


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(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>
<p>फ़ोन नंबर/ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/ STC/15-29/OA/2019

DIN-20220364WT000000A457

आदेश की तारीख / Date of Order :28.03.2022
जारी करने की तारीख / Date of Issue : 31.03.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV
आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 72 /2021-22

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

This copy is granted free of charge for private use of the person(s) to whom it is sent.

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, 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, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

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 हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल, उसकी भी उतनी ही, की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम एक प्रतियाँ संलग्न की जाएंगी एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970, की अनुसूची, 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.



अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. DGGI/AZU/Gr-A/36-04/2019-20 dated 20.04.2019 issued to M/s. Galaxy Security and Menpower Services Private Limited, 302, Narayan Complex, Opp. Havmor Restaurant, Navrangpura, Ahmedabad.

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 72 / 2021-22

M/s Galaxy Security and Menpower Services Private Limited were issued SCN No. DGGI/AZU/Gr.A/36-04/2019-20 dated 24.04.2019 by the Additional Director General, DGGI, AZU, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S GALAXY SECURITY AND MENPOWER SERVICES PVT. LTD. ARE AS FOLLOWS:

1. M/s Galaxy Security and Menpower Services Private Limited, 302, Narayan Complex, Opp. Havmor Restaurant, Navrangpura, Ahmedabad (hereinafter referred to as M/s Galaxy for the sake of brevity) were engaged in providing "Security/Detective Agency Services" and were registered with Service Tax department with Registration No. AACCG2057LST001.

2. SUMMARY:

2.1 M/s. Galaxy had provided Security/Detective Agency Service and "Manpower Recruitment/Supply Agency Services" to various clients during the Financial Year 2013-14 to 2017-18 (up to June, 2017). Acting upon the Intelligence gathered that M/s Galaxy had evaded payment of Service tax by way of suppressing and under-reporting their actual turnover/taxable value and also by claiming wrongful exemptions in their ST-3 returns, search under Section 67 of the CGST Act, 2017 read with Section 174 of the CGST Act, 2017 at the registered premises of the assessee located at 302, Narayan Complex, Opp. Havmor Restaurant, Navrangpura, Ahmedabad-380009 on 25.10.2018 was carried out and relevant documents were withdrawn under Panchnama dated 25.10.2018.

2.2 Scrutiny of documents revealed the following facts:

(i) that, M/s Galaxy had wrongly claimed exemption in respect of service rendered to units situated in SEZ/developers;

(ii) that, M/s Galaxy had failed to pay service tax in respect of conveyance bill raised by them;

(iii) that, M/s Galaxy had suppressed their income by not reflecting their taxable income correctly in their ST-3 returns; and,

(iv) that, M/s Galaxy had failed to pay service tax in respect of their miscellaneous income (telephone reimbursement, insurance) by not adding the same in the gross taxable value in contravention of provisions under Section 67 of the Finance Act, 1944.

(v) that, the total service tax evaded on all these counts during the period from 2013-14 to 2017-18 (upto June, 2017) amounts to Rs. 2,14,78,571/-

2.3 Accordingly, M/s Galaxy appeared to have suppressed their taxable income during the period from April-2013 to June-2017 to the tune of Rs. 1,06,01,032/- (as detailed in Table-A, given below). They had wrongly availed exemption in respect of service provided to their clients situated in SEZ/developers without satisfying the condition prescribed in the relevant exemption notification. Scrutiny of sales register submitted by M/s Galaxy had revealed that in some cases they had even charged the element of service tax in the invoice raised by them to their clients in SEZ/developers but declared it as exempted in the ST-3 returns. Total value of exemption availed wrongly by M/s Galaxy as reflected in their sales register and as declared in their ST-3 returns during the April-2013 to June-2017 appeared as under (as detailed in Table-B given below):

Table-A

Sr. No.	Financial Year	Total taxable value as per sales register [RUD 11]	Total taxable value as per ST-3 Returns (including the value of exemptions wrongly availed)	Total suppressed taxable value/turnover
1.	2013-14	46973245	46248561	724684
2.	2014-15	50824592	50190182	634410
3.	2015-16	76948668**	68644590	8304078
4.	2016-17	76171217	75233357	937860
5.	2017-18 (upto to June)	20509977	20749345	0
	Total	271427699	261066035	10601032

**This amount includes the values of invoices which are not reflected in the Sales Ledger.

Table-B

Sr. No.	Financial Year	Total Taxable value of service rendered to SEZ's as reflected in sales ledger	Total Taxable value of service rendered to SEZ's as reflected in ST-3 returns
1.	2013-14	14647410	14647410
2.	2014-15	21548234	23064997
3.	2015-16	42676588	42632885
4.	2016-17	49826191	49826191
5.	2017-18 (upto to June)	15694140	12872316
	Total	144392563	143043799

2.4. It also appeared that M/s Galaxy had not discharged their service tax liability towards conveyance charges collected from the recipients of service during the period from April, 2013 to June-2017. They had also suppressed 'taxable' and 'miscellaneous' (telephone reimbursement, insurance) income received by them during the financial year 2015-16, 2016-17 and 2017-18 (Apr-Jun) which was liable to be added to gross taxable value. Further, it appeared that some of the invoices for FY 2015-16 were not figuring in the sales ledger. The total taxable value of such invoices which did not figure in the sales ledger was calculated at Rs. 75,27,747 /- and the corresponding service tax liability thereon was worked out to be Rs. 10,22,192/- (as detailed in Table-C given below):

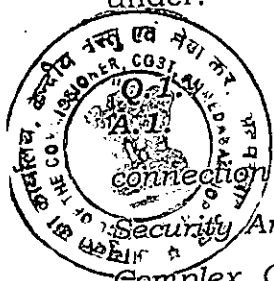
Table-C

Sr. No.	Financial year	Total Taxable of Conveyance charges collected from recipients of service	Taxable income not reflecting in Sales register	Miscellaneous Income
1.	2013-14	724684	0	0
2.	2014-15	801259	0	0
3.	2015-16	719332	7527747	0
4.	2016-17	801498	0	136362
5.	2017-18 (upto to June)	192577	0	390996
	Total	3239350		527358
	Grand Total	1,12,94,455/-		

3. Scrutiny of the documents:

3.1 It also appeared from the documents recovered during the time of search, that M/s Galaxy were engaged in providing taxable services namely, "Security/Detective Agency Service" and "Manpower Recruitment/Supply Agency Services". They had shown exempt income in ST-3 Returns, they had provided services to SEZ unit/Developer and had claimed exemption from service tax. However, no supporting documents for claiming such exemption were recovered from the premises of M/s Galaxy during search on 25.10.2018. They failed to produce the Forms A1 & A2 as prescribed under Notification No. 40/2012- ST dated 20.06.2012 as amended vide Notification No. 07/2013-ST dated 01.07.2013 and further amended by Notification No.s 15/2013-ST dated 21.11.2013 & 07 /2014-ST dated 11.07.2014, by which upfront exemption for sale of services to SEZs could be availed by them. Therefore, it appeared that M/s Galaxy had wrongfully availed exemptions showing their sale of services to SEZ units, without satisfying the prescribed conditions.

4. A Statement of Shri Shrikant Rambhuvan Tiwari, Director of M/s Galaxy Security & Menpower Services Private Limited, Ahmedabad was recorded on 25.10.2018 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and Section 174 of the CGST Act, 2017. The relevant portion of the statement of Shri Shrikant Rambhuvan Tiwari is reproduced as under:



Have you been explained as to why your statement is being recorded?
 Yes. I have been explained that my statement is being recorded in connection with the Service Tax Inquiry being conducted against M/s Galaxy Security And Menpower Services (P) Ltd, having office address at 302, Narayan Complex, Opp. Havmor Restaurant, Navarangpura, Ahmedabad-380 009. I state

that I am the Managing Director of M/s Galaxy Security And Menpower Services (P) Ltd and therefore I present myself before you to tender my statement.

Q.2. Please explain the constitution and business activities of M/s Galaxy Security And Menpower Services (P) Ltd?

A.2. M/s Galaxy Security And Menpower Services (P) Ltd is a Private Limited Company. I state that I am the Managing Director and Smt. Sheela Shivanand Tiwari my sister-in-law is the other Director. M/s Galaxy Security And Menpower Services (P) Ltd is engaged in the business of providing Security and Detective Agency Service and Fire and Safety Service.

Q3. Please state whether M/s. Galaxy Security And Menpower Services (P) Ltd, is engaged in providing any services other than 'Security/ Detective Agency Service' and "Fire and Safety Service"?

A3. The company is not engaged in providing any other service other than 'Security/ Detective Agency Service' and "Fire and Safety Service".

Q4. The activities of your company are taxable under the Finance Act, 1994 as amended from time to time. Please state, whether your company was registered with the erstwhile Service Tax Department and were you properly discharging all the Service Tax liabilities and filing ST-3 Returns regularly, or, otherwise?

A4. M/s Galaxy Security And Menpower Services (P) Ltd is registered with the Service Tax Department and we are holding STC No. AACCG2057LST001. The said registration no. has been issued to us on 10.02.2005. Post registration, M/s. Galaxy Security And Menpower Services (P) Ltd has filed ST-3 returns upto March, 2017, however I state that we have not filed the ST-3 returns for the period April, 2017 to June, 2017. Further, I state that we have not discharged our Service Tax liability regularly during the aforesaid period and the service tax has not been paid by us during the aforesaid period. The same will be discharged in due course of time.

Q5. Has your company submitted copies of Invoices, Sales ledger, 26AS and Balance Sheet (P&L account) for the period from 2013-14 to 2017-18 (Upto June, 2017)?

Yes, M/s Galaxy Security And Menpower Services (P) Ltd, has submitted copies of 26AS and Income Tax return for the period from 2013- 2014 to 2017-18 (Upto June, 2017) during the course of search on 25/ 10/2018. My company has also provided copies of Sales ledger for the F.Y. 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 (up to June 2017). As regards copies of invoices,



we have submitted copies of invoices available with us as the same was not maintained properly.

Q6. Please state the nature of services provided and the income reflected in the 26AS statement and Income Tax return filed by M/s Galaxy Security And Menpower Services (P) Ltd,?

A6. As already stated, our firm M/s Galaxy Security And Menpower Services (P) Ltd, is engaged in providing "Security/Detective Agency Service" and "Fire Safety Services" and the entire income reflected in the 26AS and Income Tax returns is considerations received towards providing these services and nothing else.

Q.7. Kindly provide the details of supply of service to SEZ by M/s Galaxy Security And Menpower Services (P) Ltd, during the period 2013-14 to 2017-18 (upto June' 2017)?

A. 7. The services provided by M/s Galaxy Security And Menpower Services (P) Ltd, to M/s Adani Port and Special Economic Zone Ltd, M/s Adani Mundra SEZ Infrastructure and M/s Adani International Container Terminal Ltd are exempted as all the companies to whom we have provided services are SEZ Units.

Q 8. Please provide the copies of Form A1 and A2 by which upfront exemption for supply of services to SEZ's has been claimed by M/s Galaxy Security And Menpower Services (P) Ltd,?

A8. I am unable to produce the copies of Form A1 and A2 as the same are not available with us now. I state that the copies of the same are available with the Shri T R Dharival, the Chartered Accountant of M/s Galaxy Security And Menpower Services (P) Ltd, who is presently out of station. On being asked I state that copies of Form A1 and A2 will be submitted by me in two days time."

