आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-248/OA/2021-22** आदेश की तारीख़/Date of Order: - 06 .12.2021

जारी करने की तारीख़/Date of Issue :- 08 .12.2021

DIN NO: **20211264WT0000111B37**

द्वारा पारित/Passed by:- मुकेश राठौर/ *MUKESH RATHORE*
संयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 26/JC/MR/2021-22

जिस व्यक्ति)यों (को यह प्रति भेजी जाती है ,उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील ,(केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन ,अंबावाड़ी ,अहमदाबाद-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-.में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(5) उक्त अपील की प्रति।

BRIEF FACTS OF THE CASE :

M/s. Heena Enterprises, Pop.Hasmulhbhai Aditbhai Patel, Shop No.12, Nilkanth Park, Nana Chiloda, Naroda, ahmedabad - 382340. (hereinafter referred to as the 'assessee' for the sake of brevity) is registered under Service Tax Department vide Registration No. ADZPP3633NST002.

2. Ongoing through the data received from Income Tax department (CBDT data) for the Financial Year 2015-2016 & 2016-17, it has been observed that the assessee has not filed the ST-3 returns despite being the service turnover as shown in ITR/P&L account for F.Y 15-16 & 16-17. The details of the value of I.T return for F.Y 15-16 & 16-17 is as per table mentioned below:

(Rs.)

F.Y.	Basic value as per ST-3	Basic value as per ITR/P&L account (Rs)	Difference of value (Rs.)	Resultant Service tax short paid (Rs.)
2015-16	0	6,99,47,872	Rs. 6,99,47,872	1,04,92,180.8
2016-2017	0	4,12,03,704	Rs.4,12,03,704	61,80,555.6
Total	0	**11,11,51,576**	**Rs. 13,36,92,472**	**16,672,736.4**

3. The department requested assessee for clarification regarding the differential value as mentioned in above table with certified documentary evidences vide **letter dated 12.04.2021** ,but the said service provider has not replied the observations raised by Range office with supporting documents till the issuance of this notice. Unquantified demand at the time of issuance of SCN-

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified that:

> *'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.*

4. Form the above facts, it is observed that the "Total Amount Paid / Credited under Section 194C, 194H, 194I, 194J OR Sales / Gross Receipts from Services (From ITR)" for the period from April, 2017 to June, 2017 has not been disclosed by the Income Tax Department and the service provider has also, even after the issuance of letters and reminders from the Department, not submitted the same. Therefore, the assessable value for the period from April, 2017 to June, 2017 is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by any other sources / agencies, against the same service provider, action will be initiated against the said service provider under the proviso to Section 73(1) of the Finance Act, 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for period from April, 2017 to June, 2017 will be recoverable from the said service provider accordingly.

5. As per Section 68 of the Finance Act, 1994 : Payment of Service Tax :- "(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section [66B] in such manner and within such period as may be prescribed. It is observed that the assessee failed to pay service tax, as detailed above, during the year 2015-16 & 2016-17 and thereby contravened the provisions of Section 68 of the Finance Act, 1994 readwith Rule 6 of the Service Tax Rules, 1994. As per Section 70 of the Finance Act, 1994 : (1) "Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the superintendent of Central Excise a return....." . It appears that the assesse has failed to assess the service tax on the taxable amount received by them and also failed to furnish periodical returns and thereby contravened the provisions of Section 70 of the Finance Act, read with Rule 2 (1)(d) of the Service Tax Rules, 1994

6. In view of above, it appears that the assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of **Rs.10,492,180.8/-** for **F.Y. 2015-16 and Rs.6,180,555.61/-for F.Y. 2016-17**] as per their ITR/ Form 26AS/P&L account, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994.in as much they failed to properly assess their service tax liability and failed to furnish periodical returns.

