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केंद्रीय सीमा शुल्क एवं केंद्रीय कर प्रधान आयुक्त का कार्यालय

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS &amp; CENTRAL TAX

विशाखापट्टणम केन्द्रीय वस्तु एवं सेवाकर आयुक्तालय

VISAKHAPATNAM CENTRAL GST COMMISSIONERATE

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पत्र सं.C.No:V/15/15/2019-Adj.

दिनांक Date:31.03.2022

**ORDER-IN-ORIGINAL No.VSP-EXCUS-COM-14-21-22 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 के लिए 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 जो वित्त अधिनियम, 1994 की धारा 86 (1) के अन्तर्गत इस आदेश से पीड़ित होता हो तो वह इस के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण के क्षेत्रीय न्यायपीठ, प्रथम तल, एच एम डब्ल्यू एस एस बी भवन, खैरताबाद, हैदराबाद-500004 के समक्ष अपील प्रस्तुत कर सकता है।
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, 1<sup>ST</sup> Floor, HMWSSB Building Rear Portion, Khairatabad, Hyderabad - 500004.**
3. इस आदेश के सूचित होने के तीन माह के अन्दर निर्धारित प्रपत्र एस.टि.-5 में अपील दर्ज कर सकता है।
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 के साथ दर्ज की चाहिए :
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 होनी चाहिए)।
- a) A copy of this order in quadruplicate (one of which at least should be certified copy).
- ब). सेवा कर के रूप में वांछित राशि का राष्ट्रीयकृत बैंक से लिया गया रेखित बैंक ड्राफ्ट सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण के क्षेत्रीय पीठ, हैदराबाद के नाम पर हैदराबाद में देय होना चाहिए।
- 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 द्वारा हस्ताक्षरित होता है तो केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35(क्यू) के अन्तर्गत विनिर्दिष्ट अधिकृत प्रतिनिधि की अपीलकर्ता की ओर से हस्ताक्षर करने एवं उपस्थित होने संबंधी अधिकृत करने वाले 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.

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**Brief facts of the case:**

M/s. Global Entropolis (Vizag) Private Limited, 9-17-27/1, CBM Compound, Suite No.101 to 103, VIP Road, Visakhapatnam-530 003 (hereinafter referred to as "the assessee"), are registered with the Service Tax Department vide Registration NO.AADCG1109JSTOO1, under 'Construction of Residential Complex' and 'Works Contract Service'.

2. As per the records available with the department, it is seen that M/s. Global Entropolis (Vizag) Pvt. Ltd. had entered into a joint development agreement with M/s. Global Entropolis (Asia) Pvt. Ltd., Bangalore for development and sale of the property owned by the latter. The assessee engaged sub-contractors for construction of villas, flats, site leveling and laying internal roads etc. and also utilized services for designing & planning of the township, quality surveying services. The total project area was of 80 acres land. Out of the total built up area of 13,00,000 Square feet, the share of owner i.e. Global Entropolis Asia Pvt. Ltd. (which includes villas (Daffodils & Orchids)) was 1,50,000 square feet, residential apartments 9,50,000 square feet and Commercial Space of 2,00,000 square feet and remaining built up area belonged to Global Entropolis Vizag Pvt. Ltd. The project consists of four blocks of residential apartments, Villas, Commercial Complexes etc.

3. Earlier the following Show Cause Notices were issued to the assessee demanding Service Tax under "Works Contract Service" in respect of the construction projects under taken by them:

Sl. No.	Show Cause Notice No.	Date	Period Covered
1	C.No.V /15/221/2014- Adj.	22.10.2014	01.07.2012 to 31.03.2013
2	C.No.V /15/153/2015- Adj.	15.07.2015	01.04.2013 to 31.03.2014
3	C.No.V /15/15/2016-Adj.	08.02.2016	01.04.2014 to 31.03.2015
4	C.No.V /15/36/2018-Adj.	12.04.2018	01.04.2015 to 31.03.2016

Show Cause Notices mentioned at Sl. No.1 to 3 were adjudicated vide OIO No.VSP-EXCUS-001-COM-012-17-18 Dated 18.10.2017 by the Principal Commissioner, Visakhapatnam-I Commissionerate and Show Cause Notice mentioned at Sl. No.4 was adjudicated vide OIO No.VSP-EXCUS-001-ADC-012-18-19 Dated 21.02.2019 by the Additional Commissioner, Visakhapatnam Central GST Commissionerate.

