

Simplex Infrastructures Ltd. Vs. Commissioner of Service Tax, Kolkata

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Court : Kolkata

Decided On : Apr-07-2016

Judge : Arijit Banerjee

Appellant : Simplex Infrastructures Ltd.

Respondent : Commissioner of Service Tax, Kolkata

Judgement :

In The High Court At Calcutta Constitutional Writ Jurisdiction Original Side WP912of 2013 Simplex Infrastructures LTD.-Vs.Commissioner of Service Tax, Kolkata Before For the Petitioner : The Honble Justice Arijit Banerjee : Mr.J.K.

Mittal, Adv.MRS.Nilanjana Banerjee, Adv.For the Respondent : Mr.S.B.

Saraf, Adv.Mrs.S.Mitra, Adv.Heard On : 15th July, 2015 CAV On : 28.08.2015 Judgment On : 07.04.2016 Arijit Banerjee, J.: (1) In the instant writ petition, the petitioner challenges a show cause-cum-Demand Notice dated 21st April, 2006 demanding service tax of Rs.65.25 crores (approx.) for the period 1st October, 2000 to 31st March, 2005 and also a hearing notice dated 13th August, 2013 issued more than seven years after issuance of the Show Cause-cum-Demand Notice, both of which according to the petitioner, are illegal and nonest in the eye of law.

The Petitioners case:(2) The petitioner company was previously known as Simplex Concrete Piles (India) Ltd., with effect from 8 November, 2005, the petitioners

name was changed to M/S.Simplex Infrastructure LTD.(3) On 28th October, 2004, the petitioner got registered under Construction Service with the Department for payment of service tax at Calcutta after construction service was brought under the purview of service tax with effect from 10th September, 2004 by the Finance (No.2) Act, 2004.

The petitioner is making payment of service tax as per law and filing return regularly.

(4) The levy of service tax for the fiRs.time was introduced in India in the year 1994 under Chapter V of the Finance Act, 1994.

It has been amended from time to time, inter alia, by introducing more categories of services within the service tax net.

By the Finance Act, 1997 the consulting engineer service was made taxable with effect from 7th July, 1997 for services provided in one or more disciplines of engineering.

Architect service tax was made applicable with effect from 16th October, 1998.

Technical testing and analysis services was made taxable with effect from 1 July, 2003.

(5) The respondent Department instituted inquiry against the petitioner company regarding applicability of service tax for consulting engineering service by letter dated 11th June, 1998.

The said letter was replied to by the petitioner by its letter dated 6th July, 1998 wherein it stated that it was not liable to pay service tax as consulting engineer since the petitioner was basically engaged in civil engineering construction and was not consulting engineer within the meaning of Section 65(11) of the Finance Act, 1994.

(as amended by Finance Act, 1997).(6) Thereafter, the respondent did not proceed with the matter and the petitioner took the matter to have been closed at the end of the respondent.

(7) After about six years, the respondent again instituted an enquiry by its letter dated 15th April, 2004 regarding service tax payable by the petitioner for consulting engineering service and the architect service rendered by the petitioner.

By its letter dated 19th May, 2004, the petitioner denied its liability for payment of service tax on account of consulting engineers services.

In the said letter, the petitioner stated that it rendered no consultancy or technical assistance service within the meaning of the service tax provisions.

(8) Thereafter, for 16 months there was no communication from the respondent Department.

(9) Then, a fresh enquiry was instituted by the respondent by its summons dated 20th September, 2005.

The said summons was replied to by the petitioner by its letter dated 28th September, 2005 by referring to its earlier reply dated 19th May, 2004 stating that the petitioner does not render consulting engineering service.

It was also stated in the letter that the petitioners business is to execute civil construction jobs for which it has obtained registration under construction services.

(10) Thereafter, the respondent issued the Show Cause-cum-Demand Notice dated 21st April, 2006 demanding service tax of Rs.65.25 crores (approximately) for the period from 1st October, 2000 to 31st March, 2005.

In the said notice there was no reference to the earlier notices sent by the Department.

(11) The petitioner filed its reply dated 24th May, 2006 to the said Show Cause-cum-Demand Notice.

The petitioner reiterated that it did not render any consulting engineering service and only executed construction work and after construction service was brought within the service tax net the petitioner got itself registered and was regularly paying the applicable service tax.

As per the said Show Cause-cum-Demand Notice, if no cause was shown within a period of 30 days from the date of receipt of the notice, the case was to be decided ex parte.

(12) Thereafter, there was silence on the part of the department for more than three years. (13) Another Show Cause-cum-Demand Notice dated 7th September, 2009 was issued by the respondent for the period 10th September, 2004 to 15th June, 2005 claiming a sum of Rs.4.51 crores (approx.) on account of service tax.

This Show Cause-cum-Demand Notice culminated in an order dated 15th February, 2012 passed by the respondent whereby the petitioner was directed to pay the sum of Rs.1,07,39,212/- which included Rs.1,05,28,639/- on account of service tax and Rs.2,10,573/- on account of education cess.

The petitioner was also directed to pay interest on the said sum.

Further, penalty of Rs.1,07,39,212/- was imposed on the petitioner.

(14) Thereafter, the petitioner received a hearing notice dated 13th August, 2013 whereby the respondent offered a personal hearing to the petitioner on 22nd August, 2013 with regard to the Show Cause Notice dated 21st April, 2006.

In response, the petitioner wrote a letter dated 26th August, 2013 contending that no hearing could be held more than seven years after issuance of a show cause notice and in the records of the petitioner no such show cause notice was found to be pending.

Further, under the law, the assessee is required to maintain records for five years only.

(15) The petitioner contends that the Show Cause-cum-Demand Notice dated 21st April 2006 was issued on the grounds of suppression under the proviso to Section 73 (1) of the Finance Act, 1994, which was not in existence during the material period of time i.e. 1st October, 2000 to 9th September, 2004.

Under the amended Section 73 which came into effect from 10th September, 2004, extended period of limitation can be invoked on the grounds of fraud,

suppression of facts, etc.but this provision was not in the statute book for the material period of time.

If the department is permitted to invoke the extended period of limitation on the grounds of suppression for a demand prior to 10th September, 2004, it will amount to giving retrospective effect to the provisions which is not permissible under the law.

