

System

<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/ F.NO.STC/15-28/OA/2020

DIN : 20211264WT0000272982

आदेश की तारीख /

Date of Order : 07.12.2021

जारी करने की तारीख /

Date of Issue : 08.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-39/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 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 Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2019)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा



M/s. Expositions & Conventions, A/ 1, Krishna Apartment, Jagjivan Park, Nr. Ishwar Bhuvan, Opp. HUDCO Bhavan and Garden, Navrangpura, Ahmedabad - 390009 were issued SCN dated 26.06.2020 (SCN No. DGGI/SZU/36-35/2020-21) vide F.No. INV/DGGI/BRU/ Gr.VII/55/2019-20 by the Additional Director General, DGGI, Surat Regional Unit, Surat demanding therein Service Tax of Rs. 25298074/-..

BRIEF FACTS OF THE CASE PERTAINING TO ISSUANCE OF THE SUBJECT SCN ARE AS UNDER:

M/s. Expositions & Conventions, A/ 1, Krishna Apartment, Jagjivan Park, Nr. Ishwarbhuvan, Opp. HUDCO Bhavan and Garden, Navrangpura, Ahmedabad - 390009, Gujarat (hereinafter referred to as 'assessee' for the sake of brevity) are Proprietorship concern of Shri Yogeshbhai Navnitlal Sutaria, having service tax Registration No. AOLPS9646FST001 for providing taxable services viz. Business Exhibition Services and Event Management Services. In the GST regime, the assessee is registered vide GSTIN 24AOLPS9646F1ZF. The assessee now falls under the jurisdiction of Range-I, Div. VII, Ahmedabad North Commissionerate.

2. Intelligence & Search :

2.1 A Search was conducted on 21/22.01.2020 at the registered premises of the assessee mentioned above and relevant documents (viz. Balance Sheet, Income Ledgers, Form 26AS, Copies of Invoices, etc.) were seized under Panchnama by the officers of DGGI Surat Zonal Unit.

2.2 Statement of Shri Yogeshbhai Navnitbhai Sutaria, Proprietor of the said assessee was recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, and Section 70 & 174 of the CGST Act, 2017, on 22.01.2020 wherein he, *inter alia*, stated as under :

- M/s. Expositions & Conventions, is a proprietorship concern of Shri Yogeshbhai Navnitbhai Sutaria and was set up by him in 2003. They are into provisioning of Business Exhibition Services and Event Management Services. They were registered with Service Tax Department vide Reg. No. AOLPS9646FST00 1 and GST Department vide GSTIN 24AOLPS9646F1ZF.
- Their main customers were Tourism Corporation of Gujarat Ltd. (TCGL) and Youth Services & Cultural Activities, Youth & Cultural Department of the State Government of Gujarat.
- Since, they were a proprietorship firm, he was looking after all the activities of his firm, including Service Tax.
- They had filed ST-3 Returns till June, 2017, however, there was a short payment of Service Tax to the tune of Rs.2.5 Crores approximately by way of declaration of taxable value in the ST-3 returns for the period from OCT, 2014 to JUNE 2017. He had submitted a statement showing his approximate taxable income and Service Tax liability during the said period.



- On the day of search, they have paid Service Tax to the tune of Rs.1.25 Crores through cash towards payment of their pending Service Tax dues. He had submitted copy of two challans vide which they had paid Service Tax of Rs.1.25 Crores alongwith corresponding DRC-03s. He had admitted their Service Tax liability as stated above and had assured to clear the same by the end of JAN, 2020 as per the schedule given in the statement.
- In case of Services Tax, except in case of seven invoices mentioned in the statement, in all other invoices the invoice value was inclusive of Service Tax and they had not charged Service Tax separately.

2.3 From the above statement and from the documents submitted by the assessee, it was noticed that the said assessee was providing taxable services viz. Business Exhibition and Event Management; they were registered with the Service Tax Department and were filing ST-3 Returns and paying Service Tax but they were evading Service Tax by way of resorting to short declaration of Taxable Value as compared to the actual taxable value on which they were supposed to pay Service Tax. Their Proprietor in his said statement dt. 22.01.2020 has also admitted that they have short paid Service Tax to the tune of Rs. 2.5 Crores approximately during the period OCT, 2014 to JUN, 2017 on account of short declaration of taxable value in the ST-3 returns for the said period and submitted the work-sheet of short payment of Service Tax under the said statement as ANNEXURE-A.

3. Investigation

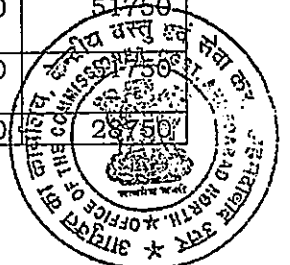
3.1 Invoicing System :

3.1.1 A specific question (Question No. 8) was asked to him to state their system of issuing invoices and whether the invoices were inclusive of Service Tax or otherwise. Question No. 8 and its answer are reproduced below:

Q8 Can you state your system of issuing invoices i.e. whether your invoices are inclusive of ST/ GST or exclusive of ST/GST.

A8 In case of Services Tax, except in case of following invoices, in all other invoices the invoice value is inclusive of Service Tax and we have not charged Service Tax separately:

Sr.No.	Inv.No.	Inv. Dt.	Name of the customer	Taxable Value	Service Tax @15%	Gross Inv. Value
1	102	13.09.2016	Concord Biotech Limited	180000	27000	207000
2	103	14.09.2016	Hester Biosciences Ltd.	45000	6750	51750
3	104	15.09.2016	Invitrogen Bioscience India Pvt. Ltd.	180000	27000	207000
4	105	16.09.2016	Hidden Brains Infotech Pvt. Ltd.	45000	6750	51750
5	106	27.09.2016	Strix Wireless Systems Pvt Ltd.	45000	6750	51750
6	107	17.09.2016	Biolinx Labsystems Pvt Ltd.	45000	6750	51750
7	108	21.09.2016	Tailored Solutions Pvt Ltd.	25000	3750	28750

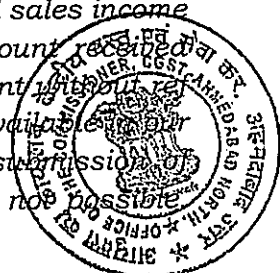


It was clear from the above statement that they were fully aware about their Service Tax liability, though they did not mention the Service Tax component separately on the body of the invoices. Moreover, in seven invoices mentioned above, they had also charged Service Tax separately, which was discussed in detail in the latter part of the SCN issued to them.

3.1.2 On comparing the Sales Invoices (which were available in seized file and some of which were submitted by the assessee subsequently) with the Income Ledger, it was observed that the amount received from their customers was not matching with the invoice value. Further, total value as per the Sales Invoices was on much lower side as compared to the income as per the Income Ledgers. Income received as per the Income Ledgers for the period OCT, 2014 to JUN, 2017 was Rs.27.79 Crores whereas total sales value for the said period as per the invoices was Rs.10.08 Crores. A specific question (Question No. 4) in this regard was asked to the Proprietor of the assessee while recording his statement dt. 24.06.2020 to clarify the matter. Question No. 4 and his reply of the said question is reproduced below :

"Q4 The box file no. 6 seized vide said panchnama dt. 21/ 22.01.2020 contains your sales invoices, which has been perused by you today. On going through this file, it has been observed that only very few invoices are available in this file and during the search you have assured to locate the remaining invoices and submit to this office. The matter was further reminded with you several times and last vide email dt.17.06.2020. However, so far you have submitted only three more invoices under your letter dt. 22.06.2020. What about the remaining invoices? Further, while comparing the invoices seized from your office under panchnama dt. 21/22.01.2020 with your income ledgers, it has been observed that the figures are not matching. What is the reason for the same?"