7. It has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the value, that has come to the notice of the Department only after going through the CBDT Data generated for the Financial Year 2015-2016 & 2016-17. The Government has, from the very beginning, placed full trust on the service providers and accordingly measures like self assessment, based on mutual trust and confidence are in place. From the evidences, it appears that the said assessee has knowingly suppressed the facts and not filed the returns regarding receipt of/providing of services by them -. It appears that the above act of omission on the part of the assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 by invoking proviso under sub-section (1) of Section 73, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the assessee constitute offence of the nature specified under Section 77(2) and 78 of the Finance Act, 1994, it appears that the assessee has rendered themselves liable for penalty under Section 77(2) and 78 of the Finance Act, 1994 for the contravention of the Section 70 of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994 and Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 respectively..

8. Therefore SCN was issued to M/s.Heena Enterprises called upon to show cause as to why:

a) The demand for Service tax to the extent of **Rs.10,492,180.8/-** for **F.Y. 2015-16 and Rs.6,180,555.61/-for F.Y. 2016-17**]short paid /not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;

b) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;

c) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

d) Penalty should not be imposed upon them under the provisions of Section 77(2) of the Finance Act, 1994.

DEFENCE REPLY:

9. The assessee vide reply dated 17.05.2021 furnished written submission wherein they stated that the income shown in their ITR for the year 2015-16 and 2016-17, the amount of income shown in ITR is Rs. 3,73,49,653/- & Rs. 4,12,03,704/- as per audit report and balance sheet respectively which are considered as taxable service in the notice, but on what ground it is considered as taxable value is not mentioned any where in the notice and therefore the SCN is not sustainable. They further submitted that in the SCN no classification of service has been mentioned that under which the noticee is covered and liable to pay tax and therefore in the absence of the same SCN is required to be dropped . The assessee is demanded service tax @15% on value for the period 2015-16 but an amount of RS.6,99,,47,872/- which is not as per audit report and balance sheet

10. The said assessee further submitted that they were providing cleaning services and manpower supply service and has paid service tax on cleaning services but not paid service tax on supply of manpower service as per Noti.No.30/2012 – ST dt.26.06.2021 at Sr.No.8, the liability to pay service tax is shifted to service recipient and not service provider. Apart from that the notice is proprietary concern and service receiver is other than proprietor i.e. Limited Co, P.Ltd co and therefore service recipients are liable for service tax therefore SCN demanding service tax deserving to be dropped. Regarding the allegation of suppression of facts, the assessee they submitted that they registered with service tax department under STC No.ADZPP3633NST002 and the noticee has filed regularly return for disputed period and the deptt could not have collected the details from noticee or from income tax deptt within the statutory time limit.. Therefore there is no suppression of facts. They relied upon the case laws of Commissioner of Central Excise, Jalandhar VS.Royal Enterprises 2016 (337)ELT 482, 1989 (40) ELT 276 (SC), 1995 (78) ELT 401 (SC), 2017 (349) ELT 13 (Kar) and 2017 (349) ELT 137. They also contended that penalty u/s.78 of Finance Act, 1994 is not imposable as there is no suppression of the facts. They relied upon the case laws 1989(40) ELT 214 (SC), 1990 (46) ELT 430 (TRIBUNAL), 1978 (2) ELT (SC),320, 1998 (33) ELT 548 (Tri), 200(125) ELT 781 and 1994 (74) ELT 9 (SC) in support of their claim.

PERSONAL HEARING:

11. The personal hearing in the matter was held on 29.09.2021. Shri Naimish K. Oza (Advocate) appeared for personnel hearing on behalf of the assessee. He furnished the written submission along with the supplementary documents at the time of personnel hearing. He reiterated the written submission made on dated 17.05.2021 and submission at the time of Personnel Hearing. He requested that SCN may be dropped. During the personnel hearing, in the written submission they stated that the income is pertaining to providing service which is cleaning and Manpower