In this connection, reliance was placed on a Supreme Court decision in the case of Mithilesh Kumari-vs.-Prem Behari Khare reported in 1989 (40) ELT257 In that case the Honble Supreme Court observed that the presumption against retrospective operation of a statute is strong in cases in which the statute, if operated retrospectively, would prejudicially affect vested rights or the illegality of past transactions or impair contracts or impose new duty or attach new disability of past transactions.

(16) The department issued a Show Cause Notice dated 7th September, 2009 covering the period 10th September, 2004 to 15th June, 2005 and, further, passed an order dated 15th February, 2012 pursuant to such show cause notice.

The period covered by the said show cause notice overlapped with the period covered by the impugned show cause notice dated 21st April, 2006.

Double assessment for the same period is not permissible under the law.

In this connection, the petitioner relied on a decision of this court in the case of Avery India Ltd.-vs.-Union of India reported in 2011 (268) ELT64 In that case, it was observed that there could not be two assessments for the same period.

Two show cause notices could not, therefore, have been issued in relation to the same period.

(17) The entire demand is raised by invoking the extended period of limitation under the proviso to Section 73 on the ground of alleged suppression.

This is not permissible.

The facts were within the knowledge of the Department since the year 1998.

Prior to issuance of the impugned show cause notice, three enquiries were held in the year 1998, in the year 2004 and in the year 2005.

In response to the enquiry notices the petitioner had disclosed the facts and had categorically stated that it is not liable to pay service tax under consulting engineering service and it had got itself registered under construction service which was made taxable with effect from 10th September, 2004.

This was never objected to by the Department.

The petitioner has never suppressed any facts from the department and the impugned show cause notice itself states that it has been issued on the basis of records submitted by the petitioner.

The petitioner always cooperated with the Department fully.

In this connection reliance was placed on a decision of the Supreme Court in the case of Uniworth Textiles Ltd.-vs.-CCE, Jaipur reported in 2013 (288) ELT161. Reliance was also placed on a Supreme Court decision in the case of Anand Nishikawa Co.Ltd.-vs.-CCE, Meerut reported in 2005 (188) ELT149 wherein it has been held that suppression of fact can have only one meaning and that is that the correct information was not disclosed deliberately to evade payment of duty.

There must be some positive act from the side of the assessee to find wilful suppression.

Ld.

Counsel also referred to a decision of this court in the case of Infinity Infotech Parks Ltd.-vs.-Union of India reported in 2014 (36) STR37 wherein it was held that mere failure to disclose a transaction and pay tax thereon or a mere misstatement or mere contravention of the Central Excise Act or the Finance Act, 1994, is not sufficient for invocation of the extended period of limitation.

There has to be a positive, conscious, and deliberate action intended to evade tax, for example, a deliberate misstatement or suppression pursuant to a query in order to evade tax.

It was observed that once the extended period of limitation has been invoked, it cannot be treated as being within the normal period of limitation once it is found that the extended period of limitation could not have been invoked.

(18) By the impugned show cause notice, service tax was demanded for consulting engineering service.

Under Section 65(31) of the Finance Act, 1994, at the material point of time only an engineering firm was covered and a body corporate was not included.

Body corporates were included by amending the said provision with effect from 1st May, 2006.

Hence prior to 1st May, 2006 a limited company which is a body corporate was not liable to pay service tax under the category consulting engineering service.

The petitioner is admittedly a body corporate and, therefore, it will not be covered under consulting engineering service for the material period.

In this connection reliance was placed on a decision of a Division Bench of the Karnataka High Court in the case of CST, Bangalore-vs.-Turbotech Precision Engineering PVT.LTD.reported in 2010 (18) STR545 and a decision of the Division Bench of the Delhi High Court in the case of CCE & Service Tax-vs.-Simplex Infrastructure & Foundry Works reported in 2014 (34) STR191 (19) The petitioner had applied under the RTI Act with the query as to how many show cause notices issued by the department in the year 2006 or prior thereto were pending for adjudication.

The answer was given as NIL.

The same person, who affirmed the affidavit-in- opposition in the instant proceeding on behalf of the department, had issued the reply to the petitioners application under the RTI Act.

The department has offered no explanation as to why hearing notice has been sent after a gap of seven years. It is evident that the respondents have maliciously issued the said hearing notice in respect of the impugned show cause notice which does not exist in the departmental records for adjudication.

(20) Although there may be no time limit for adjudication of show cause notices issued by the department, the same should be done within a reasonable period of time.

When no time limit is prescribed under the law, it has to be done within a reasonable period of time i.e. preferably within three years and not later than five years. In this connection reliance was placed on a decision of the Honble Supreme Court in the case of State of Punjab-vs.-Bhatinda District Co-op.

Milk P Union LTD. reported in 2007 (11) SCC363 In that case, at paragraphs 18 and 19 of the judgment the Honble Supreme Court observed that if no period of limitation has been prescribed, a statutory authority must exercise its jurisdiction within a reasonable period.

What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant facts. It was observed that the revisional jurisdiction under Section 21 of the Punjab General Sales Tax Act, 1948, should ordinarily be exercised within a period of three years and in any event not beyond five years. Also in the case of Government of India-vs.-Citetal Fine Pharmaceuticals reported in 1989 (42) ELT515 the Honble Supreme Court observed that in the absence of any period of limitation, it is settled that every authority is to exercise its power within a reasonable period.

(21) If adjudicatory proceedings are not completed within a reasonable period, the same are liable to be quashed.

In this connection, reliance was placed on a decision of the Bombay High Court in the case of Hindustan Lever Ltd.-vs.-Union of India reported in 2011 (24) STR97 wherein at paragraph 15 of the judgment it has been observed that it is well settled that adjudicatory proceedings have to be culminated within a reasonable time and

if the same is not done, they stand vitiated on the said ground.

The weight of the judicial pronouncements lean in favour of quashing the proceedings, if there has been an undue delay in deciding the same.

The underlying principle laid down in the judgments is that in absence of any period of limitation, it is required that every Authority is to exercise its power within a reasonable period.

In the case of Bhagwandas S.

Tolani-vs.B.C Aggarwal reported in 1983 ELT44 the Bombay High Court rejected the departments contention that no time limitation is prescribed for adjudication by holding that if such contention was accepted, then the department could commence adjudication proceedings even after ten yeRs.fifteen years or twenty years after the original show cause notice, which cannot be permitted.