A4 I regret that I could not locate any more sales invoices, however, we hereby confirm you that all our receipt of payments against the services provided by us are reflected in our Income Ledgers provided to you, there is no income of our firm which are not reflected in our income ledgers. Due to Corona Pandemic, our office and office of our consultant are closed and none of our staff are coming to office and hence we are not able to locate the remaining invoices. Further, I state that the details of the Invoices are not reflected in Income Ledgers submitted by us because of the practice followed in the service sector of Business Exhibition and Event Management, especially with Government Departments. As stated in my previous statement dt. 22.01.2020, majority of our customers are Government Departments. After providing of Business Exhibition/ Event Management Services, to Government Departments, we submit invoice, inclusive of Service Tax, based on self quantification of work done. However, this is not an actual invoice. After our submission of invoice based on self-estimation of work done, the concerned Government Departments themselves quantifies the work again, amends the invoice value and makes payment on the basis of amended value. Many times cumulative payments are received for multiple invoices. We do not receive any break-up from Government Departments regarding actual value of service quantified by them against each invoice. Hence, initially, we book the sales on provisional basis when invoice is submitted to Government authority. But subsequently when we receive payment against the bills, we remove the provisional entries and book final sales income based on actual payment received. As we do not have breakup of amount received against each invoice, we make a cumulative sales income entry of payment with different erring invoice numbers. For the above reason, invoice-wise details is not available in our Income Ledgers. Considering practice that was being followed by us, submission of invoices for corresponding sales entry in income ledger or vice-versa is not possible."



However, I state that all the sales have been recorded in income ledger and accounted for in the Balance Sheet to the extent payment received." (sic).

3.1.3 Since the assessee could not produce copies of all invoices, the value of invoices was found to be not tallying with the Income Ledgers and total value of receipt as per the Income Ledgers was on higher side as compared to the total invoice value, therefore, working out the Service Tax liability based on invoice was found to be not appropriate. Further, majority of their customers were Government Departments and the Proprietor of the assessee in his statement reproduced above confirmed that they were not receiving payments from the Government Departments as per their invoice and the Government Departments had made payment to them as per their quantification of value of services provided and they were not receiving bill-wise payment details as very often the Government Departments used to make cumulative payments of multiple invoices.

3.2 Comparison of Value as per Balance Sheet, Income Ledger and Form 26AS:

3.2.1 A comparative chart of the figures was carried out based on Balance Sheet, Income Ledgers and Form- 26AS, which were either seized or submitted by the assessee subsequently, details of which are as given below :

Period	Value as per Balance Sheet, Including Service Tax	Value as per Income Ledgers, Including Service Tax	Value as per Form 26AS, Including Service Tax
Oct, 2014 to Mar, 2015	5,83,04,030	5,83,04,030	5,83,04,030
2015-16	3,61,86,008	3,61,86,008	3,61,86,008
2016-17	13,17,91,241	13,78,82,308	11,40,72,448
2017-18 (upto Jun)	4,55,40,303	4,55,40,303	26,17,91,607

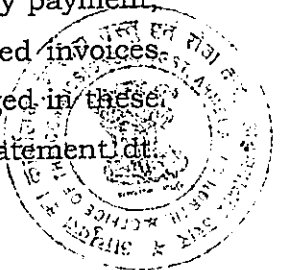
It was seen from the above that the value as per the Balance Sheet, Income Ledgers and Form-26AS were same for the period OCT, 2014 to MAR, 2016. During the Financial Year 2016-17, the value as per the Income Ledger was on higher side when compared to Income as per Balance Sheet and Form 26-AS. However, while verifying the Income Ledger of Exhibition Income, debit entry on account of Service Tax to the tune of Rs.60,91,067/- was found and when that was added to the income as per Balance Sheet i.e. Rs. 13,17,91,241/-, then the total income, including Service Tax, worked out to Rs. 13,78,82,308/-* (Rs.13,17,91,241 + Rs.60,91,067) which was found to be tallying with the income as per the Income Ledger. To clarify the matter, a specific question (Question No. 5) was asked to the Proprietor of the assessee while recording his statement on 24.06.2020 and vide Answer No. 5 he clarified that the said difference was only because of the said Service Tax amount they had calculated and debited in their ledger account of Exhibition Income for the financial year 2016-17. In the said Answer No. 5, he had further confirmed that income figures given in their Balance Sheet, P&L Account, Income Ledgers and Form 26AS for the period OCT, 2014 to JUN, 2017 were inclusive of Service Tax, except in the financial year 2016-17 as explained above. During the financial year 2017-18 (upto JUN) also, the value as

per Balance Sheet and Income Ledger were same whereas value as per Form-26AS was on lower side.

3.2.2 In view of the above, the value shown in the Income Ledger which was also equal to value shown in the Balance Sheet for the periods OCT, 2014 to MAR, 2016 and 2017-18 (upto JUN) and on higher side in 2016-17, and was equal to the value shown in Form-26AS for the period OCT, 2014 to MAR, 2016 and on higher side when compared to the value as per Form-26AS for the period APR, 2016 to JUN, 2017, was found to be appropriate for being considered for Service Tax calculation purpose for the period OCT, 2014 to JUN, 2017. The Proprietor vide Answer No. 3 of his statement dt. 26.04.2020 had also confirmed that except the income reflected in their Income Ledgers, they had not received any other income/ consideration.

3.3 Seven Invoices issued by the assessee wherein Service Tax has been charged separately :

3.3.1 It appeared that the assessee had not charged service tax in the invoice issued during the period OCT, 2014 to JUN, 2017 except in case of the following seven invoice issued in the month of SEP 2016; these invoices were either seized or produced by the assessee subsequently during the investigation. To clarify the matter, a specific question (Question No. 8) was asked to their Proprietor while recording his statement on the day of search i.e. 22.01.2020, which is reproduced above at para 3.1.1. In the said statement, vide Answer No. 8, the Proprietor had clarified that except in the said seven invoices, in all other invoices, they had not charged Service Tax separately and stated that the value in other invoices was inclusive of Service Tax. Accordingly, in case of all other invoices, the Taxable Value had to be worked out on reverse calculation basis considering that the receipts in the Income Ledgers are inclusive of Service Tax. Regarding the said seven invoices (all issued in SEP, 2016) wherein the assessee had charged Service Tax separately, on comparing these seven invoices with the Income Ledger of the assessee for the financial year 2016-17, it was observed that out of the seven invoices, they had received payments only against four invoices i.e. Invoice Nos. 102 to 105 and that also restricting to the Taxable Value, they had not received payment against Service Tax mentioned above charged in these invoices as clarified vide Answer No. 6 of the Proprietor's statement dt. 24.06.2020. However, since the assessee had provided services and issued invoices charging Service Tax separately, they were required to pay Service Tax on these invoices also, even if their customers had not paid the Service Tax component. Regarding the remaining three invoices, the assessee vide Answer No. 6 of his statement dt. 24.06.2020 intimated that even if they had raised invoices, the concerned parties had not made payment to them and hence the same was not reflected in their Income Ledgers. In these invoices also i.e. Invoice Nos. 106 to 107, even if their customers had not made any payment including Service Tax, since they had provided taxable services and raised invoices with Service Tax, they were liable to pay Service Tax on the same as charged in these invoices. The assessee had also agreed to it vide Answer No. 7 of his statement dt. 24.06.2020, copy of which is reproduced below:



"Q7 In case of your above referred invoice Nos. 102 to 108, since you have provided taxable services and charged Service Tax separately in the invoices, you are liable to pay Service Tax as charged in the said invoices, even if you have not received payment of Service Tax component and in some cases no payment has been received. What you have to say about it?

A7 I agree that in case of above referred four invoices bearing Nos. 102 to 108, since we have provided taxable services and charged Service Tax separately in the invoices, we are liable to pay Service Tax as charged in the said invoices and we have paid the same during your investigation as intimated to you."

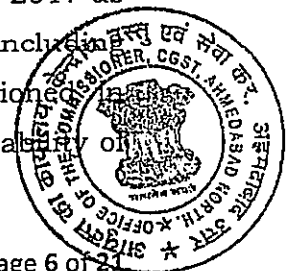
4 Calculation of Service Tax liability for the period OCT, 2014 to JUN, 2017

4.1 Total Service Tax liability for the period OCT, 2014 to JUN, 2017 -

In view of the above, the value as per the Income Ledgers, had been taken as the basis for calculation of Service Tax liability for the period OCT, 2014 to JUN, 2017. Since, except in case of seven invoices mentioned above, the assessee had not charged Service Tax separately in their invoices, the gross taxable value had been worked out in ANNEXURE-A to the Show Cause Notice (SCN) on reverse calculation basis considering that the value as per the Income Ledgers was inclusive of Service Tax. However, in case of the seven invoices mentioned above issued in SEP, 2016 (Invoice Nos. 102 to 108), since the assessee had provided taxable services and had charged Service Tax separately in those invoices, a separate work-sheet had been prepared as ANNEXURE-B to the SCN, wherein no reverse calculation method was adopted and the gross taxable value given in the invoices had been taken into consideration for calculation of Service Tax. Out of the said seven invoices, since in case of four invoices bearing Nos. 102 to 105 issued in SEP, 2016 involving total Taxable Value to the tune of Rs. 4,50,000/- was already included in the Income Ledger, the same had been deducted from the value as per Income Ledger for the Quarter JUL, 2016 to SEP, 2016 given in ANNEXURE-A as it had been considered separately in ANNEXURE-B for Service Tax calculation purpose. Since ANNEXURE-A was the consolidated Service Tax Calculation sheet for the period OCT, 2014 to JUN, 2017, Service Tax liability for the said seven invoices calculated separately in ANNEXURE-B was also included in ANNEXURE-A separately for the quarter JUL to SEP, 2016. Total Service Tax liability for the period OCT, 2014 to JUN, 2017 worked out to be Rs.3,53,88,390/- as mentioned in ANNEXURE-A to the SCN.

4.2 Details of ST-3 filed for the said period OCT, 2014 to JUN, 2017 alongwith details of Service Tax paid had been summarized in ANNEXURE-C to the SCN. It was seen from the ANNEXURE-C to the SCN that for the period OCT, 2014 to JUN, 2017 before the search on 21/22.01.2020, the assessee had paid Service Tax to the tune of Rs.1,00,90,316/-.

4.3 Net Service Tax dues of the assessee for the period OCT, 2014 to JUN, 2017 as on the date of search on 21/22.01.2020- After deducting the Service Tax (including Cess) to the tune of Rs.1,00,90,316/- paid before the search as mentioned in ANNEXURE-C to this SCN (Ref. para 4.2 above) from the total Service Tax liability of



Rs.3,53,88,390/- worked out in , ANNEXURE-A to this SCN (Ref. para 4.1 above), the net Service Tax dues of the assessee as on the date of search works out to Rs. 2,52,98,074/- as worked out in ANNEXURE-A to this SCN. The said calculation of Service Tax in ANNEXURE-A was reproduced in another ANNEXURE captioned ANNEXURE-1 and the same was got perused by the Proprietor of the assessee while recording his statement on 24.06.2020. Vide Answer No. 8 of the said statement he has confirmed that he fully agrees with the contents and calculation in the said ANNEXURE-1.

5. Service Tax paid by the assessee during the investigation- The Proprietor of the assessee vide Answer No. 5 of his statement dt. 22.01.2020 had admitted Service Tax liability to the tune of Rs.2.5 Crores approximately by way of short declaration of taxable value in ST-3 Returns for the period from OCT, 2014 to JUN, 2017 and he had also submitted work-sheet for the same as ANNEXURE-A under the said statement. On the day of search, the assessee had paid Service Tax to the tune of Rs.1.25 Crores through cash and the remaining Service Tax (including Cess) had been paid by them during the investigation through cash as mentioned in ANNEXURE-D to the SCN. Total Service Tax dues as on the date of search was Rs. 2,52,98,074/- as worked out in ANNEXURE-A to the SCN, which the assessee had paid during investigation through cash as mentioned in ANNEXURE-D to the SCN. Service Tax (including Cess) to the tune of Rs. 2,52,98,074/- paid by the assessee on their own volition during investigation as mentioned above was required to be appropriated against their net Service Tax liability to the tune of Rs. 2,52,98,074/- as worked out in ANNEXURE-A to the SCN and as discussed above. The assessee had also paid interest to the tune of Rs.1,32,886/- during investigation. The Proprietor of the assessee vide Answer No. 9 of his statement dt. 24.06.2020 submitted copies of all challans alongwith corresponding DRC-03s in proof of payment of Service Tax (including Cess) to the tune of Rs.2,52,98,074/- during the investigation by DGGI, Vadodara and regarding the remaining interest and penalty he had stated that he would pay the same within three months under intimation to DGGI.