4. In order to ascertain whether the assessee had discharged Service Tax liability properly for the subsequent period, i.e., from 01.04.2016 to 30.06.2017, the assessee were requested by the Range Superintendent, Aseelmetta Range vide

letters dated 29.05.2018 & 26.06.2018 to furnish details of the value of taxable services provided by them and the amount of Service Tax paid by them. The assessee furnished the details, vide their letters dated 09.06.2018 & 29.06.2018. It appeared from the data furnished by the assessee, that in order to arrive at the amount received towards construction the assessee were deducting land value from the gross amounts received by them from various service recipients and that the balance amount was considered by the assessee as value of construction service provided by them. It also appeared that the assessee were discharging Service Tax & Cess@ 14.5% & 15% on 40% of such construction value. It appeared from the statutory returns, i.e., ST-3 Returns, filed by the assessee for the period from 01.04.2016 to 30.06.2017, that they had discharged their Service Tax liability by considering the service provided by them as a taxable service under 'Works Contract Service'.

4.1 The relevant statutory provisions applicable w.e.f 01.07.2012, i.e., after the introduction of Negative List Scheme, are given hereunder:

4.2 Section 66B of the Finance Act, 1994, provides for levy of Service Tax at the rate of 14.5% w.e.f. 15.11.2015 & 15% w.e.f. 01.06.2016, 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 other and collected in such manner as may be prescribed. In terms of Section 65B(34) of the Finance Act, 1994, "negative list" means the services which are listed in Section 66D. Further, in terms of Section 65B(51) of the Finance Act, 1994, "taxable service" means any service on which Service Tax is leviable under Section 66B.

4.3 In terms of Section 65B(44) 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*
  - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or*
  - (iii) 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.*

4.4 In the instant case, the services provided by the assessee were not one of the services listed in the Negative List as mentioned in Section 66D of the Finance Act, 1994 and hence the services provided by the assessee are taxable services even after introduction of the negative list of services with effect from 01.07.2012.

4.5 In terms of Section 65B (51) of the Finance Act, 1994, "taxable service" means any service on which service tax is leviable under Section 66B;

4.6 As per Section 65B (54) 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 movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

4.7 As per Section 66 E (h) of Finance Act 1994, the service portion in the execution of Works contract is a declared service.

5.1 Further, Rule 2A of Service Tax (Determination Value) Rules, 2006 deals with determination of value of service portion in the execution of works contract and therefore the provisions of Rule 2A ibid (which are substituted w.e.f. 01.07.2012, vide Notification No.24/2012-Service Tax dated 06.06.2012) are given hereunder.

Rule 2(A)(i): Value of service portion In the execution of works contract 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 works contract.

Rule 2(A)(ii) : Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine Service Tax payable in the following manner, namely :-

(A) in case of works contracts entered into for execution of original works, Service Tax shall be payable on forty percent of the total amount charged for the workscontract.

(B)

(C)

Explanation 1: For the purpose of thisrule.'

(a) Original works means--

(i) all newconstructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) -----

(D) 'total amount' means the sum of 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 works contract, whether or not supplied under the same contract or any other contract, after deducting---

(i) the amount charged for such goods or services, if any;and

(ii) the value added tax or sales tax, if any, leviedthereon;

5.2 Section 67 of Finance Act, 1994, which governs valuation of taxable services, is asunder:

(1) Subject to the provisions of this Chapter, Service Tax chargeable onany taxable service with reference to its value shall,-

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service

*provided or to be provided by him;*

*(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of Service Tax charged, is equivalent to the consideration;*

*(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.*

*(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of Service Tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.*

*(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.*

6. In view of the statutory position discussed in the previous Para, it appeared that the assessable value was to be determined under Rule 2A (ii) of Service (Determination of Value) Rules, 2006 substituted with effect from 01.07.2012 vide Notification 24/2012-Service Tax dated 06.06.2012. As per clause (ii) (A) of Rule 2A of Service Tax (Determination of Value) Rules, 2006, Service Tax shall be payable on forty percent of the total amount charged for the works contract for execution of original works. In the instant case the assessee had constructed a new residential complex and is an original works. Hence, Service Tax was payable on forty percent of the total amount charged. However, the assessee arrived at the taxable value after deducting amounts towards cost of land received from their customers. Therefore, it appeared that the assessee had wrongly arrived at the taxable value by not including the total amount received/receivable from their customers, which had resulted in short payment of Service Tax.