5. It appeared from the above statement of Shri Shrikant Rambhuvan Tiwari that M/s Galaxy were claiming exemptions towards providing taxable services to M/s Adani Port and Special Economic Zone Ltd., M/s Adani Mundra SEZ Infrastructure and M/s Adani International Container Terminal Ltd. However, he had failed to produce the forms A1 and A2 by which upfront exemption for sale of services to SEZ's could be claimed as prescribed under Notification No. 40/2012-ST dated 20.06.2012, as amended vide Notification No. 07/2013-ST dated 01.07.2013 and further amended by Notification No. 15/2013-ST dated 21.11.2013 & 07/2014-ST dated 11.07.2014.

6. Submission of further records by M/s. Galaxy:

6.1 During the course of investigation vide summons dated 20/03/2019 M/s Galaxy were asked to produce following documents:

- (i). Details of service tax paid during the FY. 2013-14 to 2017-18 (upto June-17);
- (ii). Attested copies of ST-3 returns filed for the period from FY. 2013- 14 to 2017-18 (upto June-17);
- (iii). Attested copies of form 26AS statement for the FY. 2013-14 to 2017-18 (upto June-17); (iv). Attested copies of balance sheet & P&L for the FY. 2013-14 to 2017-18;
- (v). Attested copies of Tax Audit report for the FY. 2013-14 to 2017- 18; (vi). Attested copies of invoices issued during the FY. 2013-14 to 2017- 18 (upto June-17);
- (vi). Attested copies of IT returns filed during the F.Y. 2013-14 to 2017- 18;
- (vii). Attested copies of Form A-2 for claiming upfront exemption for services provided to SEZ units/developers, if any.

6.2 M/s Galaxy failed to provide any of the aforementioned documents during the course of investigation.

7.

Further

Statement of Shri Shrikant Rambhuvan Tiwari, Director of M/s Galaxy Security and Menpower Services Private Limited, Ahmedabad was recorded on 16.04.2019 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and Section 174 of the CGST Act, 2017 on 16.04.2019. The relevant~ portion of the statement of Shri Shrikant Rambhuvan Tiwari is reproduced below:

"Q2. From the documents withdrawn under Panchnama dated 25.10.2018 during search at your premises, certain variations have been noticed in figures shown under the 26AS, Profit & Loss Statement of Balance Sheet and Sales Ledgers for the period from April 2013 to June 2017. Kindly explain the reasons for such variations. Also provide the correct income of your company during the said period.

A2. With regard to the above question, I would like to submit that the figures shown in our Sales Ledgers and 26AS are the gross figures, wherein the Service Tax component is included in the figures. The figures shown in the Balance Sheet are the figures excluding the Service Tax components. With respect to the figures of 26AS, I further state that these figures are based on the TDS deducted by the service recipients, there are possibilities of minor variations with the figures shown in our Sales Ledgers because of the reason that the date of posting in 26AS

by the service recipients may be different from the date of the invoice. However, the actual income of our company is recorded in the Sales Ledgers. I hereby submit the comparative figures for the period from April 2013 to June 2017 as under :

(Amt. in Rs.)

F.Y.	Amt. As per ST-3	Amt. As per P&L	Amount as per Sales ledger		
			Taxable Value	Service tax charged	Gross amount inclusive of service tax
A	B	C	D		
2013-14	46248561	46198349	46973245	3847163	50820407
2014-15	50190182	50023333	50824592	3523196	54347788
2015-16	68644590	68618504	69420921	3627107	73048028
2016-17	75233357	75733532	76171217	3712194	79883412
2017-18 (Upto June 2017)	20749345	--	20509977	685730	21195707
TOATAL	261066035	240573718	263899952	15395390	279295342

Note: [Rs. 26,38,99,952/- + Rs. 75,27,747/- in respect of Value of invoices not reflected in sales ledger in F.Y. 2015-16 = Rs. 27,14,27,699/-]

Q3. Please explain the nature of services provided by your company, M/s Galaxy Security and Menpower Services Private Limited.

A.3. Our company, M/s Galaxy Security and Menpower Services Private Limited are engaged in providing "Security/Detective Agency Service" and "Fire Safety Services". We provide our services to various clients including the SEZ units viz. M/s Adani Port and Special Economic Zone Ltd., M/s Adani Mundra SEZ Infrastructure and M/s Adani International Container Terminal Ltd.

Q4. Please state, whether the applicable Service Tax liability has been discharged by your company on the total income received during the period from April 2013 to June 2017.

A.4. The income of our company is basically divided into following four parts:

(i) Taxable sales (Showing the taxable income, which attracts Service Tax) - Service Tax has been charged, collected and paid to the Govt. and reflected in ST-3 Returns.

(ii) SEZ Sales (Showing the income received from SEZ units, which are exempted from Service Tax) - Being services provided to SEZ units, we have claimed exemption from payment of Service Tax on the income so received and hence, no Service Tax paid on such value.

(iii) Conveyance (Showing re-imbursment of conveyance income. No Service Tax charged and paid on such income) - Since no Service Tax was collected separately, Service Tax has not been paid on this income.

(iv) Misc. income (Other income like insurance and telephone reimbursement, etc. which do not form significant part of balance sheet) - meagre income under this head, generally not included into taxable receipts. We have charged and collected Service Tax on the income shown under Sr. No. (i) above, i.e. on the Taxable sales.

We have claimed exemptions towards providing services to SEZ units (Sr. No. (ii)). In respect of conveyance income (Sr. No. (iii)), it is to state that, since no Service Tax was collected separately, no Service Tax has been paid on this income. In respect of Misc. income (Sr. No. (v)), in some of the invoices Service Tax has been collected and paid, whereas in some of the invoices, Service Tax has not been collected and hence not paid.

Q.5. Please provide the details of receipt under the heads mentioned above and also the details of Service Tax charged and collected during the period from April 2013 to June 2017.

A.5. I hereby submit the details of receipt under the heads mentioned above and also the details of Service Tax charged and collected during the period from April 2013 to June 2017 in the following table :

(Amt. in Rs.)

F.Y.	Taxable Sales	SEZ Sales	Conveyance	Misc. Income	Income not reflected in Sales ledger	Total Taxable income	ST Payable	ST paid as per ST-3 Returns
2013-14	31601151	14647410	724684	0	0	46973245	5805893	3905902
2014-15	28475099	21548234	801259	0	0	50824592	6281920	3352673
2015-16	26025001	42676588	719332	0	7527747	76948668	10792058	3634925
2016-17	25407166	49826191	801498	136362	0	76171217	11394914	3797655
2017-18 (Apr-Jun)	4232264	15694140	192577	390996	0	20509977	3076497	1181554
TOTAL	115740681	144392563	3239350	527358	7527747	271427699	37351282	15872710

Q6. Please provide the details of Service Tax discharged by you during the period from April 2013 to June 2017.

A6. We have discharged Service Tax on the taxable sales as mentioned above and have filed the ST-3 Returns accordingly. The details of Service Tax liability discharged by our company and also reflected in the ST-3 Returns for the period from April 2013 to June 2017 is given in following table :

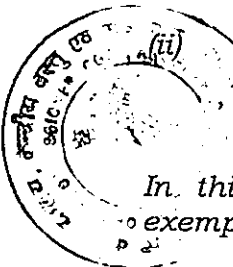
(Amt. in Rs.)

F.Y.	Total Receipt	Exemption availed	Net taxable	Service Tax paid and reflected in ST-3 Returns
2013-14	46248561	14647410	31601151	3905902
2014-15	50190182	23064997	27125185	3352673
2015-16	68644590	42632885	26011705	3634925
2016-17	75233357	49826191	25407166	3797655
2017-18 (Apr-Jun)	20749345	12872316	7877029	1181554
TOTAL	261066035	143043799	118022236	15872710

Q7. Please refer to Notification No. 12/2013-ST dated 01.07.2013, wherein conditions for allowing exemptions to services provided to SEZ units or Developers have been given. In this regard, the following two conditions regarding exemptions to service provided to SEZ units have been given:

- (i) The service provider has been given an option to pay the Service Tax on the services provided to SEZ units and subsequently the SEZ's can claim refund of the such Service Tax amount paid;
- (ii) The service provider has the option not to pay the Service Tax ab initio, subject to fulfilling the conditions mentioned in Para 3 of the said Notification.

In this regard, please state which option have you used for claiming exemptions towards providing services to SEZ units.



A 7. In this regard, I state that our company, M/s Galaxy Security and Mempoer Services Pvt. Ltd. had exercised the option (ii) mentioned above, i.e. we have claimed exemptions ab initio.

Q8. With reference to the options exercised by you are required to fulfill the terms and conditions stipulated in Sr. No. 3 of the said Notification No. 12/2013- ST dated 01.07.2013. Please state, whether you have fulfilled all such terms and conditions. If so, please provide the copies of form A-1 submitted by you and the Authorisation issued under form A-2. The same was also called for, while recording your statement on 25.10.2018, which has not been submitted by you till date. Please produce the same today.

A8. In this regard, it is to submit that though, we have exercised the option of not paying Service Tax ab initio, but I am unable to produce the copies of the Form A-1 and A-2, as the same are not available with me.

Q9. In some of the invoices, issued by you to the SEZ units, it has been noticed that Service Tax has been charged and collected. Please explain.

A9. In this regard, it is to state that, preparation of invoices was done by our accounts staff and I am not in a position to explain the same. But after perusing the sales ledger it is forthcoming that the element of service tax has been charged and collected in such invoices issued to SEZ units/developers.

Q10. In view of the answers given by you so far and the documents on record, the following facts with respect to claiming exemption towards providing services to SEZ units have been noticed :

- (i) that you have opted not to pay Service Tax ab initio and claim exemption directly;
- (ii) that the Form A-1 and A-2 required to claim such exemptions from payment of Service Tax are not available with you;
- (iii) that in some of the invoices raised to SEZ units, you have charged and collected Service Tax.

From the above, it can be seen that the exemptions claimed by your company M/s Galaxy Security and Menpower Services Pvt. Ltd. towards providing services to SEZ Units are not found to be justified. Please offer your comments in this regard.

A10. With reference to the above, it is stated that, we were under the bonafide belief that any services provided to SEZ units are exempted from payment of Service Tax. However, in some of the invoices, we have also charged and collected Service Tax from the SEZ units. I also admit that our company M/s Galaxy Security and Menpower Services Pvt. Ltd. does not appear to have fulfilled the conditions required to claim exemption towards providing services to SEZ units/developers.

Q11. In view of the answers given above, it is observed that, as your company M/s Galaxy Security and Menpower Services Pvt. Ltd. have not fulfilled the conditions stipulated for claiming exemptions towards providing services to SEZ units, the exemptions claimed need to be denied and the applicable Service Tax along with applicable interest and penalty is required to be recovered from your company. Please offer your comments on the same.

A11. On being explained the various aspects regarding claiming exemption towards providing services to SEZ units, I hereby state that our company M/s Galaxy Security and Menpower Services Pvt. Ltd. has failed to fulfill the procedural

requirements for claiming such exemptions and hence we are liable to pay the Service Tax towards such exemptions along with applicable interest and penalty.

Q12. Please explain, the type of income received under the head "Conveyance Reimbursement" shown in your Sales Ledgers.

A12. Our company is engaged in providing security services. We have to depute Security personals at various locations as per the requirement of the service recipients. The additional costs incurred in conveyance of such security personnel are recovered from the service recipients and the same amount is reflected in our sales ledger as "Conveyance Reimbursement".

Q13. Please state, whether you have paid Service Tax on the income shown under the head "Conveyance Reimbursement" and "Misc. Income", if not please produce the relevant Notification under which you have claimed exemptions for the same.