In the case of Universal Generics PVT.Ltd.-vs.-Union of India reported in 1993 (68) ELT27 a Division Bench of the Bombay High Court allowed the petition for quashing the show cause notice as the department had no explanation as to why the adjudication proceedings were not completed for ten yeRs.In the case of Biswanath & Co.-vs.-Union of India reported in 2010 (257) ELT30 this court set aside the impugned order after taking note that the order had been passed almost after three years from the date of issuance of the show cause notice.

(22) In the draft show cause notice prepared by the department it was stated, inter alia, that it appears that most of the services provided by the said company do not fall under the category consulting engineering service and without any documentary support the SCN on 33 per cent of their annual income shown in the balance sheet, if issued may not sustain. Thus, the department was also conscious that the petitioner was not liable to pay service tax under consulting engineering service for the period covered by the impugned show cause notice and the department issued such notice under the pressure and direction from CERA.

(23) The impugned show cause notice was purportedly issued on scrutiny of annual accounts (profit and loss account) and other relevant records, without giving any details of such accounts and records and without providing copies of such documents and records which have been relied upon by the department.

Further, in the impugned show cause-cum-demand notice service tax has been computed on 33 per cent of the receipt by referring to RAC meeting of Mumbai II Commissionerate, without mentioning the number or date of such meeting and without providing copy of minutes of such meeting.

In this connection, reliance is placed on the Division Bench decision of the Bombay High Court in the case of Kellogg India PVT.Ltd.-vs.-Union of India reported in 2007 (8) STR84 wherein at paragraph 51 of the judgment it was observed that the adjudicating authority was in error in not directing the respondents to supply copies of the testing reports to the petitioners. A document to be relevant may support either the Revenue or the petitioner.

No adjudicating authority can, therefore, refuse production of such a document simply because that document which is to be used against the subject is not relevant in its perception.

This would certainly amount to refusal of reasonable opportunity to defend.

(24) Mr.Mittal summed up his submissions as follows.

The impugned show cause notice and the hearing notice are non-est and invalid in the eye of law.

The show cause notice was issued more than seven years after initiating inquiry against the petitioner and under the direction of CERA.

The hearing notice was issued seven years after issuance of the show cause notice.

In the draft show cause notice dated 12th April, 2006, the department itself admitted that services provided by the petitioner do not fall under the category of consulting engineering service and without documentary support, such a show

cause notice is not sustainable.

In the case of CCE-vs.-Mohan Bakers PVT.LTD.reported in 2009 (241) ELT A23, this court dismissed the appeal filed by the department where the show cause notice was issued after two years from the date of inspection.

In the case of Giriraj Industries-vs.CCE Kolkata II reported in 2009 (242) ELT A84, this court approved the decision of the Tribunal that the show cause notice issued fifteen months after the cause of action arose is enough to include that the proceedings are initiated without any seriousness and without following the due process of law.

On the basis of these submissions Ld.

Counsel prayed for quashing of the show cause notice and the hearing notice.

Contention of the respondents:(25) Appearing on behalf of the Department Mr.Saraf, Ld.

Counsel submitted that the petitioners are not entitled to approach this court merely against the issuance of a notice of personal hearing.

The assessing officer is empowered to issue such a notice and the same is for the purpose of affording a fair opportunity to the petitioner to present its case.

Even the show cause notice issued to the assessee is valid.

In this connection he relied on a decision of this court in the case of Surya Alloy Industries Ltd.-vs.-Union of India reported in 2014 (305) ELT340wherein after referring to a catena of decisions including the decision of this court in Indian Cardboard Industries-vs.-Collector reported in 1992 (58) ELT508 it was observed as follows:Power of judicial review, under Article 226 of the Constitution of India, can be exercised where challenge to a show cause notice is made provided it is patently demonstrated that the same is issued without jurisdiction or it does not disclose any offence to have been committed.

Ordinarily High Court should not embark to decide the factual disputes but relegate the party to submit the reply before the authority concerned who is obliged to decide the same.

The aforesaid rule is, however, not free from exception.

The exception, carved out in the case of Indian Cardboard Industries Limited (supra).in my opinion, still holds the field.

The aforesaid exception can be aptly quoted hereunder: On the basis of the decisions cited it appears that the court in exercise of its jurisdiction under Article 226 of the Constitution will interfere with a show cause notice in the following circumstances: (1)When the show cause notice ex facie or on the basis of admitted facts does not disclose the offence alleged to be committed; (2)When the show cause notice is otherwise without jurisdiction; (3)When the show cause notice suffers from an incurable infirmity; (4)When the show cause notice is contrary to judicial decisions or decisions of the Tribunal; (5)When there is no material justifying the issuance of the show cause notice. In the ordinary course, the High Court will not exercise its writ jurisdiction to interfere with a show cause notice issued by the revenue Department excepting in the cases mentioned above.

None of the exceptions apply to the facts of the instant case.

It cannot be said that the notice does not disclose the alleged offence or is without jurisdiction or suffers from any incurable infirmity or is contrary to any judicial decision or there is no material justifying the issuance of the show cause notice.

Hence, the instant writ petition is not maintainable in law.

(26) Ld.

Counsel then submitted that the High Court cannot entertain writ petitions on classification.

The service provided by the petitioner can be reasonably classified into two categories or entries.

He referred to this court's decision in the case of Stores Supply (India) Agency reported in 1988 (38) ELT583 wherein it has been observed that the writ court should not interfere when two reasonable classifications are possible and the Revenue Authorities have adopted the one that is favourable to them.

Interference is called for only when the classification is perverse.

He then referred to the decision of the Honble Supreme Court in the case of ACST-vs.-P.

Kesavan & Co. reported in 1996 (81) ELT7 in support of his submission that in classification matters the Revenue Authorities are in better position to seek and appreciate necessary evidence to determine whether a particular product falls under a particular entry or not.

The writ courts should not entertain a writ petition on such issues but should direct the writ petitioner to agitate his grievance before the statutory authorities and this shall apply even to cases where sufficient evidence is placed before the writ court for an unambiguous conclusion upon technical matters. He also referred to a decision of the Bombay High Court in the case of Apcotex Industries-vs.-Union of India reported in 2011 (271) ELT46 in this regard.