6. Legal provisions – From the records, it appeared that the assessee was engaged in providing taxable services viz. Business Exhibition and Event Management, primarily for events organized by various departments of Government of Gujarat and are receiving consideration in lieu of the said services. In pre-negative regime, the said services were classified as "Business Exhibition Services" and "Event Management Services". The position in the negative list regime is discussed below :

6.1 As per Section 65B(44) of the Finance Act, 1994,

"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include

(a) *an activity which constitutes merely,*

(i) *a transfer of title in goods or immovable property, by way of sale, in any other manner; or*



(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or (iii) a transaction in money or actionable claim;

(b)

(c)

6.2 As per Section 65 B(51) of the Finance Act, 1994 -

"taxable service" means any service on which service tax is leviable under Section 66 B;

6.3 As per Section 66B of the Finance Act, 1994,

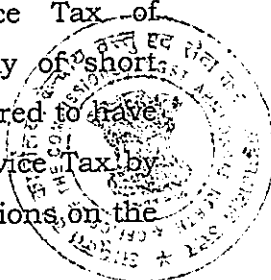
there shall be levied a tax (hereinafter referred to as the Service Tax) at the rate of twelve/ fourteen percent on the value of all services, other than those services specified in the negative list, provided or to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

6.4. From the above legal provision, it appeared that the services viz. "Business Exhibition" and "Event Management" were covered under the definition of Service under Section 65B(44) of the Finance Act, 1994 and were taxable service under Section 65B(51) and therefore liable to Service Tax under Section 66B of the Finance Act, 1994. The consideration of **Rs.24,79,39,564/- (Taxable Value)** as worked out in ANNEXURE-A to the SCN, received by the assessee from various service receivers, for the period from OCT, 2014 to JUN, 2017, for provision of services, were actually towards 'Services' provided in respect of the taxable services viz. "Business Exhibition" and "Event Management".

6.4.1 The assessee had filed ST-3 Returns for the period OCT, 2014 to JUN, 2017 but they had short declared their taxable value to the tune of Rs.17,63,95,792/-, as worked out in ANNEXURE-A and C to the SCN, as compared to their actual taxable value which had resulted in short payment of Service Tax. The Service Tax liability on the said consideration of Rs.17,63,95,792/- not declared in ST-3 Returns, as determined in terms of Section 67 of the Finance Act, 1994 for the period OCT, 2014 to JUN, 2017 works out to Rs. 2,52,98,074/- as mentioned in ANNEXURE-A to this notice, which was required to be paid by them in terms of Section 68(1) of the Finance Act, 1994 read with Rule 6(1) of the Service Tax Rules, 1994 and under proviso to section 73(1) read with section 73A of the Finance Act, 1994 . The assessee also appears to be liable to pay interest on Service Tax payable, collected but not paid, in terms of Section 75 read with section 73B of the Finance Act, 1994 and penalty in terms of Section 76 and 78 of the Finance Act, 1994.

7. Contraventions/Penal Provisions:

7.1 Whereas, the assessee appeared to have short paid Service Tax of **Rs.2,52,98,074/-** during the period OCT, 2014 to JUN, 2017 by way of short declaring the Taxable Value in the ST-3 Returns. Thus, the assessee appeared to have contravened the provisions of Finance Act, 1994 by short paying the Service Tax by short declaring the Taxable Value in the ST-3 Returns. The said contraventions, on the



part of the said assessee appeared to have been committed by them by resorting to suppression of facts, in as much as they had failed to declare the correct Taxable Value to the department in the ST-3 Returns filed by them. They were aware of their tax liability, as confessed in their statement, but had failed to discharge the same with an intent to evade payment of Service Tax.

7.2 All these acts of omission and commission done by them by way of contravention of the provisions of Section 67, 68, and 70 of the Finance Act, 1994 and Rules made thereunder, with an intent to evade the payment of Service Tax, have rendered them liable for penal action under Section 76 and 78 of the Finance Act, 1994.

8. Justification for invocation of extended period :

8.1 It appeared that in spite of getting themselves registered with the Service Tax Department as provider of taxable services and knowing all the procedures very well and also having undertaken to comply with the provisions of the Finance Act, 1994 and Rules made thereunder, the assessee deliberately had not disclosed their correct Taxable Value in their ST- 3 returns for the period OCT, 2014 to JUN, 2017 thereby resulting in evasion of huge amount of Service Tax as discussed above.

8.2 The scheme of Service Tax rests on voluntary compliance by the service provider who are entrusted with the responsibility to pay the Service Tax. As such, the original hypothesis with which one starts out is that the assessee would be complying with the Law in all seriousness that is warranted of a responsible tax payer.

8.3 Interference of departmental officers is generally not permitted as a matter of routine, but only as exceptions and that too when there is specific information or reason to believe that the tax liability is not correctly being discharged. The CBEC (now CBIC), from time to time, has come out with instructions regarding visits by departmental officers, scrutiny of tax returns and other related matters that serve to underline and strengthen the voluntary compliance system.

8.4 The action of disclosure itself is ordinarily limited to the details contained in the periodical return filed once in every six months and the onus to determine facts and issues relevant to the correct ascertainment and discharge of Service Tax levy remains with the provider of taxable services. If such facts on the basis of which an independent and proper evaluation can be made is kept away from the department due to an act of omission or commission by the party responsible to pay tax, it would constitute a situation where the first proviso to section 73 of the Finance Act, 1994, can reasonably be invoked.

8.5 The first proviso to Section 73 of the Finance Act, 1994, states as follows:

"Provided that where any service tax has not been levied or paid or has been levied or short paid or erroneously refunded by reason of:

(a) fraud; or

(b) collusion; or



(c) willful misstatement; or (d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax, by the person chargeable with service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "One year", the words "five years" had been substituted."

8.5.1 Thus, it appeared that a suppression of facts can happen even in the absence of a fraudulent intention or a willful mis-statement, but where suppression had happened out of a conscious decision, extended period is to be invoked.

8.6 In this case, the assessee had deliberately and willfully suppressed the actual Taxable Value on which they were supposed to pay Service Tax by short declaring the Taxable Value in their ST-3 Returns for the period OCT, 2014 to JUN, 2017. Such short declaration of Taxable Value of services provided by the assessee would not have come to the notice of the department, but for the search carried out by the DGGI, Vadodara. It appeared that the assessee had suppressed the above facts from the Department with regard to the Taxable Services provided by them with a clear intention to evade payment of Service Tax and had willfully contravened the provisions of the Finance Act, 1994 and Rules made thereunder with intent to evade payment of Service Tax. Thus, it appeared that the Service Tax amount of **Rs.2,52,98,074/-** (inclusive of cess) short paid by them for the period OCT, 2014 to JUN, 2017 was required to be recovered from the assessee by invoking the extended period of limitation under proviso to Section 73(1) read with Section 73(A) of Finance Act, 1994, along with applicable interest under Section 75 read with Section 73(B) of Finance Act 1994.

8.7 It appeared that the above omissions and commissions on the part of the assessee were with intent to evade payment of Service Tax and therefore the extended period in terms of proviso to Section 73(1) of the Finance Act, 1994 was rightly invocable for recovery of the Service Tax short paid within the stipulated time, along with interest in terms of the provisions of Section 75 of the Finance Act, 1994, read with Section 73(B) of Finance Act 1994. Further, it also appeared that by willfully suppressing the facts regarding provision of taxable output service and receipt of the consideration with intent to evade payment of Service Tax, the assessee has rendered themselves liable to penalty under the provisions of Section 76 and Section 78 of the Finance Act, 1994.

8.8 Penalty for non-maintenance of records : Rule 4A(l) of Service Tax Rules, 1994 reads as under :

"4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan.