A13. We have not paid Service Tax on the on the income shown under the head "Conveyance" and "Misc. Income", because we had not charged Service Tax on the invoices, however, the same cannot be supported by way of any Exemption Notification. Therefore, it is stated that we ate liable to pay Service Tax on the income received under the heads "Conveyance" and "Misc Income" along with applicable interest and penalty.

Q14. On scrutiny of the documents withdrawn under Panchnama dated 25.10.2018 during search at your premises, certain invoices pertaining to the Financial Year 2015-16 were found, which have not been accounted for in the Sales Ledger. A worksheet of the same along with applicable Service Tax is prepared. Please peruse the same and verify its correctness.

A14. After verification of the said worksheet showing details of invoices not accounted for in the Sales Ledger for the F. Y. 2015-16, I hereby put my dated signature on the same and place it as Annexure 'A' to my statement. I accept that these invoices totally valued at Rs. 75,27, 747/- were not included in our Sales Ledger. The Service Tax liability of Rs. 10,22,192/- arising against such un-accounted invoices is required to be discharged by my company and we are liable to pay the same along with applicable interest and penalty.

Q15. In view of the answers given by you, please provide the total outstanding Service Tax liability of your company for the period from April 2013 to June 2017.

A15. I hereby submit the details of total outstanding Service Tax liability of our company for the period from April 2013 to June 2017 as per Annexure-'B' to my statement. The year wise summary is given as under :

(Amt. in Rs.)

F.Y.	Taxable Sales	SEZ Sales	Conveyance	Misc. income	Income not reflected in Sales ledger	Total Taxable income	ST payable	ST paid as per ST-3 Returns	Balance ST payable	Annexure
2013-14	21691151	14647410	724684	0	0	46973245	5805893	3905902	1899991	B-1
2014-15	28475099	21548234	801259	0	0	50824592	6281920	3352673	2929247	B-2
2015-16	26025001	42676588	719332	0	7527747	76948668	10792058	3634925	7157133	B-3
2016-17	25407166	49826191	801498	136362	0	76171217	11394914	3797655	7597259	B-4
2017-18	7222264	15694140	192577	390996	0	20509977	3076497	1181554	1894942	B-5
TOTAL	115740681	144392563	3239350	527358	7527747	271427699	37351282	15872710	21478571	

I hereby undertake to discharge the above service tax liability along with applicable interest and penalty at the earliest."

7.1. Therefore, from the further statement of Shri Shrikant Rambhuvan Tiwari, it appeared that:

(i) M/s Galaxy were a Private Limited company engaged in the business of providing Security/Detective Agency Services and "Manpower Recruitment/Supply Agency Services";

(ii) Shri Shrikant Rambhuvan Tiwari, Managing Director of M/s Galaxy, in his statement dated 16/04/2019 had admitted that the actual taxable income of the company was recorded in the sales ledger and not in the P&L account;

(iii) in their ST-3 Returns, M/s Galaxy had bifurcated their income into two parts, viz. taxable income and exempted income;

(iv) they were claiming exemptions on account of providing services to SEZs without satisfying the condition for availment of such exemption;

(v) they had failed to produce forms A1 and A2, by virtue of which they could have been eligible for claiming exemptions while providing taxable services to SEZ units/developers and hence the exemptions claimed by them under Notification No. 40/2012-ST dated 20.06.2012, as amended vide Notification No. 07/2013-ST dated 01.07.2013 and further amended by Notification No.s 15/2013-ST dated 21.11.2013 & 07/2014-ST dated 11.07.2014 towards providing services to SEZ's units/developers were not found justified;

(vi) M/s Galaxy had not included income shown as 'Conveyance charges' and 'Miscellaneous Income' (telephone reimbursement/insurance), in the gross value declared in ST-3 Returns; the said incomes were shown in the invoices and claimed as reimbursement separately from their clients,

(vii) the Service Tax liability on account of the taxable income amounting to Rs. 75,27,747/- received during the financial year 2015- 16 against certain invoices not accounted in the sale ledger was worked out to be Rs. 10,22,192/-;

(viii) that, the total Service Tax liability of M/s Galaxy for the period from April 2013 to June 2017 was worked out to be Rs. 2,14,78,571/, out of which they had paid Rs. 24,20,000/- during the course of investigation.

8. In view of the above, it appeared that M/s Galaxy had willfully mis-stated the facts in their ST-3 Returns by suppressing the taxable value by not including the amounts claimed as reimbursement in the taxable value and by claiming exemptions wrongly in order to suppress their actual taxable income for the period from April, 2013 to June, 2017. They had also failed to establish the genuineness of the exemptions claimed by them and had failed to produce the statutory documents viz. form A1 and A2 required to claim upfront/ab-initio exemption, under Notification. No. 40/2012-ST dated 20.06.2012, as amended vide Notification No. 07 /2013-ST dated 01.07.2013 and further amended by

Notification No.s 15/2013-ST dated 21.11.2013 & 07/2014-ST dated 11.07.2014 towards providing taxable services to SEZ units or the developer.

8.1 It appeared from the provisions of the above notifications that the certain conditions had been placed in force to grant exemption in respect of services received by SEZ, accordingly, the service recipient SEZ Unit/Developer was to get an approval of the list of services (specified services) and was to make a declaration in Form A-1 regarding the services sought for authorised operations. Notification No. 12/2013-ST dated 01-07-13 stipulated that Form A-2 was required to be issued to the SEZ Unit/Developer by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise. On the strength of Form A-1/A-2 supplied to it by the SEZ Unit/Developer, the service provider could claim the exemption for provision of service to SEZ units/Developer. Thus, Form-A1/A2 were the core documents on the strength of which ab-initio/upfront exemption was to be granted while supplying of taxable services to the SEZ Unit/Developer. But, they had failed to produce the same, therefore, it appeared that the exemptions availed by them, in absence of supporting documentary evidences, were inadmissible under the provisions of the above referred notifications

8.2 Scrutiny of invoices recovered during the time of search [RUD- 4, 5, 6, 7, 8,9, 10 and 11] revealed that Service Tax was charged separately in **some of the invoices** which are entered by M/s Galaxy under the 'exempted' category in the Sales Ledger. However, in some other invoices the value was mentioned as inclusive of Service Tax. The failure to produce supporting documents towards claiming exemption coupled with the rampant misstatement in such invoices, wherein service tax had been charged but the same was shown under exempted services proved the mala fide intention on part of M/s Galaxy to evade Service Tax by way of claiming exemptions wrongly.

8.3 It also appeared that M/s Galaxy were receiving income under the head of 'Conveyance Allowance' and 'Miscellaneous Income (telephone reimbursement/insurance)' separately from the recipient of services and the value of such income was neither included in the gross taxable amount shown in the ST-3 Returns filed by them nor applicable service tax was discharged on such income. The total quantum of income received under the above mentioned head was Rs. 1,12,94,455/-. Shri Shrikant Rambhuvan Tiwari in his statement dated 16.04.2019 had accepted the Service Tax liability during the period from April 2013 to June 2017 towards such 'Conveyance Allowance' and

'Miscellaneous Income (telephone reimbursement/insurance)' which was not discharged by them.

8.4 The said reimbursement to M/s Galaxy by the service recipients during the course of supply of services appeared taxable income by virtue of the provisions of Section 67 of the Finance Act, 1994 read with Rule 5 of the Service Tax (Determination of Value) Rules 2006 read with Section 174 of the CGST Act, 2017. The relevant provisions of Section 67 of the Finance Act, 1994 and Rule 5 of the Service Tax (Determination of Value) Rules 2006 are reproduced below for ease of reference:

“SECTION 67. Valuation of taxable services for charging service tax:

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, -

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

(ii) ---

(iii) ---

(2) ----

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

(4)---- **Explanation.** For the purposes of this section, -

(a) **"consideration"** includes

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) ---- "

“Rule 5. Inclusion in or exclusion from value of certain expenditure or costs.-

(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.”

8.5 Therefore, it appeared that the reimbursements received from the service recipients during the course of provision of service would form part of gross taxable value and were subject to service tax. But, no service tax on such reimbursements totally amounting to Rs. 1,12,94,455/- was found to be paid by M/s. Galaxy.

8.6 In his statement dated 16.04.2019, Shri Shrikant Rambhuvan Tiwari, Director of M/s Galaxy admitted that supporting documents for claiming the exemptions shown in the Sales Ledger and also reflected in the ST-3 Returns were not available with them. He also admitted that some of the invoices, wherein Service Tax had been charged and collected were reflected under the category of exempted services in the sales ledger and also no Service Tax was paid on such income and that the same was shown as exempted services in the ST-3 Returns as well.

8.7 Shri Shrikant Rambhuvan Tiwari in his statement dated 16.04.2019 further admitted non-payment of Service Tax liability during the period from April 2013 to June 2017 arising out of wrongly claimed exemption.

8.9. Had this investigation not been initiated by DGGI, AZU, the Modus Operandi of the assessee of evading Service Tax by way of claiming exemption wrongly by way of showing the taxable income as exempted income in the ST-3 Returns would have gone unnoticed. Moreover, the non-payment of Service Tax on the additional income received towards 'Conveyance Allowance' and 'Miscellaneous Income (telephone reimbursement/insurance)' could be detected only due to the investigation done by DGGI, AZU.

8.10. From the above, it appeared that M/s. Galaxy had willfully suppressed their taxable income in the ST-3 Returns by way of showing part of taxable income as exempted income in order to evade payment of Service Tax. It was also seen that in every ST-3 Return, they had continued to claim such exemptions wrongly without being eligible for the same. This demonstrated the mala fide intention by way of suppression of the facts thereby causing revenue loss to the Government exchequer. Investigation also revealed their mala fide intention by way of suppressing their taxable income of 'Conveyance Allowance' and 'Miscellaneous Income (telephone reimbursement/insurance)' by not including it in the taxable income shown in the ST-3 Returns and thereby not discharging service tax on it.

9. Legal Provisions

9.1 As defined under Section 65B(44), "Service" means "any activity carried out by a person for another for consideration and includes a declared service"

9.2 M/s Galaxy were providing Security/Detective Agency Services and Manpower Recruitment/Supply Agency Services (Fire and Safety Services) to various clients for commercial consideration. All the above said ingredients of

being a 'service' were available in this case and accordingly it appeared that the activity undertaken by M/s Galaxy was covered under the definition of Services and that these services was not covered under negative list as provided in Section 66D of the Finance Act, 1994, therefore, the services continued to be chargeable to Service Tax.

9.3 It appeared that the ab-initio exemption was available under the Notification 40/2012-ST dated 20.06.2012, as superseded vide Notification No, 12/2013-ST dated 01.07.2013 as amended, subject to satisfaction of conditions prescribed in the Para 3(II)(a), (b) and (c), of the aforementioned notification.

9.4 It also appeared that the Valuation of Taxable services provided by M/s. Galaxy is to be done as per Section 67 of Finance Act, 1994 and accordingly, they were required to discharge Service Tax liability on the gross receipt. In view of Section 66, 66B and 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, M/s. Galaxy were liable to pay Service Tax at the specified rate by the due dates on the taxable services given by them.

9.5 As per the provisions of Section 70 of the Finance Act, 1994, M/s. Galaxy were required to correctly assess their service tax liability and file the ST-3 Returns duly incorporating the same.

9.6. Thus, from the documents, statements and legal provisions mentioned here-in-above, it appeared that M/s. Galaxy were liable to pay Service Tax on the entire income received by them as per their Sales Ledger during the period from April, 2013 to June, 2017 after deducting the Service Tax liability already discharged by them prior to initiation of the present investigation by DGGI.