7. However, the Government of India has, vide Section 129 of the Finance Act, 2017, enacted on 31.03.2017, amended Rule 2A of Service Tax (Determination of Value) Rules, 2006 retrospectively, from 01.07.2010. As per Section 129 of the Finance Act, 2017, Rule 2A of Service Tax (Determination of Value) Rules, 2006 was amended in the manner specified in column (3) of the Sixth Schedule to the Finance Act, 2017, on and from up to the corresponding date specified in column (4), against each of the rule specified in column (2) of the said Schedule. Sub-section (2) of Section 129 *ibid* also provided that notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done at any time during the period specified in column (4) of the Sixth Schedule relating to the provisions as amended by Sub-section (1) shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendment



made by Sub-section (1) had been in force at all material times. Rule 2A of Service Tax (Determination of Value) Rules, 2006 was amended retrospectively vide Section 129 of Finance Act, 2017, read with the Sixth Schedule therein, which is reproduced hereunder:

THE SIXTH SCHEDULE

(See section 129)

Sl. No.	Provisions of the Service Tax (Determination of Value) Rules, 2006 to be amended	Amendment	Period of effect of Amendment
1	2	3	4
	Rule 2A as substituted by notification number G.S.R. 431 (E), dated the 6th June, 2012. [24/2012-Service Tax, dated the 6th June, 2012].	-- -- (d) for the provisos, the following proviso shall be substituted, namely:- Provided that where the amount charged for works contract include the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty percent of the total amount charged for the works contract:	1st day of April 2016 onwards.

8. In view of the above, the taxable value adopted for the period 01.04.2016 to 30.06.2017 is thirty percent of the total amount charged for the works contract.

9. The assessee vide their letter dated 09.06.2018 had given details of the charges/consideration collected from their customers. It however appeared that they were not discharging Service Tax on all the charges collected from the customers, in as much as the assessee were deducting the land value from the gross amounts received by them from their customers and the balance amount was considered by the assessee as value of construction service provided by them. As per the information provided by the assessee pertaining to all the charges collected from their customers, it was seen that, in respect of charges collected towards Club House, Water, Electricity and Piped Gas Line, the assessee had discharged Service Tax under "Works Contract Service". Further, for the charges collected towards Documentation Expenses and Maintenance Charges, the assessee were discharging Service Tax under Other Taxable Services and Maintenance & Repair Service. In the instant case, Service Tax was discharged on the charges collected by them after considering the deductions on account of land value etc., which appeared to be irregular in terms of the statutory provisions. Hence, the deductions said to be claimed by the assessee appeared to be in relation to provision of taxable service and hence appeared to be includable in the taxable value in the light of the statutory provisions quoted. As the same was not included, it had

resulted in short payment of Service Tax & Cess by the assessee.

10. After considering the Service Tax discharged by the assessee, the short paid Service Tax & cess worked out to Rs.2,30,13,352/-, calculated @ 14.5%, &15% on 30% of differential taxable value of RS.15,39,20,592/- on the charges not considered by the assessee for computation of Service Tax &cess during the period from 01.04.2016 to 30.06.2017, as detailed in the Annexure to the Show Cause Notice. Hence, the same is recoverable from the assessee in terms of Section 73(1) of the Finance Act 1994 along with interest under Section 75 of Finance Act 1994.

11.1. In view of the foregoing, it appeared that assessee had contravened the provisions of –

- i) Section 67 of the Finance Act, 1994, in as much as, they had failed to determine the value of taxable services correctly for the purpose of payment of Service Tax on the said services rendered by them during the said period read with Service Tax (Determination of Value) Rules 2006;
- ii) Section 68 of the Finance Act, 1994 read with the Rule 6 of the Service Tax Rules, 1994, in as much as, they had not paid the Service Tax properly on the said taxable services rendered by them during the said period;
- iii) Section 70 of the Finance Act 1994 read with rule 7 of the Service Tax rules 1994, in as much as, they were providing the taxable service and have not assessed the service tax payable correctly.

11.2. Further, the assessee is also liable for penal action under Sections 76 & 77(2) of the Finance Act 1994, in view of the contraventions cited above.