(27) It was then submitted that the impugned show cause notice has been validly issued under the proviso to Section 73(1) of the Finance Act, 1994 as substituted by Finance (No.2) Act, 2004.

The provision having been substituted completely prior to the issuance of the show cause notice dated 21st April, 2006, it was incumbent upon the assessing officer to issue notice in accordance with the law prevailing on the date of its issuance as the old provision was no longer in force.

In support of this proposition he relied on a decision of the Karnataka High Court in the case of CST-vs.-The Peoples Choice reported in 2014 (36) STR10 wherein the Karnataka High Court upheld the decision of the Tribunal cancelling the show cause notice issued on 10th September, 2004 under Section 73 (1) of the Finance Act, 1994 as it stood prior to the amendment for a period prior to the amendment

as the show cause notice should have been issued under the amended provision and not under the old provision.

(28) Mr.Saraf then argued that even assuming but not admitting that the interpretation offered by the petitioners is correct and that the show cause notice should have been issued under Section 73(1) of the Finance Act, 1994 as it stood prior to the amendment, it would be of no consequences, as there was no material change in law.

Under Section 73(1)(a) as it stood prior to the amendment, the assessing officer could issue a show cause notice within a period of five years if he had reason to believe that by reason of omission or failure on the part of the assessee, to make a return under Section 70 for any prescribed period or to disclose wholly or truly all material facts required for verification of the assessment under Section 71, the value of taxable service has escaped assessment or has been under-assessed or service tax has not been paid or has been short paid or any sum has erroneously been refunded.

The word suppression of facts can be easily read into the above provision which makes failure on the part of the assessee to truly disclose all material facts, a ground for invoking the extending the period of limitation.

(29) The mere mentioning of a wrong provision of law would not vitiate the show cause notice as the assessing officer was otherwise competent to issue the same.

This principle has been laid down by the Honble Supreme Court in the case of J.Steel-vs.-Union of India reported in 1978 (2) ELT J335 and also in the case of Sanjana-vs.Elphinestone Spinning & Weaving Mills reported in 1978 (2) ELT J399.

(30) The petitioner is guilty of suppression of facts.

In its reply dated 24th May, 2006, the petitioner had accepted that it rendered services which would come under the head of consulting engineering and had referred to the circular dated 18th December, 2002 bearing No.49/11/2002-ST issued by the Central Board of Excise and Customs.New Delhi but then relied upon a decision of Daliem Industries Co.(Tribunal, Delhi) to state that as per the

said decision the service component of a works contract cannot be vivisected and hence its activities are not amenable to service tax under Section 65(105)(g).The petitioner then referred to the circular dated 18th December, 2002 and stated that such services have been regarded as consulting engineering services under the said circular.

The said reply to the petitioner is in complete contradiction to its previous replies wherein it categorically denied providing any kind of consultancy service whatsoever.

The inconsistent stand taken by the petitioner and the incorrect submission made by it about the nature of its services clearly shows that it has suppressed material facts which brings them squarely under the purview of the proviso to Section 73 (1)(a) of the Finance Act, 1994.

(31) On the issue of classification involved in the present case, the regular benches of the Tribunal in the case of Daliem Industrial Co.reported in 2003 (155) ELT457(Delhi) and in the case of Jyoti LTD.reported in 2008 (9) STR373(Ahmedabad) had held in favour of the assessee.

In both the cases the Revenue Department filed special leave petitions.

The Honble Apex Court dismissed the SLP in the case of Daliem Industrial Co.without making any observation on facts or law.

In the case of Jyoti Ltd., the Honble Supreme Court was pleased to admit the SLP and the matter is pending before the Honble Supreme Court.

Simpliciter dismissal of the SLP in the Daliem Industrial Companys case does not create a binding precedent and does not amount to pronouncement of law.

This has been held by the Honble Supreme Court in the case of SS Nadar-vs.-Tamil Nadu reported in (2002) 8 SCC361 wherein the Honble Apex Court referred to its earlier decision in the case of Supreme Court Welfare Association-vs.-UOI reported in (1989) 4 SCC187 (32) Mr.Saraf then submitted that the show cause notice dated 21st April, 2006 and the notice for personal hearing dated 13th

August, 2013 cannot be held to have been vitiated due to a delay of seven years. The Finance Act, 1994, at the time of issuance of the said show cause notice as well as the said hearing notice did not provide any period within which the adjudication proceedings should be completed.

Hence, there is no bar on the respondent authorities to continue the adjudication proceedings.

In the case of CCE, New Delhi-vs.-Bhagsons Paints Indus.

(India) reported in 2003 (158) ELT129 the Honble Supreme Court allowed the respondent authorities to complete the adjudication proceedings nine years after the issuance of the show cause notice as no period was prescribed by the statute.

The Supreme Court overruled the decision of the Tribunal in Bhagsons Paints Indus.

(India)-vs.-CCE reported in 1996 (88) ELT400 which had wrongly read reasonableness into the Central Excise Act, 1944 and had set aside the adjudication order on the ground of delay.

In the case of CIT-vs.-Tara Agencies reported in (2007) 292 ITR444 the Honble Supreme Court held that the courts cannot read words into a statute.

In the instant case, the Finance Act, 1994, did not provide any specific time frame for completing adjudication nor did it say that the same was to be completed within a reasonable period.

Hence, following the decision of the Honble Supreme Court in Bhagsons Paints (Supra) the adjudication proceedings can be validly continued.

(33) The time frame of one year within which adjudication proceedings must be completed has been prescribed by sub-Section (4B) under Section 73 of the Act, which was inserted by Finance (No.2) Act, 2014.

The amendment being prospective in nature cannot apply to the instant case.

The decisions relied upon by the petitioner in Punjab-vs.-Bhatinda District Co-op.

Milk P Union Ltd.(supra) and Government of India-vs.-Citetdal Fine Pharmaceuticals (supra) relate to exercise of suo motu revisional jurisdiction and initiation of recovery proceedings by issuing a demand notice.

The instant case on the other hand relates to continuation of adjudication proceedings for which a show cause notice had already been issued within the permissible time frame whereas in the aforesaid cases cited by the petitioner proceedings were sought to be initiated after inordinate delay.