10. Outcome of the Investigations/Conclusion:

10.1 In view of the discussion in the foregoing paras, the evidences brought on record and the statement dated 25.10.2018 and 16.04.2019 of Shri Shrikant Rambhuvan Tiwari, Director of M/s Galaxy, it appeared that:

10.2 M/s Galaxy had suppressed their actual taxable income, by way of suppressing taxable value, not including income claimed as reimbursement in the gross taxable value and by showing taxable income as exempted income in the ST-3 Returns filed by them and thereby not discharging appropriate Service Tax on the income shown as exempted income wrongly during the period from

April 2013 to June 2017. These facts were admitted by Shri Shrikant Rambhuvan Tiwari, Director of M/s Galaxy in his statement dated 16.04.2019

10.3 M/s Galaxy had willfully not included the additional income earned under the head 'Conveyance Allowance' and 'Miscellaneous Income (telephone reimbursement/insurance)', shown in their Sales Ledger, as a part of taxable income in the ST-3 Returns filed by them during the period from April 2013 to June 2017, which was in contravention of the provisions of Section 67 of the Finance Act, 1994 thereby leading to evasion of Service Tax on this account. The Service Tax liability was admitted by Shri Shrikant Rambhuvan Tiwari, Director of M/s Galaxy in his statement dated 16.04.2019.

10.4 Had this investigation not been initiated by DGGI, AZU, the Modus Operandi of M/s Galaxy by way of claiming exemption wrongly in order to evade Service Tax would have gone unnoticed. Moreover, by not including the taxable income shown under the head of 'Conveyance Allowance' and 'Miscellaneous Income (telephone reimbursement/insurance)' in the ST-3 Returns M/s. Galaxy had also evaded Service Tax. This clearly showed that despite having knowledge of Service Tax Law & Procedures, M/s Galaxy had willfully suppressed the facts with an intent to evade Service Tax. They had also deliberately suppressed their taxable income earned against certain invoices to the tune of Rs. 75,27,747 /- during the F.Y. 2015-16 by not accounting the same in their sales ledger even though they had issued/raised invoice to their clients. The issue would have gone un-detected, if the subject investigation by DGGI, AZU had not taken place. Thus, the action of M/s Galaxy was malafide in as much as they had willfully attempted to evade Service Tax. Thus, proviso to Section 73(1) of the Finance Act, 1994 was required to be invoked for recovery of the outstanding Service Tax liabilities not discharged by M/s Galaxy.

10.5 The evasion of service tax by M/s. Galaxy on the taxable income for the period from April, 2013 to June, 2017 was given in Annexure-'A', to the notice. According to the said Annexure, M/s Galaxy, during the period from April 2013 to June, 2017 had evaded Service Tax to the tune of Rs. 2,14,78,571/- on the taxable income received by them. Therefore, the same was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994.

11. Invocation of Extended Period :-

It is pertinent to mention here that the system of self-assessment was in vogue in respect of Service Tax. In the scheme of self-assessment, the

department comes to know about the service rendered and payment made only during the scrutiny of the statutory returns filed by the service providers. Therefore, it placed greater onus on the assessee to comply with higher standards of disclosure of information in the statutory returns. In the instant case, M/s Galaxy had failed to declare the actual taxable income in the ST-3 Returns and had not paid appropriate Service Tax despite the fact that they were engaged in providing taxable services. Thus, M/s Galaxy had suppressed the material facts from the Department by not showing their actual taxable income in the ST-3 Returns by way of claiming exemptions wrongly, not paying the Service Tax due to them and also suppressed the taxable value in the ST-3 Returns. This appeared to have been done intentionally by M/s. Galaxy so as not to bring their taxable activities to the notice of the Department, though they were engaged in providing taxable services, as discussed here-in-above. 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 behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s Galaxy, it clearly demonstrated their intent to evade payment of Service Tax by an act of omission in as much as M/s Galaxy though being well aware of the unambiguous provisions of the Finance Act, 1994 and Rules made there under had failed to disclose to the department at any point of time, regarding wrongly claimed exemption in the ST-3 Returns during the period from April 2013 to June 2017 and had also not included the entire taxable income while showing the taxable income in the ST-3 returns. If the investigation proceedings had not been initiated by DGGI, Zonal Unit, Ahmedabad, these facts would not have come to light.

11.2 Therefore, it appeared that M/s Galaxy had willfully suppressed the facts from the department by failing to declare their actual taxable income in their ST-3 returns with an intent to evade service tax. They had willfully suppressed the following facts by way of:

- (i). claiming exemption in respect of sales to SEZ's wrongly;
- (ii). not including the income shown under the head of 'Conveyance Allowance' and 'Miscellaneous Income (telephone reimbursement/insurance)' to the gross taxable value and;



- (iv) deliberately suppressing their taxable income earned against certain invoices to the tune of Rs. 75,27,747/- during the F.Y. 2015-16 and by not accounting the same in their sales ledger even though they had issued/raised invoice to their clients.

11.3 In view of the specific omissions and commissions as elaborated in earlier para, it was apparent that M/s Galaxy had deliberately suppressed the facts by claiming exemptions wrongly during the period from April 2013 to June 2017, by suppressing the taxable value by way of not including the additional income under the head of 'Conveyance Allowance' and 'Miscellaneous Income (telephone reimbursement/insurance)' in the ST-3 Returns filed by them and by deliberately suppressing their taxable income earned against certain invoices to the tune of Rs. 75,27,747/- during the F.Y. 2015-16 by not accounting the same in their sales ledger even though they had issued/raised invoice to their clients. This amounted to wilful suppression of facts with deliberate intent to evade payment of Service Tax. The non/short-payment of Service Tax on the entire income received towards providing taxable services by M/s Galaxy came to the knowledge of the DGGI only due to specific investigations carried out. Therefore, the extended period of limitation of five years as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 appeared to be invocable for demanding Service Tax for the period from April, 2013 to June, 2017.

12. Quantification and demand of Service Tax:

12.1 While calculating the Service Tax liability the figures appearing in ST-3 Returns, P&L Statement, 26AS statement and Sales Ledger, were taken into consideration for computation of correct taxable value. It was observed that the value of service as appearing in Sales Ledger was the highest among all. Shri Shrikant Rambhuvan Tiwari, Managing Director of M/s Galaxy in his statement dated 16/04/2019 (reply to Question no. 2) had admitted that the actual income of his company was recorded in the sales ledger. Therefore, for the purpose of quantification of service tax liability, the income related figures recorded in the sales ledger had been relied upon in the show cause notice. M/s Galaxy have suppressed the taxable value in ST-3 returns for the period from April, 2013 to June, 2017 and had also failed in giving correct value of the services and assess the tax in accordance with the provisions of Chapter-V of Finance Act 1994, and therefore the taxable value as reflected in the sales ledger was taken into consideration for calculating the service tax liability as given below:

(Amt. in Rs.)

F.Y.	Amt. as per ST-3	Amt. as per P&L	Amount as per sales ledger		
			Taxable value	Service Tax charged	Gross amount inclusive of service tax
2013-14	46248561	46198349	46973245	3847163	50820407
2014-15	50190182	50023333	50824592	3523196	54347788
2015-16	68644590	68618504	69420921	3627107	73048028
2016-17	75233357	75733532	76171217	3712194	79883412
2017-18 (Apr-Jun)	20749345	--	20509977	685730	21195707
TOTAL	261066035	240573718	263899952	15395390	279295342

Note: [Rs. 26,38,99,952/ + Rs. 75,27,747/- in respect of Value of invoices not reflected in sales ledger in F.Y. 2015-16 = Rs. 27,14,27,699/

12.2 M/s Galaxy had claimed exemptions wrongly in their ST-3 Returns for the period from April 2013 to June 2017 and had also suppressed their taxable value in their ST-3 Returns by way of not including the total taxable income and by deliberately suppressing their taxable income earned against certain invoices to the tune of Rs. 75,27,747/- during the F.Y. 2015-16 by not accounting the same in their sales ledger even though they had issued/raised invoice to their clients. Based on the discussions made here-in-above, the outstanding Service Tax liability of M/s Galaxy was calculated and the same was attached as Annexure 'A', to the SCN. The year-wise summary is given as under:

(Amt. in Rs.)

F.Y.	Taxable Sales	SEZ Sales	Conveyance	Misc. income	Income not reflected in Sales ledger	Total Taxable income	ST payable	ST paid as per ST-3 Returns	Balance ST payable
2013-14	31601151	14647410	724684	0	0	46973245	5805893	3905902	1899991
2014-15	28475099	21548234	801259	0	0	50824592	6281920	3352673	2929247
2015-16	26025001	42676588	719332	0	7527747	76948668	10792058	3634925	7157133
2016-17	25407166	49826191	801498	136362	0	76171217	11394914	3797655	7597259
2017-18 (Apr-Jun)	4232264	15694140	192577	390996	0	20509977	3076497	1181554	1894942
TOTAL	115740681	144392563	3239350	527358	7527747	271427699	37351282	15872710	21478571

12.3 From the above table, it appeared that M/s. Galaxy, during the period from April, 2013 to June, 2017 had provided the taxable services and had evaded Service Tax to the tune of Rs. 2,14,78,571/- (Including Cess) [Rupees Two Crore Fourteen Lakhs Seventy Eight Thousand Five hundred Seventy one only]. The said amount appeared to be recoverable from them under the proviso to sub-section (1) of Section 73 of Chapter V of the Finance Act, 1994 along with applicable interest and penalty.

12.4 The Service Tax amount of Rs. 24,20,000/- (Including Cess) paid by M/s Galaxy vide the following challans during investigation, was required to be appropriated against their outstanding Service tax liability:

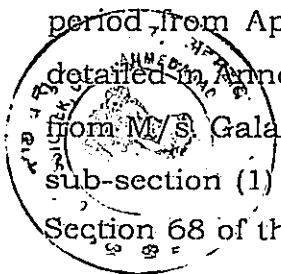
Sr. No.	BSR Code	Challan Date	Challan Serial No.	Amount (Rs.)
1	6390481	31/10/2018	00020	5,20,000
2	6360219	18/02/2019	50013	9,50,000
3	6360219	01/03/2019	50015	9,50,000

			Total	24,20,000
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12.5 In light of the facts discussed hereinabove and the material evidences available on records, it appeared that M/s. Galaxy 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 the consideration received towards providing taxable services by them. They had contravened the provision of:

- (i) Section 70 of the Finance Act, 1994, read with Rule 4 and 7 of the Service Tax Rules, 1994, in as much as they had failed to assess, declare and pay the Service Tax due on the taxable services, to maintain records, and to furnish proper returns, in such form i.e. ST-3 and in such manner and at such frequency;
- (ii) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct value of taxable service provided by them as discussed above.
- (iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had failed to pay the Service Tax at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provisions.

13. It also appeared that M/s. Galaxy had failed to pay the applicable Service Tax on their taxable income from April, 2013 to June, 2017. Further, they had wrongly claimed exemptions in their ST-3 Returns and had also not disclosed their correct taxable income in their ST-3 Returns filed as discussed in the foregoing paras. For such willful act of suppression and mis-declaration of facts with the sole intention to evade Service Tax, the extended period of five years, as provided in proviso of sub-section (1) of Section 73 of Finance Act, 1994 was invocable for demanding the Service Tax for the period from April, 2013 to June, 2017 in the subject matter. Accordingly, the Service Tax amount of Rs. 2,14,78,571/- (Including Cess) [Rupees Two Crore Fourteen Lakhs Seventy Eight Thousand Five hundred Seventy one only] evaded by M/s. Galaxy, during the period from April, 2013 to June, 2017, on the aforesaid taxable services, as detailed in Annexure-'A', to the Show Cause Notice, was required to be recovered from M/s. Galaxy by invoking extended period of five years, under the proviso to sub-section (1) of Section 73 of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994. Consequently, M/s. Galaxy also appear to



be liable to pay interest as per Section 75 of the Finance Act, 1994 on the aforesaid evaded Service Tax.