12. In view of the above, M/s. Global Entropolis (Vizag) Private Limited, 9-17-27/1, CBS Compound, Suite No. 101 to 103, VIP Road, Visakhapatnam - 530 003, were issued with a show cause by the Principal Commissioner, Central Tax, Visakhapatnam CGST Commissionerate, vide C.No.V/15/15/2019-Adjn dated 10.05.2019 requiring them to show cause as to why:-

- (i) An amount of **Rs.2,30,13,352/-**, (*Rupees Two Crores Thirty Lakhs Thirteen Thousand Three Hundred and Fifty Two only*) being Service Tax of Rs.2,15,48,883/-; Swachh Bharat Cess of Rs.7,69,603/- & Krishi Kalyan Cess of Rs.6,94,866/-, short paid by the assessee during the period from 01.04.2016 to 30.06.2017, should not be demanded from them under the category of 'Works Contract Service', in terms of Sub-section of Section 73 of the Finance Act, 1994;
- ii) interest at applicable rates should not be paid by them on the amount mentioned at (i) above, in terms of Section 75 of the Finance Act, 1994;
- iii) penalty should not be imposed on them under Section 76 of the Finance Act, 1994 as they have not properly discharged the service tax due on their activity;

- iv) penalty should not be imposed on them under Section 77(2) of the Finance Act, 1994 for showing incorrect particulars in the ST-3 Returns.

**13. PERSONAL HEARING:** An opportunity for Personal hearing was given to the assessee and the date of hearing was scheduled on 05.01.2022 at 13.00 hrs. However, the assessee requested vide mail dated 3<sup>rd</sup> January 2022 to give 30 days additional time for the next hearing and the hearing was rescheduled to 14.02.2022 at 16.30 hrs. Further, the assessee requested vide mail dated 14.02.2022 to fix the personal hearing any time convenient post March 2022. However, further 3<sup>rd</sup> and 4<sup>th</sup> Personal Hearing were fixed on 08.03.2022 at 16.00 hrs. and on 10.03.2022 at 1600 hrs. respectively. But the assessee neither attended the hearing nor submitted any written reply to the show cause notice. As the assessee had failed to avail all the opportunities personal hearings extended to represent their contentions and also had not filed any written submissions, I proceed to decide the issue based on the facts available on record.

#### **DISCUSSIONS AND FINDINGS:**

14. I have gone through, allegations made in the show cause notices and the case records. M/s. Global Entropolis (Vizag) Pvt. Ltd., Visakhapatnam are engaged in the business of construction which is in the nature of 'Construction of complex' and 'Works Contract Service'. They were issued with the show cause notice covering the period from 01-04-2016 to 30.06.2017 demanding Service Tax along with interest and penalties:

15. The issues to be decided in the present case are:

- (i) Whether the value of land is includable in the taxable value while discharging Service Tax liability under Works Contract Service?
- (ii) Whether they were liable to pay interest in terms of Section 75 of the Finance Act, 1994 and whether they are liable to be imposed with penalty under Section 76, 77 of the Finance Act, 1994.

16. I find that M/s. Global Entropolis (Vizag) Pvt. Ltd., Visakhapatnam were engaged in the activity of developing and selling of residential apartments and they have classified their activity under the category of 'Works Contract Service' as defined under clause (54) of Section 65B of the Finance Act, 1994 is

*"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;”*

17. The Government of India, vide Section 129 of the Finance Act 2017, enacted on 31.03.2017, amended Rule 2A of Service Tax (Determination of Value) Rules 2006 retrospectively, from 01.07.2010. As per Section 129 of the Finance Act 2017, Rule 2A of Service Tax (Determination of Value) Rules, 2006 was amended in the manner specified in column (3) of the Sixth Schedule to the Finance Act 2017, on and from up to the corresponding date specified in column (4), against each of the rule specified in column (2) of the said Schedule. Sub-section (2) of Section 129 also provided that notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done at any time during the period specified in column (4) of the Sixth Schedule relating to the provisions as amended by sub-section (1) shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times. Rule 2A of Service Tax (Determination of Value) Rules, 2006 was amended retrospectively for the following periods, in terms of the Sixth Schedule to the Finance Act 2017:

- i. For the period from 1st day of July, 2010 to 30<sup>th</sup> day of June, 2012 (both days inclusive):
- ii. For the period from 1st day of July, 2012 to 28th day of February, 2013 (both days inclusive):
- iii. For the period from 1st day of March, 2013 to 7th day of May, 2013 (both days inclusive):
- iv. For the period from 8th day of March, 2013 to 31st day of March 2016 (both days inclusive):
- v. For the period from 1st day of April, 2016 onwards:

18. The Sixth Schedule to the Finance Act 2017 mentioned in Section 129 of the Finance Act 2017 is reproduced hereunder:

**THE SIXTH SCHEDULE**

*[See section 129]*

<b>Sl. No.</b>	<b>Provisions of the Service Tax (Determination of Value)</b>	<b>Amendment</b>	<b>Period of effect of amendment</b>

	Rules, 2006 to be amended		
(1)	(2)	(3)	(4)
1.	Rule 2A as inserted by Notification No. G.S.R. 375(E), dated the 22nd May, 2007 [29/2007-Service Tax, dated the 22nd May, 2007].	<p>In the Service Tax (Determination of Value) Rules, 2006, in rule 2A,—</p> <p>(I) in sub-rule (1), in clause (i), after the words "value of transfer of property in goods", the words "or in goods and land or undivided share of land, as the case may be," shall be inserted;</p> <p>(II) after sub-rule (1), the following sub-rule shall be inserted, namely :-</p> <p>"(2) Where the value has not been determined under sub-rule (1) and the gross amount charged includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the gross amount charged for the works contract, subject to the following conditions, namely :—</p> <p>(i) the CENVAT Credit of duty paid on inputs or capital goods or the CENVAT Credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004;</p> <p>(ii) the service provider has not availed the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.</p>	<p>1st day of July, 2010 to 30th day of June, 2012 (both days inclusive).</p> <p>1st day of July, 2010 to 30th day of June, 2012 (both days inclusive).</p>

		<p>12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503(E), dated the 20th June, 2003].</p> <p>Explanation. — For the purposes of this sub-rule, the gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.".</p>	
2.	<p>Rule 2A as substituted by Notification No.G.S.R. 431(E), dated the 6th June, 2012. [24/2012-Service Tax, dated the 6th June, 2012].</p>	<p>In the Service Tax (Determination of Value) Rules, 2006, in rule 2A,—</p> <p>(I) in clause (i), after the words "value of property in goods", the words "or in goods and land or undivided share of land, as the case may be," shall be inserted;</p> <p>(II) in clause (ii), in sub-clause (A), —</p> <p>(a) the following proviso shall be inserted, namely :—</p> <p>"Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent of the total amount charged for the works contract.";</p> <p>(b) for the proviso, the following provisos shall be substituted, namely :—</p> <p>"Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract :</p> <p>Provided further that in case of works</p>	<p>1st day of July, 2012 onwards.</p> <p>1st day of July, 2012 to 28th day of February, 2013 (both days inclusive).</p> <p>1st day of March, 2013 to 7th day of May, 2013 (both days inclusive).</p>

	<p>contract for construction of residential units having carpet area up to 2000 square feet or where the amount charged per residential unit from service recipient is less than rupees one crore and the amount charged for the works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the total amount charged for the works contract.";</p> <p>(c) for the provisos, the following provisos shall be substituted, namely :—</p> <p>"Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract :</p> <p><b>(d) For the provisions, the following proviso shall be substituted, namely:-</b></p> <p><b>"Provided that where the amount charged for wokrs contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the amount charged for the works contract."</b></p>	<p>8th day of May, 2013 to 31st day of March, 2016 (both days inclusive).</p> <p><b>1<sup>st</sup> day of April, 2016 onwards.</b></p>
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19. The retrospective amendment to Rule 2A of Service Tax (Determination of Value) Rules, 2006 specifies that Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods or in goods and land or undivided share of land, as the case may be, involved in the execution of the said works contract.

In case the value has not been determined as above and the gross amount charged includes the value of goods as well as land or undivided share of land, the Service Tax shall be payable on Thirty per cent of the gross amount charged for the works contract, subject to certain condition that CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004 as provided under the notification No.26/2012-S.T., dated the 20th June 2012 as amended by the Notification No.8/2016-S.T., dt.01.03.2016

20. In view of the above, it can be seen that, after the said amendments to Rule 2A of Service Tax (Determination of Value) Rules 2006 retrospectively, from 01.07.2010, Service Tax has to be paid on the total amount charged for the works contract including the land value, where the amount charged for works contract includes the value of goods as well as land or undivided share of land. I have examined the statements of monthly service tax liability furnished by the assessee vide their letters dated 09.06.2018 and 29.06.2018 and find that the assessee was in the business of construction of residential and commercial complexes with various facilities and amenities and selling the individual units to the various buyers. Thus, the service provided by the assessee was in the nature of works contract service as defined under clause (54) of Section 65B of the Finance Act, 1994. I further find that the assessee had bifurcated the gross considerations in to different categories of receipts viz, Collectable Value, Land Value, Construction Value, Amenities Value, etc. and was selectively paying service tax only on the construction value and amenities charged from the buyers. Thus, it is evident that the assessee had not taken in to consideration the amounts collected from the buyers in the form of "Collectable Value" and "Land Value" in contravention of the provisions of Rule 2A of Service Tax (Determination of Value) Rules, 2006 as amended by the 6<sup>th</sup> Schedule given under Section 128 of the Finance Act, 2017 resulting in short payment of Service Tax. Accordingly, I hold that the assessee are liable to pay Service Tax on the Gross considerations including the amounts collected as "Collectable Value" and "Land Value" involved in the works contract services provided to various Residential and Commercial unit buyers.

