payment of Service Tax in respect of the different taxable services provided by them; and
- iv. Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they failed to properly self-assess the tax due on different taxable services and file periodical returns within the prescribed time limits and with correct details of the value of services renderedby them.

57. From the foregoing, it appeared that M/s GDR Infratech, liable to pay Service Tax, have failed to discharge their Service Tax liability in respect of taxable services provided by them during the period from 1st January' 2017 to 30th June' 2017 and in respect of taxable services

received by them under reverse charge mechanism during the period 1st April' 2016 to 30th June' 2017 by not taking service tax registration within the prescribed time limits and not filing periodical ST-3 returns, as detailed *supra*. It appeared that M/s GDR Infratech have consciously suppressed the facts of providing taxable services and receiving taxable services including their values during the period, as discussed above, with intention to evade payment of Service Tax.

58. Its alleged that M/s GDR Infratech were well aware of service tax liability in respect of works contract services provided by them during the period January' 2017 to June' 2017 as admitted by their Managing Partner vide his voluntary statement dated 08.11.2019 as detailed *supra*. It also appeared that M/s GDR Infratech have billed service tax in the RA Bills issued by them towards works contract services provided by them in terms of work order dated 27.12.2016 entered with M/s KMV Projects Ltd. which provides for reimbursement of service tax and accordingly accounted for service tax in their financial books of accounts as evidenced by the copies of RA Bills and relevant ledgers maintained using tally accounting software by the assessee covering the period. In spite of the same, it appeared that M/s GDR Infratech have not applied for Service Tax registration for payment of Service Tax at applicable rates on the taxable value of service consideration received by them as person liable to pay service tax though the service consideration received by them towards providing taxable services has crossed the minimum threshold limits of small scale exemption. It also appears that M/s GDR Infratech have not filed periodical ST3 returns declaring the value of taxable services provided by them and the value of taxable services received by them which are liable for payment of service tax under reverse charge mechanism during the period April' 2016 to June' 2017, as detailed *supra* with intention to evade payment of Service Tax.

59. Further, alleged that though the officers during the course of investigation have clearly appraised, to M/s GDR Infratech, various legal provisions relating to Service Tax, as detailed *supra*, the assessee have neither applied for registration nor discharged their Service Tax liability by paying applicable Service Tax in respect of taxable services provided by them during the period January' 2017 to June' 2017 and in respect of specified taxable service received by them during the period April' 2016 to June' 2017 which were liable for payment of service tax under reverse charge mechanism. The fact of not discharging Service Tax liability by applying for service tax registration even after appraising the assessee the legal provisions relating to Service Tax by the officers during the course of investigation, itself *prima facie* indicates that the assessee deliberately violated the provisions of the Service Tax law with intention to evade payment of Service Tax. Further, the claim of the assessee that the service receiver i.e., M/s KMV Projects Ltd. have discharged entire service tax liability including the service tax liability of the service provider i.e., M/s GDR Infratech was not legally acceptable as the assessee, being essentially service provider, was legally the person liable for making payment of 1st fifty percent of the total service tax liability under the provisions of Chapter V of the Finance Act, 1994 read with Notification No.: 30/2012-ST, dated 20.06.2012 as detailed *supra*. From the foregoing, it also appears that M/s GDR Infratech are insensitive to fulfill their statutory obligations including

applying for Service Tax registration and payment of Service Tax evaded by them and that they have not shown any urgency / seriousness to pay up the applicable Service Tax payable by them for the period and accordingly file periodical ST3 returns, which showed their complete disregard to the statutory provisions of the Service Tax law.

60. It is also mentioned that the system of self-assessment is in vogue under the provisions of Service Tax law and in the scheme of self-assessment, the Department comes to know about provision / receipt of taxable services by the assessee only when they apply for Service Tax registration and file periodical statutory returns declaring complete gross amounts received / paid against different taxable services provided / received by them. Therefore, it placed greater onus on the assessee to apply for service tax registration and file prescribed statutory returns within the time limits and also conform to higher standards of disclosure of information in these statutory returns. However, M/s GDR Infratech though they have provided taxable services during the period January' 2017 to June' 2017 and received specified taxable services during the period April' 2016 to June' 2017, they did not take Service Tax registration and file any periodical ST3 returns for the period.

61. It, therefore, appeared that M/s GDR Infratech have consciously suppressed the fact of providing taxable services during the period January' 2017 to June' 2017 and the fact of receiving specified taxable services during the period April' 2016 to June' 2017 and their taxable values, by not taking service tax registration in respect of these taxable services for payment of Service Tax and by not filing periodical returns with all relevant details, as discussed above with intention to evade payment of Service Tax. It was also alleged that the above facts of evasion of Service Tax by the assessee by way of willful suppression of facts as detailed above would not have come to light but for the detailed investigation by the officers of the DGGI, VZU, Visakhapatnam based on intelligence.