(34) Ld.

Counsel then submitted that the show cause notice dated 21st April, 2006 was issued by the respondent authorities within seven months of the letter dated 28th September, 2005 whereby the respondents had summoned the representatives of the petitioner.

Reliance by the petitioner on the decision in Mohan Bakers (P) LTD.(supra) and Gammon India LTD.(supra) is misplaced as in those cases the show cause notices were issued two years after inspection.

In Giriraj Industries (supra) the show cause notice was issued after fifteen months and accordingly quashed.

In the instant case, the inspection was made in 1998 for a period which is not covered by the show cause notice dated 21st April, 2006.

Thereafter, enquiries were made in 2004 and 2005 and the impugned show cause notice was issued within seven months from the last enquiry made in the matter.

(35) The next submission of Ld.

Counsel was that the assessing officer having based his findings on the documents provided by the assessee himself and not any outside document, the question of violation of principles of natural justice for not providing copies of documents relied upon, does not arise.

Prior to filing of the writ petition, the petitioner never sought for copies of the relied upon documents obviously because such documents having been provided by the petitioner itself, they are not documents or evidence which are in the exclusive possession of the respondents and/or documents which are not known to the petitioner.

Hence, there has been no breach of the principles of natural justice.

The cases referred to by the petitioners in this connection are not applicable to the instant petition.

In each of those cases, the assessee had levied specific allegations against the revenue authorities, such as clandestine removal of relied on test results of the products.

These reports and evidence were received from outside source and not known to the assessee and as such the courts in seisin of such matters set aside the notice or the order passed in such proceedings but at the same time gave liberty to the Department to re-initiate the proceedings by providing copies of the relied upon documents.

In Kellogg India (P) LTD.(supra).Revenue Department had got the assessee's products tested and did not supply copies of test reports to the assessee.

The same was held to be improper since the tests were carried out by the revenue authorities and the assessee had no knowledge of the report thereof.

(36) Mr.Saraf then submitted that the show cause notice dated 21st April, 2006 covers consulting engineering services whereas the show cause notice dated 9th April, 2009 covers civil construction.

Further, the time frame common to the said two notices is only for the period 19th December, 2004 to 31st March, 2005 which forms only a small part of the period of show cause notice dated 21st April, 2006.

In the event it is held that the show causes do overlap, the period of show cause notice dated 21st April 2006 will be reduced by the period by which it overlaps with

the show cause notice dated 9th September, 2009 but it shall not render the show cause notice dated 21st April 2006 a nullity.

(37) The petitioners submission that the definition of the term consulting engineering as it stood during the relevant period is limited to an individual or to a partnership firm but does not extend to a limited company, is in complete contradiction to the petitioners own statements made in the replies dated 19th May, 2004 and 6th July, 1998.

In the reply dated 6th July, 1998, the petitioner stated that a firm would include a company, etc providing engineering services and consultancy.

In the reply dated 19th May, 2004, the petitioner stated that consulting engineering may include a company.

In the case of MN Dastur & Co.Ltd.-vs.-UOI reported in 2002 (140) ELT341 this court held that no distinction can be made between different categories of service provideRs.be they individuals, partnership firms or incorporated companies and all such service providers come within the purview of service tax.

This decision was upheld by a decision of a Division Bench of this court reported in 2006 (4) STR3 (38) Ld.

Counsel then submitted that the RTI response dated 10th October, 2013 does not vitiate the proceedings initiated under the Finance Act, 1994.

In the instant case, the petitioner filed the RTI application dated 27th August, 2013 only after receiving the notice dated 13th August, 2013 providing it with the opportunity of personal hearing.

Hence, the petitioner was aware of the fact that the proceedings initiated under notice dated 21st April, 2006 are still alive.

Despite knowing the same, the petitioner filed the RTI application dated 27th August, 2013 with a query as to whether or not there are any pending proceedings which are of the year 2006 or the period prior thereto.

This shows the mala fide intention of the petitioner in filing the RTI application.

Further, if incorrect information has been provided to an applicant, he would have to proceed against the authorities under the RTI Act, 2005.

An incorrect response under the RTI Act cannot affect the proceedings initiated under the Finance Act, 1994.

The said response dated 27th October, 2013 cannot operate as estoppel to the proceedings initiated under the Finance Act, 1994.

(39) On the basis of the aforesaid submissions, Mr.Saraf prayed for dismissal of the writ petition.

Courts View:(40) A number of grounds have been urged on behalf of the Petitioner in support of its contention that the show cause notice and the hearing notice impugned in the present proceeding are not maintainable in law and ought to be quashed.

On the other hand, it has been contended on behalf of the Department that the instant Writ Petition is not maintainable.

Since the point of maintainability is a preliminary point, the same is taken up for consideration first.

(41) Appearing for the Department, Mr.Saraf has argued that ordinarily a show-cause notice or a notice of personal hearing cannot be interfered with in the exercise of the Writ Jurisdiction.

It is only when the show cause notice is issued without jurisdiction or it does not disclose any offence to have been committed, that the Writ Court may interfere.

In this connection, learned Counsel relied on this Courts decision in the case of Surya Alloy Industries LTD.-versus Union of India (Supra) wherein this Court referred to its earlier decision in the case of Indian Cardboard Industries -versus Collector (Supra) and reiterated the circumstances in which the Writ Court may interfere with a show cause notice.

These are, when the show cause notice on the basis of admitted facts does not disclose the offence alleged to have been committed; when the show cause notice is without jurisdiction; when the notice suffers from an incurable infirmity; when the show cause notice is contrary to judicial decisions or decisions of the Tribunal; or, where there is no material justifying the issuance of the show cause notice.

Mr.Saraf submitted that none of these circumstances exist in the facts of the present case and as such the Writ Petition should not be entertained.

(42) Appearing on behalf of the Petitioner, Mr.Mittal submitted that the show cause notice has been issued admittedly beyond the stipulated period of 18 (Eighteen) months and is without jurisdiction.

The notice has been issued by invoking the extended time period of 5 (Five) years without there being any justification for invoking such extended period of limitation.

The invocation of the extended period of limitation is erroneous and such error cause to the jurisdiction of the authority issuing the show cause notice.