1. Every person providing taxable service shall, not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him, in respect of such taxable service provided or agreed to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely:-



- (i) the name, address and the registration number of such person;
- (ii) the name and address of the person receiving taxable service;
- (iii) description and value of taxable service provided or agreed to be provided; and,
- (iv) the service tax payable thereon

The Proprietor vide Answer No. 4 of his statement dt. 24.06.2020 had conveyed his inability to produce all his sales invoices. The issue was discussed in detail aforementioned and Question and Answer No. 4 of the Proprietor's statement was also reproduced therein. It appeared that the assessee had failed to maintain basic records mandated as per Service Tax Rules 1994. By contravening provision of Rule 4A(l) of Service Tax Rules, 1994, they had rendered themselves liable for penalty under Section 77 (1)(b) of Finance Act, 1994.

9. The SCN dated 26.06.2020 F.No. INV/DGGI/BRU/Gr.VII/55/2019-20 issued to the assessee was first answerable to the Principal Commissioner of Central GST and Central Excise, Ahmedabad-South Commissionerate. Subsequently, a corrigendum dated 11.08.2020 was issued from F.No. INV/DGGI/BRU/Gr. VII/ 55/2019-20 by the Additional Director General, DGGI, Surat Zonal Unit, Surat for making the SCN answerable to Principal Commissioner/ Commissioner of Central GST and Central Excise, Ahmedabad-North. Therefore, the assessee was called upon to show cause to the Principal Commissioner/ Commissioner of Central GST and Central Excise, Ahmedabad-North, within 30 days of receipt of the notice as to why

- (i) Service Tax amounting to Rs.2,52,98,074/-(Rupees two Crores fifty two lakhs ninety eight thousand and seventy four only) for the period OCT,2014 to JUN, 2017 (including applicable cess), as mentioned in ANNEXURE-A to the SCN, should not be demanded and recovered from them by invoking extended period as per proviso to Sub-Section (1) of Section 73 read with Section 73A of the Finance Act, 1994;
- (ii) Service Tax of Rs.2,52,98,074/-(Rupees two Crores fifty two lakhs ninety eight thousand and seventy four only) paid by them during investigation in cash through e-challans, as mentioned in ANNEXURE-D to the SCN should not be appropriated from the total demand as mentioned at (i) above;
- (iii) Interest at applicable rates on the amount of Service Tax demanded at (i) above, should not be recovered from them under Section 75 read with Section 73B of the Finance Act, 1994;
- (iv) Interest of Rs. 1,32,886/-(Rupees one lakh thirty two thousand eight hundred and eighty six only) already paid vide e-challan, as detailed in para 6 and ANNEXURE-D of the SCN should not be appropriated against interest to be recovered as mentioned at (iii) above;
- (v) Penalty should not be imposed upon them under Section 76 and Section 78 of the Finance Act, 1994; and
- (vi) Penalty should not be imposed upon them under Section 77(1)(b) of the Finance Act, 1994.



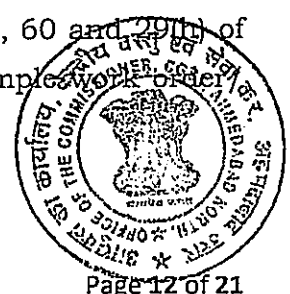
PERSONAL HEARING:

10. The personal hearing on the subject issue was fixed on 24.09.2021, however, the assessee sought adjournment. Accordingly, another date for personal hearing was fixed on 20.10.2021. The personal hearing was attended by Shri Bishan Shah, CA on behalf of the assessee on 20.10.2021. During the personal Hearing, he submitted a written submission dated 20.10.2021, and stated that though the assessee was not liable to pay service tax as they were providing the services to govt. of India, they had deposited the entire disputed tax. He also requested to drop the demand on merits.

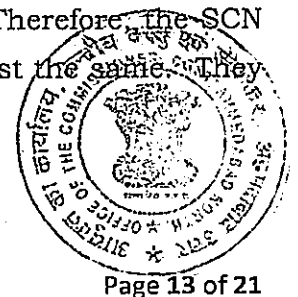
DEFENCE REPLY:

11. The assessee in reply to the SCN tendered their submission vide letter dated 20.10.2021 at the time of personal hearing wherein they inter alia stated that:

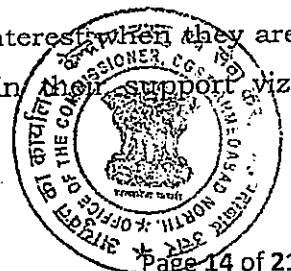
- They were providing the Service tax under Works contract service, Business Exhibition Service and Event management service.
- They were mainly doing the works contract services of preparing stall with material, preparing tableau design along with material for various industries, turn key events with material and organizing exhibitions by using various type of material.
- They had erected various stalls and turnkey exhibitions and conferences. The said work was done by erecting, commissioning, installing of property which includes composite supply of services and goods.
- They were tax compliant, they had filed ST-3 Returns.
- The amount of Rs. 3,53,88,390/- along with Interest of Rs. 1,32,886/- was paid under the pressure of DGGI. They have denied all the charges leveled against them.
- As a sub-contractor, they had provided works contract services to governmental authority/ department of the government in relation to function of Promotion of Cultural, educational and aesthetic aspects/ Cultural activities entrusted to Municipality under Article 243W as well as to Panchayat under Article 243G.
- They were providing Works contract services to another contractor (i.e. Dept. Of Government/ Governmental Authority). The another contractor were providing exempt services, as the same were in relation to function of Promotion of Cultural, educational and aesthetic aspects/ Cultural activities entrusted to municipality or panchayat under article 243W or 243G respectively. Hence, Works contract services provided by them to M/s TCGL or Government Department as a subcontractor, were exempt vide Sr. No. 39, 60 and 29(1) of Notification No. 25/2012-ST. They had submitted copy of sample work order and letter intimating acceptance of their bid.