13.1 Shri Shrikant Rambhuvan Tiwari, Director of M/s Galaxy was at the helm of the affairs of his company. During the course of recording of his statement, he had interalia admitted evasion of service tax by his company and also admitted that he was in knowledge of the fact that his company had claimed exemptions wrongfully, collected service tax from the recipients but had not deposited the same to the exchequer and had taken responsibility for the same. As such, he had a decisive role to play in the present evasion unearthed by DGGI, AZU, Ahmedabad. By committing such an act, he appeared to have rendered himself liable to penalty under Section 78A of the Finance Act, 1994.

14. The Service Tax amount of Rs. 24,20,000/- (Including Cess) paid by M/s Galaxy during investigation, appeared liable for appropriation against their outstanding Service Tax liability.

15. Further, all above acts of contravention appeared to have constituted an offence of the nature as described under the provisions of Section 77(1)(b), 77(1)(e) and 76 and/or 78 of the Finance Act, 1994, rendering M/s. Galaxy liable to penalty under Section 77(1)(b) for their failure to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder; Section 77(1)(e) for failure to issue invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account and not furnishing the information in respect of above taxable service provided by them and the taxable value thereof in prescribed periodical ST-3 returns as well as under 76 and/or Section 78 of the Finance Act, 1994 for suppression of taxable value of said taxable services provided by them.

16. Therefore, M/s Galaxy Security and Menpower Services Private Limited were issued SCN dated 24.04.2019, calling upon to show cause as to why:

- (i) The Service Tax of Rs. 2,14,78,571/- (Including Cess) [Rupees Two Crore Fourteen Lakhs Seventy Eight Thousand Five hundred Seventy one only] as detailed in Annexure-'A' to the notice, evaded on providing such taxable services during the period from April, 2013 to June, 2017 should not be demanded and recovered from them under proviso to Section 73(1) of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994, and Section 174 of CGST Act, 2017;

- (ii) The Service Tax amount of Rs. 24,20,000/- (Including Cess) paid by M/s Galaxy during investigation, should not be appropriated against their outstanding Service Tax liability;
- (iii) Interest should not be demanded and recovered from them under Section 75 of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 on the Service Tax amount at (i) above;
- (iv) (a). Penalty should not be imposed upon them for contravention of provisions of the Finance Act, 1994 under Section 77(1)(b) of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017;
- (b). Penalty should not be imposed upon them for contravention of provisions of the Finance Act, 1994 under Section 77(1) (e) of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017; and
- (v) Penalty for suppression and mis-declaration of correct taxable. value and evasion of Service Tax with deliberate intention to evade Service Tax on the aforesaid taxable services should not be imposed upon them under Section 76 and/or Section 78 of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017.
- (vi) Penalty under Section 78A of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 should not be imposed upon Shri Shrikant Rambhuvan Tiwari, Director of M/s Galaxy for wilfully suppressing the facts and thereby evading Service Tax liability.

DEFENCE REPLY:

17. M/s. Galaxy vide their letter dated 11.03.2022 have submitted their written submission as under:

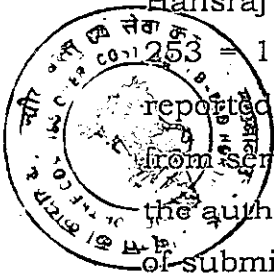
- With respect to the allegation that they had not satisfied the condition of the notification 40/2012-ST and 12/2013, they have stated that they had provided services to M/s Adani Port, M/s Adani Mundra SEZ Infrastructure and M/s Adani International Container Terminal Ltd., which were exempted as all the companies to whom they had provided services were SEZ Units.
- The unit was under the bonafide belief that any services provided to SEZ units were exempted from payment of Service Tax. They had by mistake in some of the invoices, charged and collected Service Tax from the SEZ units. The non-submission of Form A1 and A2 was the procedural requirements for claiming such exemptions but on that ground alone the exemption cannot be

denied.
As per Section 26(1)(e) of Special Economic Zones Act, 2005 read with Rule 31 of Special Economic Zones Rules, 2006, it is clear that the only condition that was required to be satisfied to avail the Service Tax benefit under the said provisions was that the services must have been rendered for the purpose of carrying out "authorized operations in a special economic zone".

- They have relied upon the decision of the Hon'ble High Court of Delhi in the case of **Jindal Stainless Limited v/s Union of India 2017(51)STR 130(Del)**, wherein the court had held that *"the only condition that is required to be satisfied to avail the Service Tax benefit under the said provisions is that the services must be rendered for the purpose of carrying out "authorized operations in a special economic zone"*.
- Section 58 of the SEZ Act provides that any notification, etc., issued under a Central Act would continue to have effect only if it was not inconsistent with the provisions of the SEZ Act. Section 26(1)(e) of the SEZ Act has specifically granted an exemption from service tax on taxable services provided to a Developer or Unit to carry on the authorized operations by the Developer and the Entrepreneur/Unit. The authorized operations are those operations which have been approved by the Board of Approval (hereinafter referred to as the 'BoA') for a Developer and the Development Commissioner for a Unit.
- That Section 26(2) of the SEZ Act has provided the power to the Central Government to prescribe the manner in which and subject to the terms and conditions to which the exemptions was to be granted to the Developer or Unit under Section 26(1). Further, Section 55 of the Act has provided a general power to the Central Government to make rules to carry out the provisions of the Act. Under the powers of Section 55 of the SEZ Act, the Central Government has introduced the SEZ Rules. Rule 31 of the SEZ Rules has prescribed the manner in which, and the terms and conditions, subject to which, the service tax exemption is available to a Developer or a Unit. This Rule provides that exemption from service tax shall be available on the rendition of all taxable services by any service provider to a Developer or a Unit for the purpose of carrying on authorized operations of the SEZ.
- As per Section 26(1)(e) of the SEZ Act read with Rule 31 of the SEZ Rules, the only condition to be satisfied was that the services should be utilised for the carrying out the authorised operations by the developer/ entrepreneur for availing exemption from payment of Service Tax. The location of the service provider or the place of service was entirely irrelevant for the purpose of this exemption. The impugned Show Cause Notice has gone ahead in denying tax exemptions to SEZs. They have provided the services of Manpower to SEZ units and the payment received therein certifies such receipt of service by the SEZ unit and so in such a case the demand issued is not justifiable, illegal and without jurisdiction. The departmental officers in the instant Show Cause

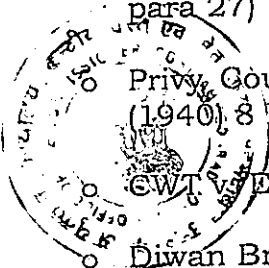
Notice were seeking to deny the tax benefits which are otherwise available to SEZs under the statutory provisions of the SEZ Act and the SEZ Rules. They were a service provider to SEZ unit and the department's insistence in the impugned show cause notice for discharging service tax despite the fact that there was a clear exemption from service tax available to them under the statutory provisions of the SEZ Act/Rules was thus violative of law of natural justice and seems to be a colorable exercise of powers.

- The Section 51 of SEZ Act has expressly provided that the provisions of SEZ Act will have effect and will override any other law for the time being in force which is inconsistent with the provisions of the Act. Therefore, the impugned Notice is illegal and is liable to be overridden by the provisions of Section 51 read with Section 26(1)(e) of the SEZ Act read with Rule 3 of the SEZ Rules.
- They have sated that the provisions of an Act which provide for an exemption from a tax have to be interpreted strictly. It is a well settled legal principle that in a taxing statute, one has to look merely at what is clearly said. There is no room for any intendment. In this regard they have relied upon the decision of the Hon'ble Supreme Court in case of CIT v. Ajax Products , reported at 55 ITR 741, 747 (SC); CIT v. Shahzada Nand , reported at 60 ITR 392, 400 (SC) and State of Punjab v. Jaswant , reported at 186 ITR 655. In view of the plain language of the SEZ Act/SEZ Rules, there is no scope of an interpretation of such provisions to include a condition for availing such exemption for reasons of non-submission of Form A-1 and A-2. The impugned Notice has no nexus with the object and purpose of SEZ Act and SEZ Rules which was to provide impetus to exports. By the impugned Notice, the department has virtually attempted to defeat the object with which the SEZ Act/SEZ Rules were formed.
- They have further argued that it was a well settled legal principle that no additional condition could be read into an exemption notification. They have placed reliance on the decision of the Hon'ble Supreme Court in the case of Hansraj Gordhandas v. H.H. Dav, Asstt. CCE , Surat reported at 1969 (2) SCR 253 = 1978 (2) E.L.T. (J350) (S.C.), and CCE, Baroda v. Vipul Shipyard , reported at 1997 (10) SCC 337 = 1996 (88) E.L.T. 640 (S.C.). The exemption from service tax was provided in the SEZ Act and SEZ Rules for carrying out the authorized operations of the developer/Unit. The procedural requirement of submission of Form A-1 and A-2 thus can be condoned as the exemption



from payment of service tax has been provided by the statutory provisions of the SEZ Act read with SEZ Rules

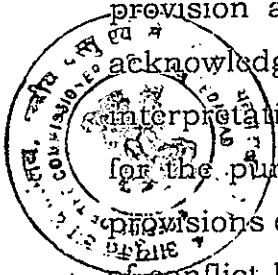
- The Hon'ble Supreme Court in the case of Tata Teleservices Ltd. v. Commission of Customs , reported at (2006) 1 SCC 746 [2006 (194) E.L.T. 11 (S.C.)] and in the case of Union of India & Ors. v. Inter Continental (India) , reported at C.A. 6529/2002 [2008 (226) E.L.T. 16 (S.C.)] has held that "to impose a limitation on the exemption notification which the exemption notification itself did not provide and therefore it was not open to the Board to whittle down the exemption notification in such a manner".
- The expression "authorized operations" refers to those operations which are to be carried out inside the Special Economic Zones, hence the words "in Special Economic Zone" as they appear in Section 26 and Rule 31 are to be read with "taxable services" so as to mean that the exemption is available only with regard to those services that are rendered in a special economic zone. The services of Manpower have been provided by them to the SEZ unit, within the Zone and therefore exemption was clearly available to them. It is a well-established law that statutes have to be given strict interpretation. If the words of a statute are precise and clear, they must be accepted as declaring the express intention of the legislature. It is equally well-settled that a subject is not to be taxed unless the words of a taxing statute unambiguously impose the tax on him. In the case of Ajmera Housing Corpn. v. CIT reported at (2010) 8 SCC 739, the Apex Court observed that *"36. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment."*
- They also relied on the following judgments:
 - Hansraj & Sons v. State of J&K , reported at (2002) 6 SCC 227
 - A.V. Fernandez v. State of Kerala - AIR 1957 SC 657 : 1957 SCR 837 observed : (AIR p. 661, para 29)
 - Lord Russel of Killowen in IRC v. Duke of Westminster - 1936 AC 1: 1935 All ER Rep 259 : 104 LJ KB 383 (HL), AC at p. 24 : (AIR p. 661, para 27)
 - Privy Council in Bank of Chettinad Ltd. v. CIT - AIR 1940 PC 183: (1940) 8 ITR 522.
 - CWT v. Ellis Bridge Gymkhana - (1998)1SCC 384
 - Diwan Bros. v. Central Bank of India - (1976) 3 SCC 800



- o A.V. Fernandez v. State of Kerala and in State of Maharashtra v. Mishrilal Tarachand Lodha - AIR 1964 SC 457 : (1964)5 SCR 230: (AIR p. 459, para 9), wherein it was observed that:

“7. These observations manifestly show that the courts have to interpret the provisions of a fiscal statute strictly so as to give benefit of doubt to the litigant. The principles deducible from the decisions referred to above are well established and admit of no doubt.”