62. It was alleged that M/s GDR Infratech had resorted to willful suppression of facts as well as contravention of statutory provisions of Chapter V of the Finance Act, 1994 and rules made thereunder, as detailed above with intent to evade payment of Service Tax. Hence, the extended period of limitation under proviso to Sub-section (1) of Section 73 of the Chapter V of the Finance Act, 1994 was invokable in this case for demanding Service Tax along with recovery of interest at applicable rates in terms of Section 75 of the Act, *ibid*.

63. It was further alleged that for contravention of the above stated statutory provisions with intent to evade payment of Service Tax and willful suppression of the relevant facts M/s GDR Infratech have rendered themselves liable for mandatory penalty under Section 78 of the Finance Act, 1994. Further, they also appeared liable for imposition of penalty under Section 76 of the Finance Act, 1994 for contravention of the provisions of the Finance Act, 1994 and rules made there-under as discussed above, which resulted in non-payment of Service Tax. It also appeared that M/s GDR Infratech were also liable for payment of penalties under provisions of Section 77 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994 for their failure to properly self-assess the tax due on the taxable services provided by them and file periodical returns with

correct details of the value of services provided by them during the period. It also appeared that M/s GDR Infratech were also liable for payment of penalty under provisions of Section 77 of the Finance Act, 1994 for contraventions of Section 69 of the Act ibid read with Rule 4 of Service Tax Rules, 1994 for not taking registration in respect of taxable services provided / received by them which are liable for payment of Service Tax, within the prescribed time limits.

64. In the above circumstances, a notice vide in C.No. V/15/96/2020-Adj dt.28.12.2020 was issued to M/s GDR Infratech requiring them to show cause to the Principal Commissioner, Central Taxes, Visakhapatnam CGST Commissionerate, Visakhapatnam within thirty days of receipt of this notice as to why

- i) an amount of **Rs.6,47,09,766/-** (rupees six crores forty seven lakhs nine thousand seven hundred and sixty six only) being the Service Tax (including SB Cess and KK Cess) not-paid in respect of taxable services provided by them, as discussed above, during the period from January' 2017 to June' 2017 should not be demanded from them under proviso to Section 73 (1) of the Chapter V of the Finance Act, 1994;
- ii) an amount of **Rs.60,10,052/-** (rupees sixty lakhs ten thousand and fifty two only) being the Service Tax (including SB Cess and KK Cess) not-paid under reverse charge mechanism in respect of taxable services received by them, as discussed above, during the period from April' 2016 to June' 2017 should not be demanded from them under proviso to Section 73 (1) of the Chapter V of the Finance Act, 1994;
- iii) interest as applicable under the provisions of Section 75 of the Chapter V of the Finance Act, 1994, should not be demanded from them on the amounts of Service Tax demanded at (i) and (ii) above;
- iv) mandatory penalty should not be imposed on them under Section 78 of the Finance Act, 1994 for their willful suppression and misstatement of the relevant facts and contraventions of the above said provisions of the Finance Act, 1994 and Rules made there under with intent to evade payment of service tax;
- v) penalty should not be imposed on them under Section 76 of the Chapter-V of the Finance Act, 1994 for failure to discharge their service tax liability; and
- vi) penalty should not be imposed on them under Section 77(1)(a) of the Chapter-V of the Finance Act, 1994 for their failure to apply for service tax registration within the time limits prescribed under law; and
- vii) penalty should not be imposed on them under 77(2) of the Chapter-V of the Finance Act, 1994 for their failure to correctly assess their tax liability and also failure to file ST3 returns within the specified time period as discussed above.

Defense Reply:

65. M/s. GDR Infratch vide their letter dated dt. 06.07.2020 submitted that :

During the F.Y 2016-17, they had undertaken a Sub Contract work for M/s. KMV projects Limited involving Civil Repairs and Painting works to 3886 Model Primary Schools within the State of Andhra Pradesh in terms of work order dated 27.12.2016 on back to back basis after deduction of 3% sub-contract margin. The Works Contract Services provided by them were taxable under partial reverse charge mechanism in terms of Section 68(2) of the Finance Act 1994 read with Notification. No: 30/2012-ST, dated 20.06.2012 as amended. As and when the works got certified they used to get the advise from the principal contractors on how much they have to bill. Accordingly they will raise the running account (R.A) bills on their principal contractor M/ s KMV Projects Limited. During the period 01-04-2016 to 30-06-2017 they had raised total 5 R.A. Bills.

66. While issuing the show cause notice the officer mentioned that they have charged the service tax in each R.A. Bill raised on their principal contractor M/ s KMV Projects Limited. Whereas it was not true that they had not charged service tax rather the service tax amount had been shown as recovery from the R.A. Bill sent to the principal contractor M/s KMV Projects Limited

67. Further submitted that the billing procedure between their firm and the principal contractor M/ s KMV Projects Limited. On certification of work initially, their principal contractor shall raise a bill on the government and the government will certify the bill. The certified bill will consist of all the statutory recoveries. Then they would receive the communication from the principal contractor about how much to be billed and the recoveries to be deducted on back to back basis. Accordingly they would raise the R.A. Bills on their principal contractor. Whatever the amounts recovered by the government and whatever the statutory amounts paid to the government by the principal contractor shall be recovered from their payment. Hence that's the reason they have shown all the amounts like PC &FSD, VAT, NAC, PS, QC and Service Tax as recoveries in their R.A. Bills raised on the principal contractor. Also submitted the copies of Bills submitted to and certified by the government and the copies R.A. Bills raised on their principal contractor.