- They stated that they had organized and managed the turkey events like Van Mahotsav, Tarnetar Fair, Kite Festival, Heritage Festival. In order to organize the event they were required to create stage, provide bouquet and arrange for videography, photography, create temporary structures, pillars, provide electricity generator, Create gate, Walls etc.
- The service was mainly in relation to construction and alteration of temporary immovable property in which ownership in goods passes to the Recipient.
- They have provided works contract service in relation to original works are eligible to pay service tax on 40% value of works contract services.
- They have submitted sample copy of work orders. They have also stated that they have worked out the service tax payable by them to be Rs.15,04,923/- as per annexure-C attached with their reply. They, however, have paid service tax of Rs. 3,53,88,390/- under pressure.
- Further, they stated that they were required to pay 50% of their service tax liability under the reverse charge mechanism as recipient of the service was body corporate.
- Without prejudice to their submission, they have stated that are eligible for cum duty valuation under Section 67(2) of the Finance Act. They have placed reliance on the following case laws:
 - a. M/s. Shree Mohangarh Construction Co. Versus CCE, Jaipur-II (2018 (1) TMI 562) (CESTAT - NEW Delhi)
 - b. M/s. Vi raj Travel Agency Versus Commissioner of Service Tax, Ahmedabad - 2013 (2) TMI 509 - CESTAT Ahmedabad
 - c. Commissioner vs. Advantage Media Consultant 2009-14-STR-J49 (SC)
 - d. Commissioner of Service Tax, Mumbai Vs. Allied Aviation Ltd 2017-(47)-STR-279 (Tri.Mumbai)
 - e. Turret Industrial Security Pvt. Ltd. vs. CCE& C, Jamshedpur 2008-TIOL-45-CESTAT-KOL
 - f. CCE, Patna vs. M/s Advantage Media Consultant 2008-TIOL-548-CESTAT-KOL
 - g. Municipal Corpn of Delhi vs. Commissioner of Service Tax, Delhi 2009-TIOL-975-CESTAT-DEL
 - h. M/s Robot Detective & Security Agency CCE, Chennai vs. CCE, Chennai 2009-TIOL-238-CESTAT-MAD
 - i. M/s ABN Amro Bank vs. CCE,Noida 2011-TIOL-1147-CESTAT-DEL
 - j. M/s Speedway Carriers Pvt Ltd vs. Commissioner of Central Excise, Jaipur 2012-TIOL1230-CESTAT-DEL
 - k. Professional Couriers vs. Commissioner of Service Tax, Mumbai 2013 (32) S.T.R. 348 (Tri- Mumbai)
 - l. CCE, Delhi vs. Maruti Udyog Ltd. 2002-TIOL-34-SC-CX-LB
- They have stated that in their case there was no suppression of facts or willful mis-statement with intent to evade payment of tax, the invocation of extended period under the proviso to Section 73(1) is not applicable, The SCN has failed to substantiate willful mis-statement or malafide intention. Therefore, The SCN is time barred. Similarly, Section 73A is not applicable against the same. They have relied upon the following decisions of the tribunal:



- Honorable CESTAT New Delhi in case of MIS Oriental Insurance Company Limited (2021 (5) TMI 869)
- Honorable CESTAT New Delhi in case of M/s. Gannon Dunkerley & Co. Ltd (2020 (12) TMI 1096), wherein the tribunal has held that the circular cast upon the duty on the officers for effectively scrutinizing the return at the preliminary stage. The Assessee has been regularly filing the returns and so the Department cannot take a stand that it is only during the audit that it can examine the factual position.
- In the case of Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur, 2013 (288) E.L.T. 161 (S.C.), relied upon the case of Anand Nishikawa Co. Ltd v. Commissioner of Central Excise, Meerut, 2005 (188) E.L.T. 149 (S.C.), held that the burden of proving any form of mala fide lies on the shoulders of the one alleging it.
- Suzica Color Laboratory Vs. Commissioner of Central Excise and Service Tax, Patna [2019 (6) TMI 511 -CESTAT-KOLKATA]
- Concept Motors Pvt. Ltd. V. CST, Ahmedabad. Final Order No. A / 11717 / 2018 dated 07.08.2018
- Span Commercial Co. Vs. CCE Ahmedabad-I. Final Order No. A/10185/2020 dated 14.01.2020.
- They have stated that the SCN has been issued Post GST Regime, invoking of provisio to Section 73(1) of the Finance Ac, the applicable GST provision was required to be invoked simultaneously. Without which the SCN is not maintainable.
- They have stated that there is no jurisdiction to issue the Show Cause Notice since Notification No.14/2017 dated 01.07.2017 has been issued by the Central Board of Excise and Customs appointing DGGI as Central Excise Officers under Section 3 of the CGST Act whereas under Section 3 of the CGST Act, only the Central Government can issue a notification appointing officers, and the same is non est in law.
- They have stated that there is no power to delegate the power of identifying authorities to carry out adjudication functions to another authority. The Board alone can't specify who should be the adjudicating authority and an authority issuing a Show Cause Notice cannot specify another authority as an adjudicating authority. Further, all these powers have not been exercised after implementation of GST and such exercise of powers prior to implementation of GST do not survive and are not protected by Section 174.
- They have further stated that they are not liable to pay interest when they are not liable to tax. They have relied on the case laws in *Shri. Sripoti viz. Sundaram Textiles Ltd.* 2014 (36) STR 30 (Mad.)



- Further, they are not liable to penal action under section 77, 78 and 76, as there was no contravention on their part, there was no malafide intention, wilful misstatement or suppression of facts, with an intent to evade tax. They have cited various case law in their support.
- Lastly they have requested to drop the proceeding.

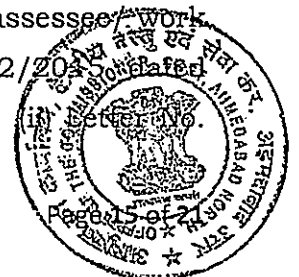
DISCUSSION AND FINDINGS:

12. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 02.03.2020, documents submitted and oral submission made by the assessee during the personal hearing.

13. On going through the SCN, I find that SCN has alleged that the assessee had deliberately and wilfully suppressed the actual taxable value on which they were supposed to pay service tax by short declaring the taxable value in their ST-3 Returns for the period Oct-14 to June-17. Therefore, the SCN has proposed the demand of Service Tax of Rs. 2,52,98,074/- by invoking the extended period of five years under the proviso to section 73(1) read with Section 73A of the Finance Act, 14 alongwith applicable interest under Section 75 read with Section 73B, and has also proposed imposition of penalty under Section 76,78 and 77(i)(b) of the Finance Act, 1994.

14. I find that the assessee has contended that they had provided the works contract services to another contractor as a subcontractor. The works contracts service provided by them were in relation to functions of Promotion of Cultural, educational and aesthetic aspects/ Cultural activities. They have contended that another contractor (i.e. Government authority/ Government department) were providing exempt services, as the same were in relation to function of Promotion of Cultural, educational and aesthetic aspects/ Cultural activities which were the functions entrusted to municipality or panchayat under article 243W or 243G of the Constitution.

15. I find that the SCN mentions that the assessee had provided service of Business Exhibition Service and Event management service. However, during the adjudication the assessee has contested that they had provided the works contract service. I find that they have also stated in their defence reply that they had organized and managed the turkey events like Van Mahotsav, Tarnetar Fair, Kite Festival,, Heritage Festival. In order to organize the event they were required to create stage, provide bouquet and arrange for videography, photography, create temporary structures, pillars, provide electricity generator, Create gate, Walls etc. The service was mainly in relation to construction and alteration of temporary immovable property in which ownership in goods passed to the Recipient. In support of their contention, they have provided 4 copy of sample copies of letters intimating the acceptance of bid of the assessee/ work order. Copy provided are (i) Letter No. Event//IKF/PO.1&02/2015 of 02.01.2015 issued by Tourism Corporation of Gujarat Limited (TCGL)



Event/Tarnetar 2014/1176 dated 01.08.2014 issued by TCGL (iii) Letter No. Event/GIHF/2014 dated 09.02.2014 issued by TCGL and (iv) Work Order Rokad/ 22-4/65 VNM STATE/ EVENT TENDER dated 10.07.2014 issued by Dy. Conservator of Forest, Rajkot.

16. Thus, first and foremost, in order to ascertain as to whether the service provided by the assessee can qualify as works contract service or otherwise, I would like to examine the letters/work order produced during the process of adjudication.