Supply Service, that the notice is registered with the service tax department; that the service tax is paid on income on cleaning services; that they provide service of man power supply; that the service recipient in respect of providing services of man power supply is liable to pay service tax as per Notification No.30/2012-ST dated 20.06.2012

DISCUSSION AND FINDINGS:

12. I have carefully gone through the facts of the case and records available in the case file. I have also gone through the defence reply dated 17.05.2021 filed by the assessee. On going through the same, I find that the impugned show cause notice is issued based on the data shared and provided by the CBDT for the year 2015-16 and 2016-17 on the ground that the assessee had earned substantial Service income of Rs. 11,11,51,576/- by way of providing taxable services, but has not discharged their Service Tax liability fully and not paid the service tax. The issue in the impugned Show cause notice is whether the assessee is liable to pay service tax of Rs.1,66,72,736/- on the difference value of Rs. 11,11,51,576/- under provision to Section 73 of Finance Act, 1994 or not;

13. They have contended that the services provided by them are cleaning services and Man Power Supply Services and they have paid the Service Tax on Cleaning Services and has not paid Service Tax on man power Supply Services as they are covered under Noti. No. 30/2012-ST dated 20.06.20102. According to Sr. No. 8 of the said notification, the service recipient is liable to pay service tax as the notice is proprietor and service recipient is other than the proprietor. I have gone through the Notification No. 30/2012-Service Tax dated 20.06.2012, the relevant portion of the said notification is furnished herewith:

Notification No. 30/2012-Service Tax New Delhi, the 20th June, 2012

GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),*vide* number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

1. The taxable services,—

(A) *(i)* provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

(ia) provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company;]

(ib) |***|;

(ic) provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998);

(*ii*) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(*a*)any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(*b*)any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(*c*) any co-operative society established by or under any law;

(*d*) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(*e*) any body corporate established, by or under any law; or

(*f*) any partnership firm whether registered or not under any law including association of persons;

(*iii*) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;

(*iv*) provided or agreed to be provided by,—

(*A*) an arbitral tribunal, or

(*B*) an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocates, or";

(C) Government or local authority [5][***] excluding,—

(1) renting of immovable property, and

(2) services specified in sub-clauses (*i*), (*ii*) and (*iii*) of clause (*a*) of section 66D of the Finance Act,1994,

to any business entity located in the taxable territory;

(iva) provided or agreed to be provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, to such business entity who is litigant, applicant, or petitioner, as the case may be;

(ivb) provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate;

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose [[or security services] or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

(*vi*) provided or agreed to be provided by a person involving an aggregator in any manner;

(vii) provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India;

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I shall be as specified in the following Table, namely:—

TABLE

Sl. No.	*Description of a service*	*Percentage of service*	*Percentage of service tax payable by any person liable for paying service tax other than the service provider*
(1)	*(2)*	*(3)*	*(4)*
8	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose [or security services]	*Nil*	100%

2.This notification shall come into force on the 1st day of July, 2012.

14. The aforesaid notification has been amended vide Notification No. 07/2015 ST dated 01.03.2015. I furnish herewith relevant portion of the said notification.

Notification No. 7/2015-ST Dated: March 01, 2015

G.S.R. 161(E) In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012, namely:-

1. In the said notification,-

(iii) against Sl. No. 8, in column (3) and column (4), for the existing entries, the entries "Nil" and "100%" shall respectively be substituted:

From the plain reading of aforesaid Notification i.e. 30/2012-ST dated 20.06.2012, the liability to pay Service tax is 25% on service Provider and 75% is on service receiver. However, from 01.03.2015, vide Notification No. 07/2015, the liability to pay Service Tax is entirely on Service Recipient.