68. Further submitted that while remitting the consideration the principal contractor M/s. KMV Projects have retained the Service Tax Amount and the balance alone has been remitted to them. The total service tax retained by the principal contractor has been remitted to the government under reverse charge mechanism. The fact that M/s. KMV Projects paying the Service Tax to government has been confirmed by the principal contractor, M/s KMV Projects, during the enquiry done by the GST Intelligence Department. These facts had been agreed by the officer and mentioned in the show cause notice issued at point no. xiv of page no.4 of the show cause notice issued. They also submitted copy of the confirmation letter stating that 100% applicable Service Tax is paid by the Principal Contractor M/s. KMV Projects.

69. They have also agreed that being provider of the taxable services they were required to register under Service Tax enacted under the Finance Act 1994 and required to discharge the service tax to the extent of our share and have to file the returns accordingly. They have also submitted that they were generally used to undertake only government work contracts like different civil construction works in the nature of works contract service involving construction of irrigation canals and roads to the various government departments, which was an exempted service and never came across applicability of service tax registration. The same has been confirmed wide para no. xiii in the page no 8 of the show cause notice issued. Hence their mistake of not obtaining registration was under bonafide belief, but not intentional.

70. In relation to the work executed under Sub-Contract with M/s KMV Projects they were not given the service tax amount and it had been recovered as stated in the earlier paras and hence the question of theye paying the service tax again does not arise as it was a well settled law that when once the receiver of service pays the service tax under reverse charge, the service provider need not pay the tax once again, which may lead to double taxation. Though they were responsible for making the service tax under partial reverse charge, since their principal contractor had paid their share as well there is no loss of revenue to the government as well. Therefore the application of the relevant sections and the notifications does not arise in our case as the recipient of service had already paid the service tax as was evident from the relevant documentary evidences in support of their claim.

71. Further the assessee relied upon the following judgments:

- Navyug Alloys {P.} Ltd. v. CCE[2008],17 STT 362 {Ahd. — CESTAT}
- Mandev Tubes v. CCE [Final Order No A/ 9 12/ 2009-WZB/Ahd, dated 20-5-2009]
- CST v. Geeta Industries (P.) Ltd.
- and Circular No. 341/ 18/ 2004-TRU {Pt.} dated 17-12-04, assessee could not be made liable to pay any service tax again.

72. With the above submissions, they requested to drop the proposal set out in the show cause notice with regard to the levy of Service Tax under forward charge to the extent of 50% of Service Tax on the transaction between M/s KMV Projects and their firm i. e Rs.6,47,09,766/-

73. With regard to Service Tax of Rs. 60, 10, 052/- under Reverse Charge mechanism on the seignorge charges paid to the A.P State Government during the period April 2016 to June 2017 the assessee has submitted that :

- a) Seignorage charges would be recovered as per rules from the work bills of the contract based on the theoretical requirement materials', Materials referred are Sand, Metal and Gravel

- b) The rate of seigniorage charges would be collected as stated in the Schedule I and Schedule II of the notification no. G.O Ms. No 198 dated 13th August 2009, an order issued vide section 15 of the Mines and Minerals (Development & Regulation) Act, 1957 and Andhra Pradesh Minor Mineral Concession Rules, 1966.
- c) Form H — Mineral dues clearance certificate of the A.P Minor Mineral Concession Rules, 1966 states that the mining dues demanded would be recovered as under.
 - i. Seigniorage fee/ Bid amount/ Cesses - in the case of minor minerals.
 - ii. Royalty/ Dead Rent/ Surface Rent/ Mineral Right Tax/ Cesses in the case of major minerals.
 - iii. Thereby, it was clear that the nature of Seigniorage and royalty were similar in nature.
- d) Section 15(3) of the Mines and Minerals (Development and Regulation) Act, 1957 states that the holder of the mining lease or any other mineral concession granted under any rule, would pay royalty or Seigniorage in respect of the minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed by the state government in respect of the minor minerals.
- e) In the instant case, the holder of the mining lease is the quarry owner/ crusher. He would be liable to pay Seigniorage in respect of the minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed by the state. Whereas in the given instant case of Collection of Seigniorage from the us (The Works Contractors) no service is being received by us, but the same is being received by the Quarry Owner from whom we have purchased the Metal on which we have already paid the consideration.