- They have stated that the SEZ Act has provided exemption from payment of service tax for services rendered to SEZ units/ Developer and it has an overriding effect over all other acts/law. It is trite law that a subordinate legislation has to conform to the parent statute and any subordinate legislation inconsistent to the provisions of the parent statute is liable to be set aside. It is equally well settled that circulars being executive/administrative in character cannot supersede or override the Act and the statutory rules. A division Bench of the Court in decision dated 4-3-2011 in the case of Federation of Indian Airlines v. Union of India - [WP (C) No. 8004/2010] has elaborately discussed the above proposition of law.
- That in Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra reported at (2009) 5 SCC 24, the Apex Court has held that circulars are administrative in nature and cannot alter the provisions of a statute nor can they impose additional conditions.
- A SPECIAL LAW SHALL PREVAIL OVER THE GENERAL AND PRIOR LAWS
SPECIAL ACT (SEZ ACT AND RULES) OVERRIDES GENERAL CLAUSE ACT
(PROCEDRAL RULES UNDER CENTRAL EXCISE)
- “Generalia specialibus non derogant” is a Latin maxim which means universal things do not detract from specific things. This maxim of law says that when a matter falls under any specific provision, then it must be governed by that provision and not by the general provision. The general provisions must acknowledge the specific provisions of law. It is a basic principle of statutory interpretation. The maxim “generalia specialibus non derogant” means that, for the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one. In the case of conflict between an earlier and a later statute, a repeal by implication is never to be favoured and is only achieved where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that



the two cannot stand together... Special Acts are not annulled by general Acts unless there is some express reference to the previous legislation or an essential inconsistency in the two Acts standing together which prevents the maxim "generalia specialibus non derogant" being applied. The principle is applied when there is a conflict between two statutes or two provisions of the same statute. They have placed reliance on the following case laws :

- o Paradip Port Trust v. Their Workmen AIR 1977 SC 36,
 - o Dharam Pal Sat Dev v. CIT [1974] 97 ITR 302 (P&H) and Nandlal Sohanlal v. CIT [1977] 110 ITR 170 (P&H),
 - o Ispat Industries Ltd. v. Commissioner of Customs (2006) 202 ELT 561 SC. Hon'ble Justice Markandey Katju has mentioned to Mimansa rules of interpretation of the ancient times while deciding an appeal under Custom Tariffs Act, 1975. The question of decision elaborated the interpretation of Section 14 of the Customs Act and some relevant rules especially Rule 9(2)(a) of the Customs Valuation (Determination of Prize of Imported Goods) Rules, 1988. According to the Court, every legal system has a hierarchy of norms.
- In Dilawar Singh vs. Parvinder Singh @ Iqbal Singh & Anr . AIR 2006 SC 389, it was held that --with reference to the maxim 'Generalia Specialibus non Derogant' the Court held that if a special provision has been made on a certain matter, that matter is excluded from the general provisions.
 - In view of above legal standings, it is aptly clear that the provisions of the SEZ Act and Rules would override the provision of General Clause Act i.e the Central Excise Act and Rules and therefore the insistence on form A-1 and A-2 would be termed as procedural in nature and the actual condition as laid under the governing provisions of SEZ Act and Rules have been duly fulfilled by them and therefore the issue raised herein has no merit.
 - They have produced copies of approval certificates as SEZ Units (to the unit whom they had provided services of Manpower and other services) and the value of the services provided to SEZ units as certified by the Chartered Accountant. They had declared the claim of exemption in the ST-3 returns filed. They have availed the exemption correctly, and had declared the availment of exemption in their ST-3 returns.

In view of the fact that certificates evidencing approval of SEZ units along with Chartered Accountant's Certificate certifying the value of services provided to such units and the SCNs do not contain any specific details about

the unit wise value, their claim that they had availed the exemption from Service Tax for services provided to SEZ units correctly has firm ground to hold. They have stated that the service supplied was Security Agency Service and Manpower Recruitment Service to SEZ unit and the exemption claimed was rightfully claimed.”

- They have made disclosure of turnover in ST-3 returns, the disclosure of exemption notification, production of SEZ certificates and, and therefore there was no suppression of facts with intention to evade tax. The allegation of suppression of facts and mala fide intention with intent to evade payment of tax is not sustainable in view of the fact that proper disclosure have been made in the ST-3 returns.
- They had claimed the exemption under Noti. No. 40/2012-ST for providing services to SEZ units/ Developer. Further, the exemption from payment of service tax on services rendered for carrying “authorised operations” was available under Section 26 of SEZ Act, read with Rule 31 of SEZ Rules without any restriction regarding the consumption of services [Norasia Container Lines v. CCE (2011) 23 STR 295 (Tri-Del)].
- The onus was on the SEZ unit for issuance of Form A-1 and A-2. It was stipulated that in order to claim ab initio exemption from payment of service tax on services used by it for its authorized operations, they had to get an approval from the ‘Approval Committee’ of the SEZ to the list of services used for authorized operations and had furnished a declaration in Form A-1 specified under notification verified by the SEZ officer to the jurisdictional Dy. CCE. The Dy. CCE was to issue the certificate in Form A-2 under the above notification to the SEZ unit without making any further enquiry. The onus for the was on the SEZ unit.
- The exemption claimed by them was under reasonable belief that supplies made to SEZ unit was exempted from payment of service tax.
- The producing of the prescribed documents was procedural in nature, and facts remained that they had supplied the service to SEZ units. They have produced approval from the Approval Committee in respect of the SEZ units. The services were provided to these SEZ units and based on the certificate from the Chartered accountant, exemption need to be allowed to them. Services provided were deemed to be export of services, thus the same was exempt from service tax.

They stated with respect to the allegation that they had suppressed their income by not reflecting their taxable income correctly in their ST-3 Returns,

that the figures shown in our Sales Ledgers and 26AS were gross figures, wherein the Service Tax component was included in the figures. However, the actual income of M/s. Galaxy was recorded in the Sales Ledgers. That they were paying service tax as per their bona fide understanding that the service tax was to be paid on the receipts retained by them and not on reimbursement expenses. Further the matter of calculation adopted by the investigating officer is not clear to them. Therefore, they had been filing their service tax returns on the basis of the actual receipts retained by them and thus adopted the correct method of computing the service tax. Therefore, the allegation of suppression, misstatement was wrongly attributed to them.

- As a law abiding assessee, on the insistence of the department they had made substantial deposits of Rs 24 Lacs towards the differential service tax and have cleared all the dues including the interest even before the issuance of the show cause notice. Therefore, no interest was chargeable for the amount deposited prior to the issuance of the show cause notice still entire interest was paid. Relying upon the judgment of the Larger Bench of the CESTAT rendered in the case of CCE, Delhi-III Vs. Machino Montell (I) Ltd. reported at 2004 (168) ELT 466 (Tri-LAB), they have submitted that since they had discharged their full duty and interest liability, that itself showed their bona fide. Therefore, the case fell within the parameters of Section 80 of the Finance Act, which provides non imposition of penalty. They have relied upon the following case laws as regards to non imposition of penalty:

- Akber Travels of India (P) Ltd. Vs. Commissioner of Customs and Central Excise, Cochin, 2008 (11) STR 42 (Tri. Bang.)
- Eta Engineering Ltd. Vs. CCE, Chennai-2004 (1740 ELT 19 (Tri-LB.)
- CCE, Meerut-II, Vs. R.N. Katayal-2006 92) STR 77 (Tri-Del).
- Urban Improvement Trust Vs. CCE, Jaipur-2006 930 STR 248 (Tri-Del).
- Sri Venkateswar Hi-tech Machiner Vs. CCE, Coimbatore-2007 (6) STR 139 (T)
- Commr. S.T. Kol-I Vs. Pee Kay & Co.-2007 (7) STR 540 (T-kol).
- CCE, Nashik Vs. Bapu Transport-2007 97)Tri-Mum)
- Niki Associates Vs. CCE, nashik-2007 (7) STR 662 (Tri-Mum).
- CCE Bhopal Vs. Maharashtra Samaj Bhawan Trust-2007 (5) STR 651 (Tri-Del).
- Lakmichand Dharshi Vs. CCE, Mumbai-2007 (5) STR 128(Tri-Mum).

- CCE, Bhopal Vs. Bharat Security Services & Workers" Cont.-2006 (3) STR 703 (Tri-Del).
 - CCE, Bhopal Vs. R.K. Electronic Cable Network-2006 (2) STR 153 (Tri-Del.)
 - CCE & C.V. Mukul S. Patil-2008 (10) STR 115 (Bom).
 - A.R. Ashish V. Patil Vs. CCE, Nashik-2006 (3) STR 184 (Tri-Mum).
 - Union of India Vs. TPL Industries Ltd. 2007 (214) ELT 506 (Raj.)
 - CCE, Ludhiana Vs. Sigma Steel Tubes-2007 (82) RLT 361 (P &H)
 - Union of India Vs. perfect Thread Mills Ltd.-2009 (234) ELT 49 (Raj.)
- As regards non payment of service tax on Conveyance Bill raise by them, non payment of service on reimbursement , Misc, Income, and some invoice which were not figuring in the sales ledger, they have stated that since no Service Tax was collected separately, no Service Tax had been paid on this income. They have also stated that the Hon'ble Supreme Court has held that no service tax was payable on reimbursable expenditure or cost incurred by the service provider.
 - They further stated that the demand is time barred.

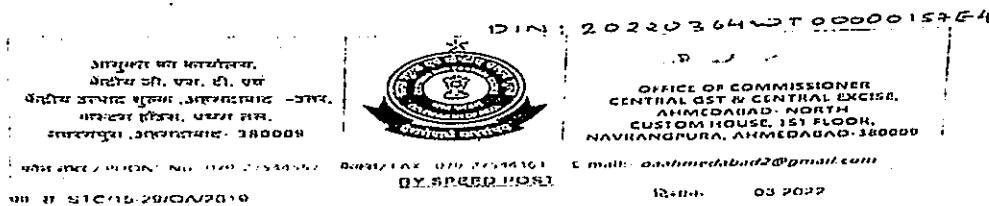
18. Further, Shri Rambhuvan Tiwari, Managing Director has also submitted the affidavit alongwith the written submission, wherein Shri Rambhuvan Tiwari has stated that his statements recorded during the investigation was under pressure, and wrong promise and temptation and by applying coercion to him and he was made to sign the statements. He does not understand English, as such what was recorded in English was not known to him. He has also stated that they do not have any knowledge with respect to Balance sheet or 26AS of their firm.

PERSONAL HEARING:

19. Personal hearing was granted to M/s. Galaxy vide letter dated 17.01.2020, but in reply, they vide their letter dated 04.02.2020 informed and requested to defer the personal hearing as they had filed an application under Sabka Vishwas Scheme 2019. Thenafter, they were granted personal hearings vide letters dated 28.08.2020, 11.09.2020, 05.10.2020, 27.10.2020 and 24.03.2021. However, they did not respond to these letters except to letter dated 24.03.2021. In connection with letter dated 24.03.2021, they sought copies of relied upon documents and sought extension of time till the Covid Pandemic situation got normalized. They were again granted personal hearing vide letters

dated 28.05.2021 and 16.06.2021, but no response from M/s. Galaxy was received. The demand for RUD after almost two years from the date of issuance of SCN appeared strange, however, without going into whether they had received the RUD or otherwise, they were asked vide letter dated 15.11.2021 to collect the RUD from the office, in the interest of justice. They accordingly collected the documents only on 06.01.2022. Meanwhile, they were granted personal hearing vide letters dated 06.12.2021 and 30.12.2021. In reply to letter dated 30.12.2021, they sought extension of time. Therefore, they were again granted personal hearing on 24.01.2022, but they again sought extension of time. Finally, they were granted personal hearing vide letter dated 02.03.2022 by the adjudicating authority himself in the interest of justice as under, and it was conveyed to them that if the personal hearing was not attended, the matter would be taken up exparte. However, again they did not appear for the personal hearing fixed on 11.03.2022.