15. The assessee has also submitted the copies of Income Tax Returns in Form ITR-6 for Year 2015-16, 2016-17 filed with Income Tax Department as required under Section 11 of the Income Tax Act. I find that the Profit and Loss Accounts for FY 2015-16, 2016-17 recognizes main Revenue as "Labour Contract Income". I find that the aforementioned records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by the firm during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair. I find that in the SCN, the

total amount of value shown i.e. Income for the year declared as per ITR/ P & L for the year 2015-16 is Rs. 6,99,47,872/-. However on verification of ITR & audited Balance Sheet for the year 2015-16, the Labor contract Income is shown as 3,73,49,653/-. The difference in the taxable value has been rectified by the Jurisdictional Assistant Commissioner and requested to consider the value for Subject SCN to Rs. 3,73,49,653/- for the year 2015-16 as declared in their ITR/Audited balance Sheet instead of Rs. 6,99.47,872/- demanded. Accordingly, I consider the income for the year 2015-16 based ITR/audited Balance sheet as Rs. 3,73,49,653/-. (The calculation Sheet is furnished herewith)

Year	**Basic value as per ITR/P&L account (Rs) (as per demand in SCN)**	After rectification from Division Office and as per statutory records i.e Balance Sheet and P & L account
2015-16	6,99,47,482	3,73,49,653
2016-17	4,12,03,704	4,12,03,704

16. I have also gone through the ST-3 returns, Audited Balance Sheet, ITR, 26 AS and ledger accounts for the period 2015-16 and 2016-17 and find that the assessee has declared value of services in respect of cleaning services for the year 2015-16 as Rs.2,26,387- and for the year 2016-17 as Rs.1,44.548/- and accordingly they have paid the Service tax on cleaning and house keeping Services and declared NIL Clearance value in respect of Services provided for Man Power Supply. The details are furnished herein under;

YEAR	After rectification from Division Office and as per statutory records i.e Balance Sheet and P & L account	Value of Cleaning Services as Shown in ST-3 returns on which ST is paid	Remaining amount to be considered for demand in subject SCN	Service Tax
2015-16	3,73,49,653	2,26,387	3,71,23,266	53,82,274
2016-17	4,12,03,704	1,44,548	4,10,59,156	61,58,873
TOTAL	7,85,53,357	3,70,935	7,81,82,422	1,15,41,747

17. On scrutiny. I further observed and find that the assessee has not declared the service value of Rs. 3,71,23,266/- for the year 2015-16 and Rs. 4,10,59,156/- for the year 2016-17 in their ST-3 returns and therefore they are liable to pay Service Tax on the Services Provided by them in respect of Man Power Supply on the value as stated above as the Same is not declared in their ST-3 returns. The same is required to be recovered from them under the provisions of Section 73 of the Finance Act. 1994:

18. On perusal of para 5 of the SCN, I find that the levy of service tax for FY 2017-18 (upto June 2017). which was not ascertainable at the time of issuance of the subject SCN. if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee. action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act. 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I

however do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part of the SCN.. As the same is not discussed in the Charging Para of the Show Cause Notice. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

19. On scrutiny of relevant ST 3 returns for the year 2015-16 & 2016-2017, I find that the said assessee had failed to disclose the above details in their ST-3 Returns during the period under dispute. Thus, they have suppressed the material facts from the Department by not disclosing in their ST-3 Returns, the fact about providing Manpower Supply Services. This appears to be done intentionally so as not to bring their activities to the notice of the Department, though they were registered for providing various taxable services, as discussed earlier. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. M/s. Heena Enterprise deliberately not shown in their ST-3 Returns, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. The said assessee himself admits in their reply to SCN dated 12.05.2021 that they were providing cleaning service and manpower supply service and they have paid service tax on cleaning service only. They never disclosed that they are providing Manpower Supply Services to various persons and availing the benefit of any Notification. When the assessee is a registered person and are regularly filing ST 3 return, it is his legal obligation to disclose the full facts and material in their ST 3 returns. As they have not disclosed the entire fact that they are providing Manpower Supply service to others, data provided by CBDT helped to find out the suppression of the assessee and subsequent issuance of Show Cause Notice to recover the remaining service tax from the said assessee. The said assessee in their submissions referred various case laws against invoking of extended period, however, in view of the above facts and discussion, it is correctly invoked the extended period while issuing SCN. Moreover, the Hon'ble apex court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.