74. Without prejudice to the above submissions, alternatively with regard to the levying of service tax on Seigniorage charges, they submitted that Seigniorage charges which were paid to the AP State Government was nothing but Royalty in Nature. In light of their contention they relied on the Judgment in case of Madras High Court in case of Vijay Mines And Minerals Vs The Director Of Industries And ... on 16 June, 1994. Where in it was stated as follows

Mr. Vijay Karajan, learned counsel for the petitioner cited a ruling of a learned single judge of madras high court in W. P. No. 10406 of 1990 dated 23-1-1991 wherein Rainalingam, J. has observed as follows:

"In the instant case, it cannot be denied or disputed that the cess is sought to be imposed for the privilege given to the petitioner for extraction of minerals for

which he has to *pay royalty be it called Seigniorage Fee. In law, there is no distinction Or difference between royalty and Seigniorage Fee. Both reflect the sovereign right of the State to collect sums from the grantee for privilege to quarry minerals.*"

75. The Honorable Supreme Court in the case of the India Cement Ltd., etc. Vs State of Tamil Nadu etc (AIR1990SC85) held that royalty is a tax. Since Royalty was a Tax and as per the clarification issued by the CBIC under Circular No. 192/ 02/ 2016-Service Tax, the Taxes, Cesses or Duties levied were not consideration for any particular service as such and hence not leviable to Service Tax.

76. Further submitted that, question of levy of penalty under section 78 was also unwarranted as the taxes have already been paid and it is only a mistake that our part of Service Tax also paid under reverse charge which is not intentional and has been done for the misunderstanding of law. Penalty under section 78 was only levied when the department was able to establish mensrea, hence therefore the question of levy of penalty under section 78 without establishment of mensrea was therefore improper and incorrect and they relied upon the judgments in 2012 (28) STR 574, 2014(33) STR 340, 2013 (31) STR 625, 2000 (125) ELT 78 1, 1995 (75) ELT 721, 2009 (238) ELT 3, 2010 (19) STR 818, 2010(20) STR 92, 211, 2011 (30) STT 284, 2012(26) STR 97, 2013 (9) SCC 753 and 20 11 (1) SCC 601.

77. Further submitted that the question of levy of interest U/s 75 would only arise after considering the relevant submissions and the contentions put forth, hence therefore the question of levy of interest does not arise as held by the Hon'ble Supreme Court reported in 44 STC 422, 106 STC 460, (2008} 1 DRT 8. It is also further submitted that when once the tax was paid even before issuance of show cause notice, interest need not be levied and the same was held in 2009 16 STT 241 (CESTAT Bangalore J. In the instant case the 100% Service Tax Liability has been paid by the principal contractor under reverse charge and there is not tax liability due to be paid at the time of show cause notice issued.

78. With regard to the levy of penalty under the provisions of section 76, they submitted that the penalty under Sec 76 shall be imposed when the applicable tax was not discharged. In the instant case the principal contractor had remitted to the service tax department total 100% of Service Tax, both his share under reverse charge and our share required to be paid under forward charge. He never remitted the service tax amount to us. To this extent he has given confirmation and the same is enclosed herewith.

79. They state that they were not pressing on the levy of penalty under the provisions of section 77 (1) (a) and 77 (2) with regard to the failure to obtain the Service Tax Registration within the time limit prescribed under the law and

accordingly, the levy of penalty and interest were unwarranted and request you to kindly drop the proposal set out in the show cause notice taking into consideration, the submissions mentioned above.

Personal Hearing.

80. The Personal Hearing on virtual mode was attended by Sri Brahmnanada Rao B Chartered Accountant on behalf of the assessee on 15.03.2022. He reiterated the written submissions dated 06.07.2020. He further added that their client had rendered sub contract on back to back basis and the principal contractor had paid the Service Tax on the total taxable value of the contract and that he was of the opinion that their client was not liable to pay Service Tax and requested to drop the proceedings.

Findings:

81. I have carefully gone through the case records, the contents of the show cause notice issued to the assessee, the submission of the assessee as well as the arguments/discussions made by their representative during the course of personal hearing. I find that the Show Cause notice was issued to the assessee for

(i) Non-payment of Service Tax on Sub-Contract receipts under Work Contract service during the period January 2017 to June 2017.

(ii) Non-payment of Service tax on Seigniorage charges paid to the Andhra Pradesh State government under reverse charge mechanism. Now, I shall be discussing both these issues one by one.

82. The issue in hand was whether M/s. GDR Infratech was liable to pay Service tax on the sub contract works carried out in the nature of works contract by them on back to back agreement with the principal contractor viz., M/s. KMV Projects Ltd, Hyderabad for execution of civil repair and maintenance works along with painting of 3886 model primary schools within the State of Andhra Pradesh during the period January 2017 to June 2017 when the principal contractor discharged the Service tax liability on the total contract value.

83. The main allegation in the SCN was the sub-contractor was essentially a taxable service provider and the fact that services provided by such sub-contractors were used by the main / principal service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors were in the nature of input services to the principal / main contractor. Service tax was, therefore, leviable on any taxable services provided, whether or not the services were provided by a person in his capacity as a sub-contractor and whether or not such services were used as input services. It, therefore, appeared that the contention of M/s GDR Infratech for non-payment of service tax in respect of taxable services provided to M/s KMV Projects Ltd., Hyderabad on back to back sub-contract basis in terms of work order dated 27.12.2016 during the period January' 2017 to June' 2017 was not legally acceptable as M/s GDR Infratech are taxable service providers under the provisions of the Service Tax law and accordingly person liable for making payment of service tax under Section 68(1) of the Chapter V of the Finance Act, 1994 read with Rule 2(1)(d) of the