An authority cannot clothe itself with jurisdiction by erroneously deciding a point of fact or law.

(43) Having considered the submissions of the learned Counsel on the point of maintainability of the Writ Petition, I am of the view that if it be held finally that the extended period of limitation was wrongly invoked by the authority in issuing the impugned show cause notice, the logical conclusion would be that the show cause notice was issued without jurisdiction.

In that event, this Court will be justified in interfering with the show cause notice in the exercise of its Writ Jurisdiction.

It is trite law that an authority cannot confer on itself jurisdiction to do a particular thing by wrongly assuming the existence of a certain set of facts, existence whereof is a sine qua non for exercise of jurisdiction by such authority.

An authority cannot assume jurisdiction to do a particular thing by erroneously deciding a point of fact or law.

In the instant case, since the petitioner has challenged the jurisdiction of the authority to issue the impugned show cause notice, in my view the Writ Petition cannot be rejected at the threshold.

Whether or not the petitioner will ultimately succeed on merits is a different question altogether.

However, it cannot be said that the Writ Petition is not maintainability at all and should not be entertained for adjudication.

(44) There can be no dispute that the question of limitation is a question of jurisdiction and that the Commissioner has no authority and / or jurisdiction to issue notice after the period of limitation prescribed in the Finance Act, 1994.

(45) In *M/s Raza Textiles Ltd., Rampur -versus The Income Tax Officer, Rampur* reported in AIR 1973 SC1362 the Supreme Court held that no authority, much less a quasi-judicial authority, could confer jurisdiction on itself by deciding the jurisdictional fact wrongly.

The question of whether the jurisdictional fact had rightly been decided or not was a question open to examination by the High Court in an application under Article 226 of the Constitution of India.

(46) In the aforesaid case, the Supreme Court held that where the Income Tax Officer had assumed jurisdiction by deciding a jurisdictional fact erroneously, the assessee would be entitled to a writ of certiorari as prayed for, since it was incomprehensible to think a quasi-judicial authority could erroneously decide a jurisdictional fact and impose a levy.

(47) In *Shrisht Dhawan -versus Shaw Brother* reported in (1992) 1 SCC534 the Supreme Court followed its earlier judgment in *M/s Raza Textiles LTD.* and reiterated the proposition that a Court or Tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly.

(48) In *Calcutta Discount Company LTD.-versus Income Tax Officer, Companies District I, Calcutta & Anr.*

reported in AIR 1961 SC372 a Constitution Bench of the Supreme Court held that where the action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, would issue appropriate orders or direction to prevent the same.

(49) In view of the above, the preliminary issue of maintainability of the Writ Petition is decided in favour of the Petitioner.

I hold that the writ petition cannot be dismissed in limine as unmaintainable.

(50) On merits, the fiRs point that has been urged on behalf of the Petitioner is that the impugned show cause notice is barred by limitation and is thus without jurisdiction.

The show cause -cumdemand notice is dated 21st April, 2006 and pertains to the period 1st October, 2000 to 31st March, 2005.

In this connection, Section 73 of the Finance Act, 1994 is relevant and the same, in so far as material for the present purpose is set out hereunder:-S.

73. Recovery of service tax not levied or paid or shortlevied or short-paid or erroneously refunded --- (1) Where any service tax has not been levied or paid or has been shortlevied or short-paid or erroneously refunded, the (Central Excise Officer) may, within (eighteen months) from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of- (a)fraud; or (b) collusion; or (c) wilful mis-statement; or (d) suppression of facts; or (e)contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words (eighteen months).the words five years had been substituted. (51) Sub-Section 6 of Section 73 defines relevant date as

follows:(6) For the purposes of this section, relevant date means,-(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid--(a)where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed; (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules; (c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder; (ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof; (iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund. (52) Thus, where any service tax has not been paid, the Department is empowered to serve a show cause notice on the assessee requiring him to show cause why he should not pay the amounts specified in the notice.

Such notice has to be issued within 18 (Eighteen) months from the date when such service tax was payable.

Any notice issued beyond such period would be barred by limitation.

However, the period of limitation stands extended to 5 (Five) years if non-payment or short payment of the service tax is by reason of fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of Chapter 1 of the Finance Act, 1994 or the Rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax.

(53) In the instant case the impugned show cause notice has admittedly been issued much beyond 18 (Eighteen) months from the date when, according to the Department, the service tax was payable by the Petitioner.

However, the Department invoked the extended period of limitation.

In the impugned notice it is stated inter-alia as follows:It would be evident from the foregoing that had the investigation not been conducted, the fact of providing such

service by the said noticee would have remained unearthed.

Hence, the extended period of 5 years is invocable for issuing show cause notice to the said noticee as per proviso to Section 73(1) of the said Act since the said noticee wilfully suppressed the material facts to the Department with intent to evade payment of service tax and education cess as stated in foregoing paragraphs. (54) The question is whether the Department was justified in invoking the extended period of limitation for the purpose of issuing the impugned show cause notice.

I am of the view that a mere mechanical reproduction of the language of the proviso to Section 73(1) of the Finance Act, 1994 does not per se justify invocation of the extended period of limitation.

A mere ipse dixit that the noticee wilfully suppressed the material facts with intent to evade payment of service tax is not sufficient.

The notice must contain particulars of facts and circumstance in support of such allegation.

Even if such particulars are not included in the notice, the Department should be in a position to justify and/or substantiate its allegation of suppression of material facts on the part of the noticee.

(56) Coming to the facts of the instant case, do we find any suppression on the part of the Petitioner as would entitle the Department to invoke the extended period of limitation?.

To my mind, the answer must be in the negative.

The Department initiated the enquiry by issuing a letter dated 11th June, 1998.

The Petitioner duly responded to the said letter by its letter dated 6th July, 1998, categorically stating therein that the Petitioner did not carry on the business of consolidating engineer and that the Petitioner was basically a civil engineering construction contractor.

The Petitioner submitted to the Department a copy of its balance sheet for the year 1996-97 as also copies of some specimen contracts entered into by and between the Petitioner and its clients.

Upon receipt of such reply from the Petitioner, the Department went on a silent mode and there was no communication from them for 6 (Six) years. Thereafter by a notice dated 15th April, 2004 the Department again instituted an enquiry which was duly responded to by the Petitioner by its letter dated 19th May, 2004.