21. Further, as per the retrospective changes made to Rule 2A of Service Tax (Determination of Value) Rules 2006 vide the Finance Act, 2017 read with Notification No.26/2012-ST dated the 20th June 2012 as amended by the Notification No.8/2016-S.T., dt.01.03.2016 the taxable value to be adopted for the period 01.04.2016 to 30.06.2017, shall be thirty per cent of the total amount charged for the works contract.



22. I have examined the annexure to the show cause notice and I find that the difference in the service tax liability has been correctly calculated and therefore, in terms of sub-section (2) of Section 73 of the Finance Act, 1994, I hold that the assessee are liable to pay Service Tax of Rs.2,30,13,352/- (including Ed. Cess and SHEd. Cess, Swacha Bharat Cess) [Rupees Two Crores Thirty Lakhs Thirteen Thousand Three Hundred and Fifty Two only] being the Service Tax short paid for the period from 01.04.2016 to 30.06.2017.

23. As per Section 75 of the Finance Act, 1994, every person, liable to pay the tax in accordance with the provisions of Section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest for the period by which such crediting of the tax or any part thereof is delayed. In the present case, as the assessee had not paid the Service Tax payable within the prescribed period, I hold that they are liable to pay the interest at the applicable rate.

24. I further, hold that the assessee are liable for penalty under Section 76 of the Finance Act, 1994 for failure to pay Service Tax and they are liable for penalty under Section 77(2) of the Finance Act, 1994 for improper filing of ST-3 Returns.

25. Accordingly, I pass the following order:

**ORDER**

- (i) I confirm the demand of Service Tax of Rs.2,30,13,352/- (including Ed. Cess and SHEd. Cess, Swacha Bharat Cess) [Rupees Two Crores Thirty Lakhs Thirteen Thousand Three Hundred and Fifty Two only] being the Service Tax short paid for the period from 01.04.2016 to 30.06.2017 under "Works Contract Service", in terms of Sub-Section (2) of 73 of the Finance Act, 1994 read with Section 174 of Central Goods and Services Act, 2017;
- (ii) I demand interest under Section 75 of the Finance Act, 1994, on (i) above;
- (iii) I impose a penalty of Rs.23,01,335/- (Rupees Twenty Three Lakh One Thousand Three Hundred and Thirty Five Only)) on M/s. Global Entropolis (Vizag) Pvt. Ltd, Visakhapatnam, in terms of Section 76 (1) of the Finance Act, 1994. However, in terms of proviso (ii) of Section 76, if the Service Tax and interest is paid, along with interest, within a period of thirty days from the receipt of this order the penalty

payable shall be twenty-five per cent of the penalty imposed in this order, only if such reduced penalty is also paid within such period;

- (iv) I impose a penalty of Rs.10,000/- (Rupees Ten Thousand Only) on M/s. Global Entropolis (Vizag) Pvt. Ltd., Visakhapatnam for improper filing of ST-3 Returns, under Section 77(2) of the Finance Act, 1994.

  
(S. Faheem Ahmed )  
Principal Commissioner

To  
M/s. Global Entropolis (Vizag) Private Limited,  
9-17-27/1, CBM Compound,  
Suite No.101 to 103, VIP Road,  
Visakhapatnam-530 003.

Copy submitted to the Principal Commissioner of Customs & Central Tax, CGST, Visakhapatnam. Attn: Superintendent (Hq. Reviews)

Copy to:

1.The Assistant Commissioner, CGST, Visakhapatnam North Division

2. The Superintendent of CGST, Aseelmetta Range [He is directed to serve the Order-in-Original on the assessee, obtain their dated acknowledgment and submit the same to this Office for record].

3. The Assistant Commissioner, ARC Section, Hqrs. Office, Visakhapatnam.

~~4. Guard File~~