Service Tax Rules, 1994. Further, the services provided by M/s GDR Infratech appears to be independently liable for service tax as per applicable classification of services irrespective of liability of the services in turn provided by their client viz., M/s KMV Projects Ltd., Hyderabad;

84. M/s. GDR contention is that the total service tax was paid by the principal contractor under reversed charge mechanism and there was no loss to the government. While stating so, they have mentioned their billing procedure between them and the principal contractor of M/s. KMV Project Limited that initially principal contractor shall raise a bill on the government and the government will certify the bill. The certified bill will consist of all the statute recoveries. Sub contractor i.e., M/s. GDR will receive the communication from the principal contractor about how much to be billed and the recoveries to be deducted on back to back basis. Accordingly they will raise the Running Account (R.A.) Bills on their principal contractor. It was also mentioned that the amount recovered by the government or paid to the government by the principal contractor shall be recovered from their payment. Hence all the recoveries like PC & FSD, VAT, NAC, PS and Services Tax were shown as recoveries in their R.A. Bill raised on the Principal contractor. Accordingly the principal contractor retained the service tax amount and the balance alone has been remitted to them. The total service tax retained by the principal contractor had been remitted to the government under reverse charge mechanism. The same was confirmed by the principal contractor M/s. KMV projects in a letter form. In the Show cause notice the officer mentioned that they had charged the service tax in each R.A. Bill raised on the principal contractor M/s. KMV projects Limited, whereas it was not true rather the service tax amount had been shown as recovery from the R.A. Bill sent to the principal contractor M/s. KMV Projects Limited.

85. The assessee also agreed that though they were responsible for making the service tax under partial reverse charge, since their principal contractor has paid their share there was no loss of revenue to the government. Therefore the application of the relevant sections and the notification did not arise in their case as the recipient of service has already paid the service tax.

86. From the above allegation and submission, it is clear that there was no dispute that the activity undertaken by the sub-contractor falls under the category of 'Works Contract' service. What was sought to be contended is that the main contractors, who had given sub-contracts through a work order, had already discharged the Service Tax liability on the entire contract amount and accordingly, the sub-contractor was not required to pay any Service Tax which would result into double taxation.

87. Before going to decide the issue let me put forth the legal provisions with regard to who are chargeable to tax and at what point tax is charged under Service Tax .

Section 68 of the Finance Act 1994 interalia reads as;

68. Payment of service tax

(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be 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 66B 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.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.

Section 66B of the Finance Act, 1994, reads as there shall be levied a tax (hereinafter referred to as the service tax) at the prescribed rate on the value of services, *other than those services specified in the negative list*, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Clause (51) of Section 65B of the Chapter V of the Finance Act, 1994 reads as 'taxable service' means "any service on which service tax is leviable under Section 66 B" of the Finance Act, 1994

Declared service is defined under clause (22) of Section 65B of the Chapter V of the Finance Act, 1994, reads as 'declared service' means any activity carried out by a person for another person for consideration and declared as such under Section 66E of the Finance Act, 1994. Further, as per clause (h) of Section 66E of Chapter V of the Finance Act, 1994, "service portion in the execution of a works contract" shall, *inter alia*, constitute declared service.

88. From the above legal provisions it is clear that as per 66B of F.A 1994 there shall be levied a tax at the prescribed rate on the value of services, *other than those services specified in the negative list*, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed and as per section 68 of the F.A 1994 every **person providing taxable services** shall pay service tax in such manner and *within such period* as may be prescribed. Further, Section 68(2) of the Chapter V of the Finance Act, 1994, as amended provides for liability to pay service tax, at the rates specified under Section 66B by a person other than service provider in case of certain specified services notified by the Central Government and all the provisions of the Finance Act, 1994 shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

In the instant case under the provisions of the Notification No. 30/2012-ST, dated 20.6.12 as amended, as per the serial number 9 of the table given under paragraph (II) of the notification, the service provider is, *inter alia*, liable to pay the following percentage of service tax payable towards rendering the services:

Sl. No.	Description of Service	% of service tax payable by the person providing service	% of service tax payable by any person liable for paying service tax other than the service provider
9	In respect of services provided or agreed to be provided in service portion in execution of works contract.	50%	50%

In light of the above provisions unless and otherwise sub contractor is specifically exempted from payment of Service tax M/s. GDR Infratech are liable to pay service tax as applicable on their activity.

89. Now, let me take up the argument of double taxation as claimed by the assessee. M/s. GDR's contention was that in relation to the work executed under Sub-contract with M/s. KMV projects Ltd, they were not given the service tax amount and it had been recovered hence the question of paying service tax again does not arise as it was a well settled law that when once the receiver of service pays the service tax under reverse charge, the service provider need not pay the tax once again, which may lead to double taxation.