On perusal of the Letter No.Event/GIHF/2014 dated 09.02.2014 issued by Tourism Corporation of Gujarat Limited, it is seen that the subject of the letter reads as follow:

"Letter of intent for "Temporary Infrastructure & Even Management Activities on Turnkey Basis for 1st Great Indian Heritage Festival-2014 to be held at Vadoadara-Gujarat"

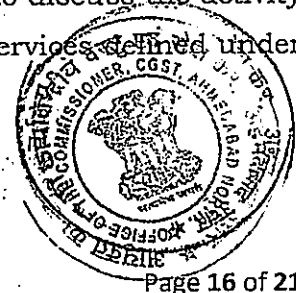
Subject of the letter No. Event/Tarnetar 2014/1176 dated 01.08.2014 reads as follow:

"Letter of intent for "conceptualizing, designing, execution & Supervision of temporary structures & Related Infrastructures and service on turnkey basis for Taranter Fair 2014 to be held at Tarnetar"

Similar description is also found in letter dated 02.01.2015. These letters also mention that *"The detailed scope of work shall be as per the tender document, contract documents, specifications, approved concept and the requirements by the committee"*. Further, the said letter also refers the assessee as "Event Contractor".

On a perusal of the Work Order dated 10.07. 2014, it is seen that the work was awarded for *"preparation of stage for CM, Stage Back Drop, Videography, Sound System, Cleaning, supply of LED TVs, Lighting, decoration, Barrcading, Preparation of VIP Room, Flower, supply of AC/Air cooler"*in relation to dedication of Shakti Van to public. As can be discerned, the work was for managing the event.

I find from the invoices issued by the assessee, available on records, that the same had been issued for the work they carried out; the invoices mention the "Brief Description of work", carried out as *"stage, Mandap, chairs, sofa, gates, manpower, flooring, electrification, light, DG sets, Hostess, Stewards, bouquet and flowers, decoration items, sound systems, site developments, house keeping services, AC Dom, Dinning Hall"*. I find that the assessee at this stage is harping on the term "works contract" as the service provided by them, which is contradictory to the allegation in SCN and also contradictory to what was deposed by the assessee in his statement. In order to have more clarity on the activity, I consider it pertinent to discuss the activity carried out by the assessee in the light of the some activities / services defined under Section 65 of the Finance Act, 1994, prior to 01.07.2012.



65(19a) "business exhibition" means an exhibition, —

- (a) to market; or
- (b) to promote; or
- (c) to advertise; or
- (d) to showcase,

any product or service, intended for the growth in business of the producer or provider of such product or service, as the case may be;]

65(40) "event management" means any service provided in relation to planning, promotion, organising or presentation of any arts, entertainment, business, [sports, marriage or any other event] and includes any consultation provided in this regard;]

65(66) "mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 (4 of 1882) and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organising any official, social or business function;

[Explanation. — For the purposes of this clause, "social function" includes marriage;]

65(77a) "pandal or shamiana" means a place specially prepared or arranged for organising an official, social or business function;

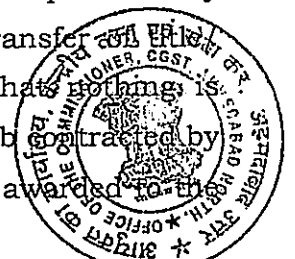
[Explanation. — For the purposes of this clause, "social function" includes marriage;]

65(77b) "pandal or shamiana contractor" means a person engaged in providing any service, either directly or indirectly, in connection with the preparation, arrangement, erection or decoration of a pandal or shamiana and includes the supply of furniture, fixtures, lights and lighting fittings, floor coverings and other articles for use therein;]

I find that service is said to be works contract service only, if the contract of service involves the transfer of property in goods and such service is for purpose of construction, erection, installation, repair, renovation of movable property or movable /immovable property. For better understanding, I would like to have a look at the definition of "works Contract" service provided under Section 65B(54) of the Finance Act, 1994, the same is reproduced as under for ready reference.

65(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable

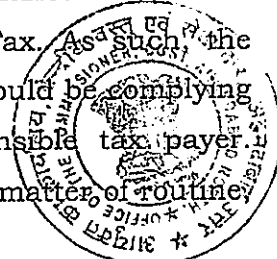
17. From the above factual position, I am able to discern that the assessee had provided the service in connection with the preparation, arrangement, erection or decoration of a pandal or shamiana, place which includes the supply of furniture, fixtures, lights and lighting fittings, floor coverings and other articles for use therein. The letter/work order submitted by the assessee in their defence and arguments, do not suggest any transfer of property in goods; there is no transfer of ownership of goods involved or sale of goods involved. I find that the supply of goods involved was for use only in providing the service only. Since, the contract of service has not involved the transfer of property in goods or sale of goods, the service can not be qualified to be works contract service. Further, the assessee has not pointed any specific clause in letter/work order demonstrating involvement of transfer of ownership of goods to the recipient of service. Similarly, I find that nothing is forthcoming from the said letter/ work orders that the assessee was subcontracted by the Governmental authority/ department, rather I find that the work awarded to the



assessee was for promoting the activity of the Government Company. In view of the this factual position, I find that the assessee's arguments of having provided works contract service by them is devoid of substance and accordingly is not acceptable. Therefore, I also find that there is no need to discuss incidental arguments, as the main arguments are not proved. From the definition of service as existed prior to 01.07.2012 aforementioned, I find that the service provided by the assessee are akin to the activity/ service of "event management", "business exhibition" and "pandal or shamiana contractor". I find that the assessee has also deposed the same version in their statement dated 22.01.2020 (RUD-2), wherein they have stated that they were providing the Business Exhibition and Event Management Service. I find that the assessee, as per the available records, has never retracted their statement, hence, the statement is having essential evidential value. The documents seized during the investigation also support the deposition made by the assessee, and confirm the nature of service as has been admitted by the assessee in their statement.

18. From the above discussion, legal position and documents available on records, I find that the service viz. Business Exhibition and Event Management provided during Oct-2014 to June 2017, for a total consideration of Rs. 24,79,39,564/- as per Annexure -A to the SCN, are covered under the definition of Service under Section 65B(44) of the Finance Act, 1994, therefore, the same are liable to service tax under Section 66B of the Finance Act, 1994. However, it is evident from the ST-3 Returns that the assessee had declared Rs. 7,15,43,772/- (as per annexure-C to the SCN) towards the total gross value of service provided during the period Oct-2014 to June 2017. Therefore, I find that the assessee has short declared the value of service provided by them to the tune of Rs. 17,63,95,792/-, thereby, resulting into short payment of Service Tax of Rs. 2,52,98,074/- (as per Annexure-A to the SCN). Thus, I find that the assessee has failed to determine the correct value of service; has failed to assess their service tax liability and has failed to declare the correct value of service in their returns, thereby, contravening of the provision of Section 67, 68 and 70 of the Finance Act, 1994. I also find that the assessee had provided the service for a consideration which was inclusive of service tax except in some cases (as per Annexure-B to the SCN) the service tax was charged separately, therefore the provisions of Section 73A, are also invocable for demanding the tax collected but not deposited. Therefore, I hold that the assessee is liable to pay the short paid service tax of Rs. 2,52,98,074/- under the proviso to Section 73(1) read with Section 73A of the Finance Act, 1994 alongwith the applicable interest under Section 75 read with section 73B of the Finance Act, 1994.