> *"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.*
>
> *12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis -statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.*

13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.

14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.

15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder , the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as

once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :
"From sub-section 1 read with its proviso it is clear that in case the short payment, nonpayment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis -statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priory the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

In view of the above facts, the extended period is correctly invoked while issuing this Show Cause Notice

20. Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period in the ST-3 Returns, nor did they have sought any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service in the ST-3 Returns during the relevant period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

21. I further find that M/s.Heena Enterprises had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period from 01.04.2015 to 31.03.2017:

(i) Section 67 of the Finance Act, 1994 read with Rule 2A(ii)(B)(ii) of Service Tax (Determination of Value) Rules, 2006, in as much as they have failed to determine the net taxable value of taxable service and declared the same to the department.

(ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994 , as amended, in as much as they did not pay the appropriate Service Tax on the taxable services provided by them.

(iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, have failed to furnish proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided therein and incorporating the required information to the jurisdictional Superintendent of Service Tax.

22. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Act, rendering themselves liable to penalty under Section 77 of the Act, ibid, for failing to furnish proper periodical returns in form ST-3. Therefore, I hold that the assessee is liable to pay penalty u/s.77 of Finance Act, 1994.

23. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of fiancé Act, 1994 as they failed to pay the correct duty with the intend to evade the same. It is also a fact that they had deliberately not shown in their ST-3 Returns, the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided them, in respective ST-3 returns filed by them at the relevant period. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. It, thus, found that the assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act,1994.

24. Further, all the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid/short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years. All these acts of contravention of the provisions of Section 65, 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 liable to penal action under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

25. In view of the above discussion and findings, I pass the following orders:-

ORDER

(i) I hereby drop the service tax demand on excess taxable value of Rs. 3,25,98,219/- for the year 2015-16 ascertained wrongly at the time issuing Show Cause Notice, out of demand on total taxable value of Rs. 6,99,47,872/- as discussed in Para 15.

(ii) I drop the demand on taxable service of Rs. 2,26,387/- for the year 2015-16 and taxable service of Rs. 1,44,548/- for the year 2016-17, for services provided in respect of cleaning services on which appropriate Service Tax has already been paid by the assessee.

(iii) I confirm the Service Tax amounting to Rs. 1,15,41,747/- (Rupees One Crore Fifteen Lakhs Forty One Thousand Seven Hundred Forty Seven only) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act,2017 as amended and order M/s. Heena Enterprises to pay up the amount immediately.

(ii) I order that interest be recovered from M/s. Heena Enterprises on the service tax on Rs. 1,15,41,747/- (Rupees One Crore Fifteen Lakhs Forty One Thousand Seven Hundred Forty Seven only) under the provisions of Section 75 of chapter V of the Finance Act, 1994.

(iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s.Heena Enterprises under Section 77 of the Finance Act, 1994.

(iv) I impose a penalty of Rs. 1,15,41,747/- (Rupees One Crore Fifteen Lakhs Forty One Thousand Seven Hundred Forty Seven only) on M/s. Heena Enterprises under section 78 of the Finance Act 1994 as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Heena Enterprises pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Heena Enterprises shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

06/12/2021

(MUKESH RATHORE)
Joint Commissioner
Central Excise & CGST,
Ahmedabad North

By Regd. Post AD./Hand Delivery
F.No.STC/15-248/OA/2021-22

Date: 06.12.2021

To
M/s. Heena Enterprises, Prop
Hasmulhbhai Aditbhai Patel,
Shop No.12,
Nilkanth Park, Nana Chiloda,
Naroda, ahmedabad - 382340.

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
2. The Dy. /Assistant Commissioner, DIV-I, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-IV, Division-VII, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
5. Guard File.