90. I find no legal basis for the contention of the assessee. The Service tax leviable at the hands of each service provider is decided by nature of activities undertaken by them. If the same is covered by scope of the taxable entry under Finance Act 1994 tax liability arises. In the regime of CENVAT Credit Rules of 2004 where the scope of the CENVAT is expanded across the services and goods, it enables every service provider in a supply chain to take input credit of the tax paid by him which can be utilized for the purpose of discharge of taxes on his output service. In the instant case the service recipient i.e., the main contractor can, however, avail the benefit of the provisions of the CENVAT Rules. The mechanism under the CENVAT Credit Rules also ensures that there is no scope for double taxation. In the face of these provisions, it may not be open to a sub-contractor to contend that he should not be subjected to discharge the Service Tax liability in respect of a taxable service when the main contractor has paid service tax on the gross amount, more particularly when there is no provision granting exemption to him from payment of Service Tax. It is, therefore, clear that every person (which would include a sub-contractor) providing taxable service to any persons (which will include a main contractor) shall pay Service tax at the rate specified in section 66B in the manner provided for.

91. CBEC vide circular No. **96/7/2007-ST, dated 23.8.07** (refer reference code 999.03/23.8.07) has clarified, *inter alia*, stated that “*A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services.*”

92. In light of the above circular it is very clear that a sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

93. The decisions relied upon by the assessee may not be relevant to the present case inasmuch as the same pertains to a period prior to CENVAT Credit Rules of 2004 and CBEC circular No. **96/7/2007-ST, dated 23.8.07**. The difference in time is relevant in view of the introduction of CENVAT Credit Rules 2004 which negates the argument of double taxation.

94. In respect valuation, as per the allegation in the SCN the nature of works are other than original works and are taxable at 70% of the ‘total amount’ charged for the works contract as per Rule 2A(ii)(B)(ii) of the Service Tax (Determination of Value) Rules, 2006 for payment of service tax. “Total amount” for the purpose of the Rule 2A(ii) is defined under the Rules, 2006 and it means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting

the amount charged for such goods or services, if any and the value of VAT or Sales Tax, if any, levied thereon.

95. In the instant case the total gross amount charged by the assessee for providing works contract services to M/s KMV Projects Ltd. in terms of the work order dated 27.12.2016 during the period January' 2017 to June' 2017 works out to Rs.128,93,53,167/-. M/s GDR Infratech have charged total amount of Rs.5,67,86,190/- towards VAT against five RA Bills raised by them. After deducting VAT from the gross charged amount the taxable amount works out to Rs.123,25,66,977/- (i.e., gross bill amount minus VAT billed) and the total taxable value on which service tax is liable to be paid by M/s GDR Infratech @ 70% of the total amount charged in terms of Rule 2A(ii)(B)(ii) of the Service Tax (Determination of Value) Rules, 2006 works out to Rs.86,27,96,884/-. Thus the Service Tax there on at prevailing rates during the relevant period works out to Rs.12,94,19,533/-. Accordingly, M/s.GDR are liable for 50% of the tax as their portion of liability as per paragraph (II) of the notification No. 30/2012-ST, dated 20.6.2012 which works out to Rs. Rs.6,47,09,766/- as provided under Section 68 of the Finance Act, 1994

96. In this regard, my views are also supported by the decision of the Honourable CESTAT Principal Bench, New Delhi in the case of Commissioner of Service Tax, New Delhi Vs. Melange Developers Private Limited reported in 2020 (33) G.S.T.L. 116 (Tri-LB) where in it was observed at para 29 and 31 as brought hereunder;

“29. The submission of the Learned Counsel for the Respondent regarding ‘revenue neutrality’ cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A sub-contractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the Cenvat Credit Rules of 2004.

30. Thus, for all the reasons stated above, it is not possible to accept the contention of the Learned Counsel for the Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.

31. The reference is, accordingly, answered in the following terms :

“A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract.””.

Non-payment of Service Tax on Seigniorage charges paid to Govt. of Andhra Pradesh by M/s GDR Infratech under reverse charge mechanism.

97. With regard to the Seigniorage charges paid to Government from the allegations in the SCN and the submissions made by M /s. GDR two issues emerges out to be addressed .

- a) Whether Seigniorage charges are liable to Service Tax under provisions of Finance Act 1994.
- b) Who is liable to pay the tax if at all payable.

98. With regard to the levying of service tax on Seigniorage charges, the assessee submitted that Seigniorage paid to the AP State Government was nothing but Royalty in Nature. Further

relied upon the judgment of Madras High Court in case of Vijay Mines and Minerals Vs The Director of Industries and ... wherein it was held that "it cannot be denied or disputed that the cess is sought to be imposed for the privilege given to the petitioner for extraction of minerals for which he has to pay royalty be it called Seigniorage Fee. In law, there is no distinction or difference between royalty and Seigniorage Fee. Both reflect the sovereign right of the State to collect sums from the grantee for privilege to quarry minerals.

99. Further relied on the Honorable Supreme Court judgment in the case of the India Cement Ltd etc., Vs State of Tamil Nadu (AIR 1990 SC 85) where in held that royalty is a tax. Since Royalty is a tax and as per the clarification issued by the CBIC No. 192/02/2016-Service Tax , the Taxes , Cesses or Duties levied are not consideration for any particular service as such and hence not leviable to Service Tax.