Image of letter dated 02.03.2022



To,
M/s Galaxy Security & Manpower Services Pvt Ltd
302, Narayan Complex, Opp. Havmor Restaurant,
Navrangpura, Ahmedabad-380009
Shri Shrikant Rambhuvan Tiwari, Director
302, Narayan Complex, Opp. Havmor Restaurant
Navrangpura, Ahmedabad-380009
Gentlemen

Sub: Intimation regarding Fixing of Personal Hearing m/req.

Please refer to the SCN No DGG/AAZU/Ce-A/38-04/2019-20 dated 24 04 2019 issued to you by the Additional Director General, Ahmedabad Zonal Unit, DGGI, Ahmedabad. Please also refer to letters of even no dated 25 08 2020, 11 09 2020, 05 10 2020, 27 10 2020, 24 03 2021, 28 05 2021, 16 08 2021, 06 12 2021, 30 12 2021 and 24 01 2022 vide which dates of personal hearing were communicated to you so that you could have your say vis-a-vis the charges levilled in the SCN

In this connection it is to mention that you have neither filed your defence reply nor have attended any of the numerous personal hearings fixed in the matter. Since a substantial amount of govt revenue is involved in the matter, you are once again requested to file your defence reply if any and also appear for personal hearing on any working day, but not later than 11 03 2022. You may also take note that this is the last and final opportunity given to you to defend your case in person in the interest of justice. In case you fail to appear for personal hearing before 11 03 2022, the undersigned as an adjudicating authority would have no recourse left but to adjudicate the case on the basis of available records ex-parte.

Yours sincerely,

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

Copy to The Deputy Commissioner, Central Excise & CGST Div. VII Ahmedabad North, Ahmedabad- for serving the letter on the notice.

In response to the above letter M/s. Galaxy sought another extension and requested for personal hearing to be fixed on 21.03.2022. The request of M/s. Galaxy was acceded to and vide mail dated 17.03.2022, they were requested to attend the personal hearing on 21.03.2022. However, again they did not attend the personal hearing fixed on 21.03.2022 and they vide their mail dated 17.03.2022 sought last/final postponement of PH fixed on 21.03.2022 to

23.03.2022. The request of M/s. Galaxy was again acceded to in the interest of justice. Finally, personal hearing was attended by Shri Sachin Dutt Shama Authorised Representative and Shri Chetan Khandelwal, CA on behalf of M/s. Galaxy on 23.03.2022. During the course of personal hearing they reiterated the gist of the written submission dated 11.03.2022. They stated that they had supplied service to SEZ, though the procedures/stipulations governing the same may not have been adhered to. They requested to provide exemption from service to them in view of the fact of supply of services to SEZ by them.

DISCUSSION AND FINDINGS:

20. I have carefully gone through the facts of the case and records available in the case file, which include SCN, the defence replies dated 11.03.2022, documents submitted and oral submission made during the course of personal hearing.

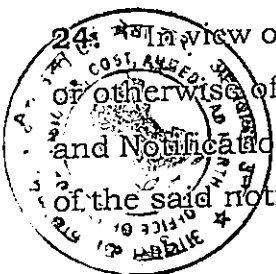
21. On going through the SCN, I find that basically the essence of the case is that the investigation by the DGGI Office was carried out against M/s. Galaxy, who were engaged in providing service under category of "Security/ Detective Agency Services" and "Manpower Recruitment/supply agency Services". I also find that the SCN has alleged that M/s. Galaxy has resorted to evasion of service tax (i) by claiming exemption from payment of service tax wrongly in respect of service purportedly provided to SEZ units / Developers without supporting documents. It was also observed that the exemption could have been availed under Notification No. 40/2012-ST dated 20.06.2012 and 12/2013-ST dated 01.07.2013 only by satisfying the conditions laid down thereunder (ii) by not paying service tax on Conveyance Bill raised by them (iii) by not accounting some of invoices in their sales ledger and not showing correct value of provision of services in ST-3 returns filed by them (iv) by not including the miscellaneous income received towards reimbursement of telephone charges, insurance charges etc. in the taxable value of service as required under Section 67 of the Finance Act, 1994 (v) by suppressing taxable value of services/ under reporting the taxable value in ST-3 Returns filed by them. Therefore, the SCN dated 24.04.2019 proposing the demand of Service Tax of 2,14,78,571/- alongwith applicable interest and penalty was issued. Therefore, the issues for determination in the subject SCN dated 24.04.2019 before me are (i) whether the benefit of exemption under Notification 40/2012-ST dated 20.06.2012 and 12/2013-ST dated 01.07.2013 was available to M/s. Galaxy or otherwise (ii) whether amount charged under the conveyance bill and amount of reimbursement are includible in the value of taxable service provided by M/s.

Galaxy or otherwise, in terms of Section 67 ibid (iii) whether M/s. Galaxy had non accounted the income or not declared the correct value of service in their sales ledger and ST-3 Returns respectively or otherwise (iv) whether M/s. Galaxy had indulged in suppression of taxable value /under reporting the correct value of service in ST-3 Returns.

22. With respect to the claiming of the exemption from payment of service tax for rendering the services to SEZ units/ developer, M/s. Galaxy has contended that they have provided the services of "Security and Manpower" to M/s Adani Port, M/s Adani Mundra SEZ Infrastructure and M/s Adani International Container Terminal Ltd., who were SEZ units. Further, they have argued that production of A1 & A2 under Notification no. 40/2012-ST or 12/2013-ST, were mere procedural requirements, however, in terms of Section 26(1)(e) of SEZ Act, read with Rule 31 of SEZ Rules, the only condition to be satisfied to avail exemption was that the services to be rendered were for carrying out the authorised operation by SEZ units. The services provided by them were for carrying out the authorised operations by SEZ units. They have also tendered arguments that the exemption in respect of services provided to SEZ were available to them as per Section 26(1)(e) read with Rule 31 of SEZ Rules, and by virtue of Section 51 of the SEZ Act, that the Section 26(1)(e) had overriding effect over any law/act which was not consistent with SEZ Act. They have also stated that the SEZ Act is specific act hence it always prevail over the subordinate / general act, and in support of their arguments they have cited various case laws.

23. I find from the statement dated 25.10.2018 of Shri Shrikant Rambhuwan Tiwari, Managing Director of M/s. Galaxy, which was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, that he had stated that they had provided services to SEZ units viz. M/s. Adani Port and Special Economic Zone Ltd, M/s. Adani Mundra SEZ Infrastructure and M/s. Adani International Container Terminal Ltd. He had also stated that service provided to them were exempt service.

In view of the above, I find that the issue basically concerns the availability of otherwise of exemption under Notification No. 40/2012-ST dated 20.06.2012 and Notification 12/2013-ST dated 01.07.2013. Therefore, the relevant excerpts of the said notifications are reproduced for ready reference as under:



Notification No. 40/2012-ST dated 20.06.2012.

G.S.R. (E). – In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section 3 of section 95 of Finance (No.2) Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ and used for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

2. The exemption contained in this notification shall be subject to the following conditions, namely:-

(a) the exemption shall be provided by way of refund of service tax paid on the specified services received by a unit located in a SEZ or the developer of SEZ and used for the authorised operations:

Provided that where the specified services received in SEZ and used for the authorised operations are wholly consumed within the SEZ, the person liable to pay service tax has the option not to pay the service tax ab initio instead of the SEZ unit or the developer claiming exemption by way of refund in terms of this notification.

(b)

(c) for the purpose of claiming exemption, the Unit of a SEZ or developer shall obtain a list of services that are liable to service tax as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;

(d) for the purpose of claiming ab initio exemption, the unit of a SEZ or developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, in addition to the list specified under condition (c); the unit of a SEZ or developer who does not own or carry on any business other than the operations in SEZ, shall declare to that effect in Form A-1

.....

3. The following procedure should be adopted for claiming the benefit of the exemption contained in this notification, namely:

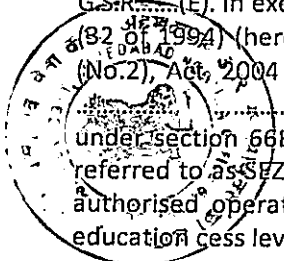
(a).....

.....

(h) a service provider shall provide the specified services falling under wholly consumed category, under ab initio exemption granted by this notification, to a unit of a SEZ or developer, for authorised operations, subject to the submission of list specified in condition (c) under paragraph 2 and a declaration in Form A-1;

Notification No. 12/2013-ST dated 01.07.2013. (which rescinded the Notification No. 40/2012-ST dated 20.06.2012)

G.S.R. (E). In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007 (22 of 2007) hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.



2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:

Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio, subject to the conditions and procedure as stated below.

3. This exemption shall be given effect to in the following manner:

(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II) The ab-initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

25. On perusing the above excerpts of the notification, it is seen that the exemption from service tax has been provided to the services received by SEZ units/ Developers for use in authorised operations, by way of granting refund or ab-initio exemption from payment of service tax, subject to following certain procedures and conditions laid down in the aforesaid notifications. It is also discerned from the notifications that SEZ unit/ Developer will get services which are required for authorised operations approved by the Approval Committee. Thereafter, the SEZ unit /developer is required to submit /make declaration in Form A-1, duly verified by the Specified Officer of the SEZ alongwith the list of specified services (services required for authorised operations) to Jurisdictional Central Excise Assistant /Deputy Commissioner. As per clause 3 (h) of Notification No. 40/2012-ST, the service provider shall provide the service to SEZ/Developer without payment of service tax by submitting the Declaration in Form A-1 and List of approved services. The procedure/condition laid down in Notification 12/2013-ST was somewhat different. The SEZ unit /Developer is required to get the services required for authorised operation approved by the Approval Committee. Thereafter, SEZ Unit/Developer was to submit the declaration in Form A-1 alongwith the list of approved services to Jurisdictional Central Excise authority. On the basis of Declaration in Form A-1, the Jurisdictional Assistant/Deputy Commissioner would issue the authorisation in

Form A-2. The service provider on the strength of A-2, was required to provide service to SEZ unit / Developer without payment of service tax. From the above provisions contained in both the notification, Declaration in Form-A1 and Authorisation in Form A-2 are extremely very vital documents required for claiming the exemption from payment of service tax.

26. I also find that the M/s. Galaxy have argued that the Service tax exemption has been granted to SEZ unit/ Developer under Section 26(1)(e) readwith Rule 31 of SEZ Rules, and they have also argued that as per Section 51 of SEZ Act, the SEZ Act has overriding effect over the other Acts/Laws which are inconsistent with the SEZ Act. I would like to re-produce the said sections of the SEZ Act for ready reference as under:

“Section 26 of SEZ Act, 2005

26. Exemptions, drawbacks and concessions to every Developer and entrepreneur: –

(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be **entitled to the following exemptions, drawbacks and concessions, namely:-**

(a)

.....

(e) exemption from service tax under Chapter V of the Finance Act, 1994 (32 of 1994) on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;

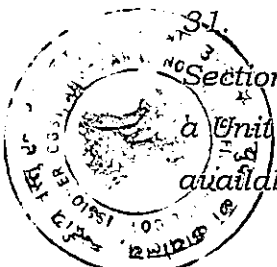
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(g)

(2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).”