Such enquiry was also closed without communication of any formal order by the Department to the Petitioner.

The Department again instituted an enquiry against the Petitioner by way of issuing summons dated 20th September, 2005 which was responded to by the Petitioner by its reply dated 28th September, 2005 again categorically stating that it did not fall under consolidating engineering service.

The Petitioner reiterated that it was doing construction work and had obtained registration under construction service which was included within the ambit of service tax with effect from 10th September, 2004.

Then again, there was a long gap and there was no communication from the Department.

More than one and half years thereafter the Department issued the show cause notice which is impugned in the present Writ Petition.

(57) From the aforesaid it appears that the Petitioner was diligent in responding to all the notices issued by the Department and in its replies, the Petitioner clearly explained the nature and scope of its business.

Specimen copies of contracts entered into by the Petitioner when its clients were also made available to the Department.

In my view there was full and sufficient disclosure of the nature of the Petitioner's business to the Department and it cannot be said that the Petitioner suppressed material facts to keep the Department in the dark with an intent to evade payment

of service tax.

(58) It is also pertinent to note that it is stated in the impugned show cause notice itself that the same has been issued on the basis of the records submitted by the Petitioner.

Hence, there appears to be no basis in the Departments contention that the Petitioner suppressed material facts with an intent to evade payment of service tax.

Suppression of fact in the context of this case can only mean nondisclosure of correct information deliberately to evade payment of service tax.

There must be an element of fraud and dishonest motive before a non-disclosure simplicitor can be called suppression of facts.

In the present case, the Petitioner suppressed nothing and maintained all through out that it did not carry on business as consulting engineer and as such was not liable to pay service tax under that head.

Even if such perception of the Petitioner was founded to be erroneous subsequently still the same would not, in my mind, amount to suppression of fact.

Unless a party deliberately conceals material facts with a dishonest motive of eroding some liability or making some unlawful gain, he cannot be said to be guilty of suppression of facts.

(59) As would appear from the show cause notice under challenge, there is no allegation of any conscious act on the part of the Petitioner that constitutes fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of the Finance Act, 1994 or any Rule made therein with intent to evade service tax.

There is only a sweeping statement that had investigation not been conducted material facts would not have been unearthed.

There is no whisper in the impugned notice of the facts which have allegedly been suppressed.

Mr.Mittal has vociferously argued that the vague assertion that the Petitioner had wilfully suppressed material facts with intent to evade payment of service tax was unfounded and I find substantial force in such argument.

(60) The Petitioner furnished all information that was called for by the Department from time to time.

Once the information is supplied pursuant to the directions of the revenue authority and information so supplied has not been questioned, a belated demand has to be held to be barred by limitation.

This proposition finds support from the judgment of the Supreme Court in case of Commissioner of Central Excise, Chandigarh -versus Punjab Laminates PVT.LTD.reported in 2006(202)ELT578 (61) In this connection one may also refer to the judgment of the Honble Apex Court in the case of Commissioner of Central Excise, Chennai -versus Chennai Petroleum Corporation LTD.reported in 2007(211) ELT193where it was held in effect that where the Department was aware of the activities of the assessee and nothing prevented the Department from visiting the assessee's site to make enquiries, it had to be held that there was no suppression on the part of the assessee to warrant invocation of the extended period of limitation.

(62) In Collector of Central Excise, Hyderabad -versus Chemphar Drugs and Liniments, Hyderabad reported in (1989) 2 SCC127 the Supreme Court held:-In order to make the demand for duty sustainable beyond a period of 6 months and up to a period of 5 years in view of the proviso to sub-section (1) of Section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty.

Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months.

Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. (63) In *Anand Nishikawa Co.Ltd -versus Commissioner of Central Excise, Meerut*, reported in (2005).SCC749= 2005 (188) E.L.T.149 (S.C.).the Supreme Court held: we find that suppression of facts can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty.

When facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression.

It is settled law that mere failure to declare does not amount to wilful suppression.

There must be some positive act from the side of the assessee to find wilful suppression. (64) In *Commissioner of Central Excise, Aurangabad -versus Bajaj Auto LTD.*reported in 2010 (260) E.L.T17(S.C.) the Supreme Court referred to and followed its earlier judgments in *Collector of Central excise, Hyderabad -versus Chemphar Drugs and Liniments, Hyderabad (Supra).**Cosmic Dye Chemical -versus Collector of Central Excise, Bombay (Supra).**Anand Nishikawa Co.LTD.-versus Commissioner of Central Excise, Meerut (Supra)* and held that it was settled that mere failure to declare would not amount to wilful suppression.

There must be some conscious, deliberate act with a view to evade tax.

(65) The proposition which emerges from the judgments of the Supreme Court referred to above, is that mere failure to disclose a transaction and pay tax thereon or a mere misstatement or mere contravention of the Central Excise Act or the Finance Act, 1994, as amended, or of any Rules framed thereunder, is not sufficient for invocation of the extended period of limitation.

There has to be a positive, conscious and deliberate action intended to evade tax, for example, a deliberate misstatement or suppression pursuant to a query, in order to evade tax.

(67) On a bare reading of the impugned notice, I am of the view that the Commissioner proceeded on the basis that there had been contravention, as a result whereof, service tax that was payable had not been paid.

The Commissioner of service tax did not address the issue which he was required to do, for issuing a show cause notice by invoking the extended period of limitation.

(68) In my considered view and in view of the law as discussed above, the impugned show cause notice is hopelessly barred by limitation.

There was absolutely no ground or justification for issuing such notice by invoking the extended period of limitation.

None of the pre- conditions necessary for taking recourse to the extended period of limitation exists in the facts of this case and by wrongfully invoking the extended period of limitation the Commissioner conferred on himself a jurisdiction which he otherwise did not have.

(69) In view of the aforesaid the impugned show cause notice and consequently, the impugned notice of hearing cannot be sustained.

(70) Even if I were to decide the issue of limitation in favour of the department, there are other grounds on which I would have been compelled to quash the impugned show cause notice and I think I should briefly indicate those grounds.

(71) The impugned show cause notice dated 21st April, 2006 pertains to the period 1st October, 2000 to 31st September, 2009.