100. The contention of whether Seigniorage or Royalty is a tax or otherwise has not attained its finality as there is a case pending before the Honorable Supreme Court of 9 member bench in the case of Mineral Area Development Authority etc vs. Union of India & Ors on the same issue the case quoted by GDR cannot be taken into consideration at this juncture.

101. Further, the activity of permitting usage of natural resources like metal, gravel, sand, etc within the State of Andhra Pradesh to a business entity by the Government on which the Government of Andhra Pradesh has exclusive legal right, for revenue consideration in the name of Seigniorage charges, are the same in the nature of service activity provided by the Government of Andhra Pradesh as defined under Section 65B(44) supra. Further the services provided by Government of Andhra Pradesh are taxable services as defined under Section 65B(51) supra and are not covered under the negative list of services as defined under Section 66D of the Finance Act, 1994 and also not covered under Mega Exemption Notification No. 25/2012-ST, dated 20.06.2012 as amended during the period 1st April' 2016 to 30th June' 2017.

102. Further, CBEC vide serial number 5 of Circular No. 192 / 02 / 2016-ST, dated 13.4.2016 issued vide F. No.: 334/8/2016-TRU while stating that any service provided by Government or local authority to a business entity has been made taxable with effect from 1st April' 2016. In the circular while giving clarification on many issues clarified that Services provided in lieu of fee charged by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a *quid pro quo* for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that Service Tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority. Accordingly, I find that charging of Service Tax on Seigniorage charges paid to the Government of Andhra Pradesh is clearly justified.

103. Now let me examine who is liable to pay Service Tax i.e., M/s.GDR Infratech who are actually paying the Seigniorage or the lessee i.e., quarry owners who have received the service from the AP government as claimed by GDR.

104. M/s. GDR Infratech have contested that in respect of Seigniorage charges paid to AP State Government that they were being contractors purchasing the minor minerals from the Lessee of Quarry, namely quarry owner and the quarry owner would be responsible for compliance by way of paying Seigniorage charges as may be required. However as a protective measure the State Government departments are deducting from the Work Bills raised by the Contractors and the same shall be paid to the Mines Department. As no service received by them from AP State Govt. Seigniorage charges are forcefully recovered from them from the bill amount. As per Section 15(3) of the Mines and Mineral (development and Regulation) A, 1957 states that the holder of the mining lease or any other mineral concession granted under any rule, would pay royalty or Seigniorage in respect of the minor minerals removed or consumed by him or by his agent, manger, employee contractor or sub-lessee at the rate prescribed by the state government in respect of the minor minerals. In the instant case the holder of the mining lease is the quarry owner/crusher.

105. However as seen from the work order dt. 27.12.2016 under para 1(j) it is specifically mentioned that "Royalty , cess, seigniorage, and or other levies, levied by respective statutory authorities shall be borne by the Contractor. Further I find that M/s. GDR Infratech were using the minor minerals such as aggregate, sand, gravel and the Seigniorage charges paid to the Andhra Pradesh Government were accounted in their books of account as indirect expenditure as payment of Seigniorage charges and has also not produced any evidence showing that the burden was passed on to the quarry owners. In the absence of passing of burden to the quarry owners and as the work order dt. 27.12.2016 clearly mentioned that the "Royalty , cess, seigniorage, and or other levies, levied by respective statutory authorities shall be borne by the Contractor, it is established beyond doubt that M/s.GDR Infratech are only given the right to use the minor mineral on payment of Seigniorage charges. Accordingly I find that M/s. GDR Infratech are rightly liable to pay Service Tax under reverse charge mechanism under paragraph (II) of the notification No. 30/2012-ST, dated 20.6.2012 as amended on 100% of the Seigniorage In light of the above I am fully convinced that M/s.GDR Infratech are liable to pay Service Tax of Rs.60,10,052/- on the Seigniorage charges paid by them to the Government of Andhra Pradesh.

106. I hold that the assessee was liable for payment of appropriate interest in terms of Section 75 Finance Act 1994 on the confirmed service tax amount of whose payment is delayed beyond due date.

107. The government has, from the very beginning, placed full trust on manufacturers and service providers w.r.t voluntary compliance in central excise and service tax. Accordingly, measures like self-assessment etc., based on mutual trust and confidence, were put in place. All these are premised on the honesty of the manufacturers and service providers and therefore the

governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the manufacturer/service provider. Further, the onus is on the assessee to scrupulously follow the procedures and fulfill the statutory Tax obligations.

108. In the instant case, the assessee has rendered taxable services and has received consideration, but not discharged appropriate service tax against the taxable receipts received for rendition of taxable services in terms of Section 68 of Finance Act 1994 read with Rule 6 of the Service Tax Rules, 1994 and Rule 3 of the Pont of Taxation Rules, 2011, they have not registered with the department as per Section 69 of the Chapter V of the Finance Act, 1994, read with Rule 4 of the Service Tax Rules, 1994, in as much as they did not take registration *within the time period prescribed* under law, violated Section 67 of the Finance Act, 1994 in as much as they have not arrived at the correct taxable value for payment of Service Tax in respect of the taxable services provided by them as stated above and violated Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they failed to properly self-assess the tax due on different taxable services and file periodical returns within the prescribed time limits and with correct details of the value of services rendered by them.