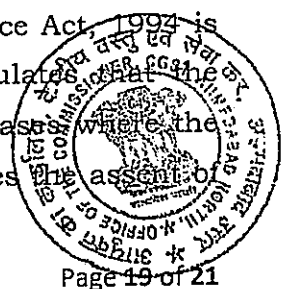
19. I find that the scheme of Service Tax rests on voluntary compliance wherein the assessee is entrusted with the responsibility to pay the Service Tax. As such, the original hypothesis with which one starts out is that the assessee would be complying with the Law in all seriousness that is warranted of a responsible tax payer. Interference of departmental officers is generally not permitted as a matter of routine.



but only as exceptions and that too when there is specific information or reason to believe that the tax liability is not correctly being discharged. The CBEC (now CBIC), from time to time, has come out with instructions regarding visits by departmental officers, scrutiny of tax returns and other related matters that serve to underline and strengthen the voluntary compliance system. The action of disclosure itself is ordinarily limited to the details contained in the periodical return filed once in every six months and the onus to determine facts and issues relevant to the correct ascertainment and discharge of Service Tax levy remains with the provider of taxable services. If such facts on the basis of which an independent and proper evaluation can be made are kept away from the department due to an act of omission or commission by the party responsible to pay tax, it would constitute a situation where the first proviso to section 73 of the Finance Act, 1994, can reasonably be invoked. In the instant case, the assessee had deliberately and willfully suppressed the actual Taxable Value on which they were supposed to pay Service Tax by short declaring the Taxable Value in their ST-3 Returns for the period OCT, 2014 to JUN, 2017. It is evident from the statement that the assessee was fully aware of such facts. Such short declaration of Taxable Value of services provided by the assessee would not have come to the notice of the department, but for the search carried out by the DGGI, Vadodara. Therefore, I find that the assessee had suppressed the above facts from the Department with regard to the Taxable Services provided by them with a clear intention to evade payment of Service Tax and had willfully contravened the provisions of the Finance Act, 1994 and Rules made thereunder with intent to evade payment of Service Tax. Thus, I hold that the Service Tax amount of **Rs.2,52,98,074/-** (inclusive of cess) short paid by them for the period OCT, 2014 to JUN, 2017 is recoverable from the assessee by invoking the extended period of limitation under proviso to Section 73(1) read with Section 73(A) of Finance Act, 1994, along with applicable interest under Section 75 read with Section 73(B) of Finance Act 1994. And for the same reasons, I hold that the assessee has rendered themselves liable to penal action under the provisions of Section 78 of the Finance Act, 1994. I find that the assessee has cited the various case laws with regard to invocation of extended period and imposition of penalty, in case of bonafide intention existing. I find that the case laws would not come to the help to the assessee, as they have failed to substantiate their bonafide intention vis-à-vis the non payment of legitimate dues to the government exchequer.

20. I find from the records that the assessee has already paid Service Tax of Rs. 2,52,98,074/- and interest of Rs. 1,32,886/- during the course of investigation itself. Hence, I hold that the same is also liable to be appropriated against the service tax and interest liability.

21. As far as the imposition of penalty under Sec. 76 of the Finance Act, 1994 is concerned, I find that Section 78B of the Finance Act, 1994 stipulates that the provisions of the amended Section 76 and 78 will be applicable in cases where the order is passed after the date on which the Finance Bill, 2015 receives the assent of



the President. The Finance Bill, 2015 received the assent of the President on 14.05.2015. Therefore, the amended provisions of Section 76 and 78 are applicable in the present case.

22. In view of the above, the penalty under Sec. 76 is imposable only in cases where the non-payment/ short-payment of service tax is on account of reasons other than fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax. In the instant case, as I have already discussed hereinabove, the non-payment/ short-payment of service tax is on account of suppression of facts and contravention of the provisions of law with an intent to evade payment of service tax and as such the provisions of Sec. 76 of the Finance Act, 1994 will not be applicable to the 'facts of the present case and no penalty can be imposed under Sec. 76 of the Finance Act, 1994.

23. I find that assessee in their statement dated 24.06.2020, had expressed their inability to produce all their sales invoices. Therefore, I find that the assessee had failed to maintain basic records mandated as per Rule 4A(1) of Service Tax Rules 1994. By contravening provision of Rule 4A(1) of Service Tax Rules, 1994, I find that they have rendered themselves liable for penalty under Section 77 (1)(b) of Finance Act, 1994.

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

ORDER

(i) I hereby confirm the demand of Service Tax amounting to **Rs.2,52,98,074/-** (Rupees two Crores fifty two lakhs ninety eight thousand and seventy four only) for the period **OCT,2014 to JUN, 2017** (including applicable cess), as mentioned in **ANNEXURE-A** to the SCN and order to recover the same from the assessee by invoking extended period as per proviso to Sub-Section (1) of Section 73 read with Section 73A of the Finance Act, 1994;

(ii) I hereby order to appropriate the Service Tax of **Rs.2,52,98,074/-** (Rupees two Crores fifty two lakhs ninety eight thousand and seventy four only) paid by the assessee during investigation in cash through e-challans, as mentioned in **ANNEXURE-D** to the SCN, against the total demand as mentioned at (i) above;

(iii) I hereby order to charge the Interest at applicable rates on the amount of Service Tax demanded at (i) above, and order to recover from the assessee under Section 75 read with Section 73B of the Finance Act, 1994;

(iv) I hereby order to appropriate the Interest of **Rs.1,32,886/-** (Rupees one lakh thirty two thousand eight hundred and eighty six only) already paid vide e-challan, as per **ANNEXURE-D** of the SCN against interest to be recovered as mentioned at (iii) above;

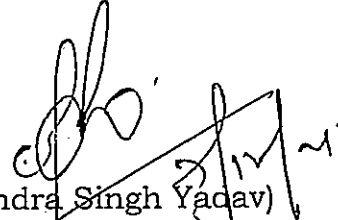
(v) I hereby impose the penalty of **Rs.2,52,98,074/-** (Rupees two Crores fifty two lakhs ninety eight thousand and seventy four only) on the assessee under **Section 78** of the Finance Act, 1994; and



(vi) I hereby impose penalty of Rs. 10,000/- (Ten Thousand only) on the assessee under Section 77(1)(b) of the Finance Act, 1994.

(vii) I do not impose any penalty on the assessee in terms of the provisions of Section 76 of the Finance Act 1994.

However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.


(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Speed Post

F.No. STC/15-28/OA/2020

Date: .12.2021

M/s. Expositions & Conventions,
A/ 1, Krishna Apartment, Jagjivan Park,
Nr. Ishwarbhuvan,
Opp. HUDCO Bhavan and Garden,
Navrangpura, Ahmedabad - 390009

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Additional Director General, DGGI, SZU, Surat, Ahmedabad
3. The Assistant Commissioner, CGST & C. Ex., Division-VII, Ahmedabad North.
4. The Superintendent, Range-I, Division-VII, Ahmedabad North.
5. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
6. Guard File