Subsequently, the department issued another show cause notice dated 7th September, 2009 covering the period 10th September, 2004 to 15th June, 2005.

On the basis of the said show cause notice the department initiated adjudication and passed an order dated 15th February, 2012 imposing on the petitioner the liability on account of service tax to the tune of Rs.1,05,28,639/- and Rs.2,10,573/- on account of education cess along with penalty of Rs.1,07,39,212/-.

There cannot be double assessment for the period 10th September, 2004 to 31st September, 2005 as the department has sought to do.

The periods pertaining to which the show cause notice dated 21st April, 2006 and the show cause notice dated 7th September, 2009 were issued, overlapped to an appreciable extent.

This is not permissible in law as held by this court in the case of Avery India Ltd.-vs.-Union of India (2011) (268 ELT64 following the decision of the Honble Supreme Court in the case of Dankan Industries Ltd.-vs.-Commissioner of Central Excise, New Delhi (2006) (201 ELT517.

Two show cause notices could not have been issued in relation to the same period.

The impugned show cause notice, therefore, cannot be sustained.

(72) On a perusal of the impugned show cause notice, it appears to me that the demand raised therein is pre-determined.

The language of the notice suggests so.

For example, the notice states, inter alia, that the noticee has rendered itself liable to penal action under Sections 76 and 78 of the Finance Act, 1994.

Thus the Commissioner appears to have already made up his mind and come to a conclusion that the petitioner has evaded payment of service tax and education cess.

When a demand is pre-determined, the same ceases to be in the realm of a show cause notice as held by the Honble Supreme Court in the case of Siemens Ltd.-vs.-State of Maharashtra reported in 2007 (207 ELT168 wherein it was observed

that although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same, inter alia, appears to have been issued without jurisdiction, the question has to be considered from a different angle when a notice is issued with pre-meditation.

In such an event, even if the courts direct the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose and a writ petition would be maintainable in such a case.

In the present case, it appears to me that the respondents have already formed an opinion as regards the liability of the petitioner and hence, the impugned notice does not remain in the realm of a show cause notice.

For this reason also I would be inclined to quash the impugned show cause notice.

(73) It would appear from the documents on record as also the pleadings filed by the parties that the impugned show cause notice was issued by the Commissioner of service tax in view of the observations of and at the instance of the audit team of CERA.

In this connection one may refer to a letter dated 12th April, 2006 written by the Assistant Commissioner, Service Tax Division-III to the Assistant Commissioner (ADJN) (copy at page 22 of Affidavit-in-Reply) wherein at the concluding paragraph it was stated as follows: Under the situation, as stated above, prima facie, it appears that most of the services provided by the said company do not fall under the category Consulting Engineer Service and without any documentary support the SCN on 33% of their annual income shown in the balance sheet, if issued may not sustain.

However, since it is a CERA case, the revised draft SCN was prepared on the basis of available records covering the period October, 2000 to March 2005 (April 2000 to September 2000 is time barred) and was forwarded for the Commissioners consideration please. (74) It is well-settled that a quasi-judicial authority must act independently and not at the dictates of some other authority.

It is quite evident that the Commissioner issued the impugned show cause notice at the instance of CERA without any independent application of mind and, thereby, abdicated his powers and duty, which is not permissible in law.

In this connection one may refer to the decision of the Honble Supreme Court in the case of Orient Paper Mills Ltd.-vs.Union of India reported in 1978 (2) ELT J345.

(75) In view of the aforesaid, it is not necessary for me to deal with the other grounds of challenge to the impugned show cause notice agitated by Mr.Mittal, Ld.

Counsel for the petitioner including the ground of pendency of proceedings for an inordinately long period of time.

(76) As regards the decisions relied upon by Ld.

Counsel for the department in support of his contention that the High Court cannot entertain a writ petition on classification, in my view, the same have no manner of application to the facts of the instant case.

The issue involved in the present case is not the correctness or justifiability of classification but of sustainability of a show cause notice.

(77) Although I have not entered into the merits of the departments claim on account of service tax as raised in the impugned show cause notice in the sense that I have not dilated on the point as to whether or not the petitioner rendered Consulting Engineer Service thereby becoming liable to pay service tax under that heading, yet I feel that I should briefly refer to the decision of the Honble Supreme Court dated 10th August, 2015 in the case of Commissioner, Central Excise and Customs.Kerala-vs.-M/S.Larsen & Toubro LTD.wherein at paragraphs 24, 41, 44 and 45 of the judgment the Honble Apex Court held as follows: 24.

A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65 (105) would refer only to service contracts simpliciter and not to composite works contracts.

This is clean from the very language of Section 65 (105) which defines taxable service as any service provided.

All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract.

Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him.

This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases.

It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.

41. We are afraid that there are several errors in this paragraph.

The High Court *fiRs*.correctly holds that in the case of composite works contracts, the service elements should be bifurcated, ascertained and then taxed.

The finding that this has, in fact, been done by the Finance Act, 1994 Act is wholly incorrect as it ignores the second *Gannon Dunkerley* decision of this Court.

Further, the finding that Section 67 of the Finance Act, which speaks of gross amount charged, only speaks of the gross amount charged for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract.

We find therefore that this judgment is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contracts.

44. We have been informed by counsel for the revenue that several exemption notifications have been granted qua service tax levied by the 1994 Finance Act.

We may only state that whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded.

Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise.

With these observations, these appeals are disposed of.

45. We, therefore, allow all the appeals of the assesseees before us and dismiss all the appeals of the revenue. (78) Thus, service contracts simpliciter and not composite works contracts come within the service tax net under the provisions of the Finance Act.

The petitioner is involved in performance of composite works contracts and vivisection of such contracts to segregate the service element and impose service tax on the same is not permissible.

(79) In the result, this application succeeds.

The impugned show cause notice dated 21st April, 2006 and the impugned notice of hearing dated 13th August, 2013 are quashed.

In the facts of the case, there will, however, be no order as to costs.

(80) At the end, I would be failing my duty if I do not record my appreciation for the manner in which both Mr.Mittal and Mr.Saraf assisted this Court in deciding the instant writ petition.

(81) Urgent certified photocopy of this judgment, if applied for, be given to the parties upon compliance of necessary formalities.

(Arijit Banerjee, J.)