109. The assessee argued on limitation for issue of demand. I observed that there is no evidence produced by the assessee that the fact of provision of services was made known/available to the department at any point of time. The provision of the services was not known to the department unless the officers have conducted verification of Rajahmundry office premises of M/s GDR Infratech on 01.11.2019 in terms of the Search Warrant dated 29.10.2019 issued by the Joint Director, DGGI, Visakhapatnam Zonal Unit, Visakhapatnam. But for the efforts of the department, the issue of receipt of service income for rendition of taxable services and the tax liability thereon would have escaped entirely and could have caused loss to the government exchequer. Therefore, I hold that the assessee has not discharged the service tax liability with an intent to evade payment of service tax by suppressing the fact of providing taxable services. Hence, I hold that the invocation of extended period in terms of proviso to Section 73(1) of Finance Act, 1994, as proposed in the show cause notice is rightly justifiable. Hence, I hold that the argument of the assessee on limitation is not valid.

110. In view of above, I hold that the M/s. GDR Infratech are liable for penalty under Section 78 of Finance Act, 1994 for suppressing the fact of provision of taxable service with an intent to evade payment of service tax.

111. Further, I hold that they are also liable for penalty under Section 77(1)(a) of the Finance Act, 1994 for their failure to obtain service tax registration and also liable to penal action under Section 77(2) of the Finance Act, 1994 for their failure to correctly assess their tax liability and also file the periodical ST-3 returns.

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

ORDER

- i. I confirm the Service Tax of Rs. **Rs.6,47,09,766/-** (Rupees six crores forty seven lakhs nine thousand seven hundred and sixty six only) being the Service tax (including SB Cess and KK Cess) payable on the work contract services provided by M/s. GDR Infratech during the period January,2017 to June,2017, as discussed at para 87 to 96 above, in terms of Section 73 (2) of the Chapter V of the Finance Act, 1994,
- ii. I confirm the amount of Rs.60,10,052/- (Rupees sixty lakhs ten thousand and fifty two only) being the Service Tax (including SB Cess and KK Cess) under reverse charge mechanism in respect of Seignorage charges paid by M/s. GDR Infratech to the Government of Andhra Pradesh during the period 04/2016 to 06/2017, as discussed at para 97 to 105, in terms of Section 73(2) of the Finance Act, 1994.
- iii. I order that interest at appropriate rate should also be charged on the confirmed demands of (i) and (ii) above under the provisions of Section 75 of the Finance Act 1994, as amended from time to time.
- iv. I impose a penalty of Rs. 7,07,19,818/- (Seven crores seven lakhs nineteen thousand eight hundred and eighteen only) on M/s.GDR Infratech in respect of the demands confirmed at (i) and (ii) above in terms of the provisions of Section 78(1) of the Finance Act, 1994 for suppressing the material facts of providing/receiving of Taxable Services from the department and for not disclosing the value of the said taxable service to the department with sole intention to evade payment of applicable Service Tax and contravention of the provisions of Chapter V of the Finance Act, 1994 and Rules made there under with intent to evade Service Tax as discussed at para 107 to 110 above. However, in view of clause (ii) of the second proviso to Section 78 (1) of the Act, if the amount of Service Tax confirmed and interest thereon is paid within a period of thirty days from the date of receipt of this order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.
- v. I restrain from imposing penalty under Section 76 of the Finance Act 1994, as mandatory penalty equivalent to the Service Tax not paid for the same contraventions and supersession of the facts is already imposed under Section 78 of the Finance act 1994.
- vi. I impose a penalty of Rs. 10,000/- under Section 77 (1) (a) of the Finance Act 1994 for failure to apply for service tax registration within the time limits prescribed under law.

- vii. I also impose a penalty of Rs. 10,000/- under Section 77(2) of the Finance Act 1994 for failure to correctly assess their tax liability and also for their failure to file ST-3 returns within the specified time period.


(S. FAHEEM AHMED)
PRINCIPAL COMMISSIONER

To
M/s. GDR Infratech,
Flat No. 501, Shanthi Residency,
Door No. 78-12-2, Behind RTC Complex
Shyamala Nagar, Rajahmundry -533101

Copy submitted to:

- 1) The Chief Commissioner of Customs & Central Tax, CGST, Visakhapatnam Zone . [By name to Superintendent, Review].
- 2) The Additional Director General, Directorate General of GST Intelligence, Visakhapatnam Zonal Unit D. No. 28-14-27, Siryabagh Beside Melody Theatre, Visakhapatnam.

Copy to:

- 3) The Deputy / Assistant Commissioner of Central Tax, Rajahamundry Central CGST Division, Rajahamundry
- 4) The Superintendent of Central Tax, Danavaipeta CGST Range, Rajahamundry Central CGST Division *[with a direction to serve this Order in Original on the assessee and submit the dated acknowledgment to this office for record]*
- ✓ 5) Office copy