“Rule 31 of SEZ Rules 2006.

31. The exemption from payment of service tax on taxable services under Section 65 of the Finance Act, 1994 (32 of 1994) rendered to a Developer or a Unit (including unit under Construction) by any service provider shall be available for the authorised operations in a Special Economic Zone.”



“Section 51 of SEZ Act,

51. Act to have overriding effect- *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any instruments having effect by virtue of any law other than this Act"*

27. It is seen from the above that when there is a conflict between the SEZ Act and other Act/law, then Section 51 have overriding effect over the other act. I find that there is no inconsistency between SEZ Act and Finance Act 1994. Section 26 of the SEZ Act has made provisions for exemption in respect of receipt of service by SEZ unit/developer from DTA and Notification No. 40/2012-ST or 12/2013-ST have been issued under Section 93 of Finance Act, 1994 in line with SEZ Act, providing for exemption for the service provided by DTA to SEZ units/developers, thereby removing any conflict between the two enactments and rules. Therefore, there is no inconsistency whatsoever.

28. I find that if there is conflict between SEZ Act and other enactments relating to SEZ units or developer, the provisions of SEZ Act may be applicable in terms of Section 51. The applicability of the provision of service SEZ developer/unit does not mean that only SEZ Act becomes applicable and provisions of Finance Act, 1994, and rules thereunder and Central Excise Act, 1944 and rules made thereunder would not be applicable. In this regard, I rely on the decision of the Tribunal in the case of M/s. SOBHA DEVELOPERS LTD reported at [2012 (25) S.T.R. 136 (Tri. - Bang.)]. The decision of the Tribunal was also upheld by the Hon'ble High Court of Karnataka [2013 (30) S.T.R. J83 (Kar.)]

29. I also draw support from the decision of the Hon'ble Tribunal in the case of M/s. DHL LEMUIR LOGISTICS PVT. LTD. reported at [2012 (28) S.T.R. 135 (Tri. - Mumbai)], wherein it was held that "Assessee's contention of Notification to be read with provisions of Special Economic Zone Act, 2005 and Special Economic Zone Rules, 2006 devoid of merit - Conditional Notification issued under Section 93 of Finance Act, 1994 cannot be interpreted on basis of provisions of SEZ Act or Rules - If intention of legislation to align impugned Notification with Section 26 of said Act or Rule 31 of said Rules amendment of Notification would have been carried out".

30. I also place reliance on the ratio of decision of the Hon'ble Gujarat High Court in the case of M/s. ESSAR STEEL LIMITED reported at [2010 (249) E.L.T. 3 (Guj.)], wherein it was held that Section 51 of the SEZ Act, 2005 providing that the Act would have overriding effect does not justify adoption of a different definition in the Act for the purposes of

another statute. A non-obstante clause only enables the provisions of the Act containing it to prevail over the provisions of another enactment in case of any conflict in the operation of the Act containing the non-obstante clause. The relevant para of decision is reproduce as under:

“41.3.3 Section 51 of the SEZ Act, 2005 providing that the Act would have overriding effect does not justify adoption of a different definition in the Act for the purposes of another statute. A non-obstante clause only enables the provisions of the Act containing it to prevail over the provisions of another enactment in case of any conflict in the operation of the Act containing the non-obstante clause. In other words, if the provision/s of both the enactments apply in a given case and there is a conflict, the provisions of the Act containing the non-obstante clause would ordinarily prevail. In the present case, the movement of goods from the Domestic Tariff Area into the Special Economic Zone is treated as an export under the SEZ Act, 2005, which does not contain any provision for levy of export duty on the same. On the other hand, export duty is levied under the Customs Act, 1962 on export of goods from India to a place outside India and the said Act does not contemplate levy of duty on movement of goods from the Domestic Tariff Area to the Special Economic Zone. Therefore, there is no conflict in applying the respective definitions of export in the two enactments for the purposes of both the Acts and therefore, the non-obstante clause cannot be applied or invoked at all.”

I also find this case was upheld by the Apex Court reported at [2010(255)ELTA115(SC)].

31. I find that there is no dispute regarding provision of service by M/s. Galaxy. The service tax on making provision of services, is leviable under Section 66B of the Finance Act, 1994, unless it is covered under negative list of service or exempt service. Therefore, any service for a consideration is taxable service. As regards, the provision of service to SEZ units/ Developer for carrying out the authorized operation by SEZ/Developer, the exemption from payment of service tax is available to the service provided to SEZ unit/developer under notification no, 40/2012-ST or 12/2013-ST, subject to certain procedures and conditions laid down under the said notifications. The same has been discussed hereinabove.

I find that the exemption has been made available to SEZ unit/Developer under Finance Act, 1994 for receiving the service tax free, which is in line with the provisions contained in Section 26 of the SEZ Act. I do not find any conflict in provisions in this regard. In view of the legal position as discussed above, the subject conditional notifications issued under Section 93 of Finance Act, can not be interpreted on the basis of SEZ Act and SEZ Rules. For availing the benefit of



exemption under respective notification, the conditions and procedures laid down must be adhered to. I find that laying down of certain condition and procedure by the statute is for monitoring purpose so as to prevent any misuse, ensuring use of services for the intended purpose or for accounting of tax free supply to such receiver of service.

32. Now, it is pertinent to mention here that exemption available to SEZ unit/Developer under Section 26(1) are subject to provisions of sub-section (2) of Section 26 of the SEZ Act. Accordingly to Sub-section (2), the exemption, concessions, drawback or other benefit have been granted subject to manner, terms and condition prescribed by the Central Government. I find that Chapter IV of SEZ (Rule 22 to Rule 46) contains the terms and conditions subject to which Entrepreneur And Developer are entitled to exemption, Drawbacks and Concessions. I also find it necessary to mention here that as per Rule 25 of SEZ Rules, SEZ Units/ Developer have to refund the amount equal to the benefits of exemptions, concession availed by them in case of goods/services on which exemptions, concession have been availed and the said goods/ services have not been utilised in authorised operations or unable to account for the same by SEZ Units/Developer.

33. I find that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A person claiming exemption has to bring himself under the ambit of the notification. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly. If exemption is available on complying with certain conditions, the conditions have to be complied with. In this regard, I rely on decision of the Supreme Court in the matter of Commissioner of C.Ex., New Delhi vs. Hari Chand Shri Gopal, reported in [2010(260)ELT3(SC)].

34. Similar view has been taken by the Hon'ble Apex court in the following cases:

(i) Any exemption notification has to be interpreted based on the language used therein. The Supreme Court in the case of *Hemraj Gordhandas v. H.H. Dave, Asst. Collector of Central Excise & Customs* [1978 (2) E.L.T. (J350) (S.C.)] laid down the following principle:-

"It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax payer is within the plain terms of the exemption it cannot be denied

its benefit by calling in aid any supposed intention of the exempting authority.”

(ii) in the case of *Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commissioner* reported in 1991 (55) E.L.T. 437 (S.C.), the apex Court held as follows :-

“It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in *Union of India & Ors. v. Wood Papers Ltd. & Ors* - 1991 JT (1) 151 at 155”.....Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction...”

(iii) In the case of *Bombay Chemical Pvt. Ltd. v. C.C.E., Bombay* reported in 1995 (77) E.L.T. 3 (S.C.), the Hon’ble Apex Court *inter alia* held as follows :

“One of the settled principles of construction of an exemption notification is that it should be construed strictly, but once a goods is found to satisfy the test by which it falls in the exemption notification then it cannot be excluded from it by construing such notification narrowly”.

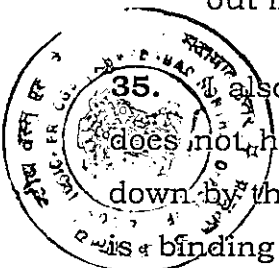
(iv) In the *Sarabhai M. Chemicals v. C.C.E., Vadodara* reported in 2005 (179) E.L.T. 3 (S.C.) a three judge Bench of the Hon’ble Apex Court held as follows :-

“It is well-settled that an exemption notification has to be strictly interpreted. The conditions for taking the benefit of the exemption have to be strictly interpreted.”

(v) The same view was re-iterated by the Hon’ble Apex Court in the case of *Gujarat State Fertilizers Co. v. C.C.E.* reported in 1997 (91) E.L.T. 3 (S.C.) wherein it was held that -

“an exemption notification has to be interpreted by taking into consideration, the language of the notification which has to be given its due effect. Supposed object and purpose of the exemption has to be culled out from the said language.”

also find that the reliance placed by M/s. Galaxy on various case laws does not help when one applies the principles of statutory interpretation laid down by the Hon’ble Apex Court. The law laid down by the Hon’ble Apex Court is binding on all lower Courts/ appellate authorities and quasi judicial authorities.



36. M/s. Galaxy in their defence reply dated 11.03.2020 at page 23, have mentioned that they are producing the copies of approval certificates as SEZ units. However, it is pertinent to mention that M/s. Galaxy have not provided any copies of approval certificate as SEZ, rather they have blandly enclosed the list of 20 functional SEZs. The part image of the said list is reproduced as under:

Notified Special Economic Zones (Functional)							
Sl. No.	Developer	Location	Industry	Area (Hectares)	Notified Date	Operational Area (Hectares)	Employment
1	Zydus Infrastructure Pvt.Ltd.	Chachanvadi-Vasna San. Matoda	- Pharma - 48.83 hec	Notified and operational in area of 48-43-00 hectares vide notification No 1830(E) dated 25.9.06	Ahmedabad	3404.00	5470
2	AHMEDABAD APPREAL PARK Gujarat Industrial Dev. Corpn	Ahmedabad	- Apparel	Notified and operational in area of 18-05-13 hectares vide notification No 513(E) dated 10.04.2007	Ahmedabad	175.45	1483
3	Ganesh Infrastructure Pvt. Ltd	T. Agni and G. Road	- IT/ITES	Notified and operational in area of 12-11-23 hectares vide notification No S.O. 1011(E) dated 22.06.2007	Ahmedabad	114.27	207
4	E Complex Private Ltd	Rampura & Lunaspur	- Engineering	Notified and operational in area of 124-11-99 hectares vide Notification No S.O. 9(E) dated 2/01/2005	Amreli	1454.16	97
5	DAHEJ SEZ Dahej SEZ Limited	Dahej, Ambheta, Luvara, Sura, Lalpugam, Jagdishwar	- Multi-product	Notified and operational in area of 17-8-93-87 hectares vide	Bharuch	40229.61	6256
6	Sterling SEZ Infrastructure pvt Ltd	Vaipor and Sarod	- Multi-product	Notified and operational in area of 1263-17-00 hectares vide notification No S.O. 69(E) dated 11.11.2005	Bharuch	1368.56	518
				Notified and operational in area of 107-16-50			

From the above, it is quite apparent that the above list by itself does not serve any purpose for the current adjudication proceedings as the list by itself does not establish any thing.

37. Based on above legal position, submission made by M/s. Galaxy, and discussion hereinabove, I am of the view that the benefit of exemption from service tax on provision of services to SEZ unit/ Developer for authorized operations, can be granted only under subject Notifications 40/2012-ST dated 20.06.2012, and 12/2013-ST dated 01.07.2013, and that too only if conditions/procedures as laid down are followed while providing service to SEZ unit/Developer. Therefore, the arguments of M/s. Galaxy that the production of A1/A2 under Notification No. 40/2012-ST and 12/2013 was mere procedural lapse is not sustainable. In the instant case it evident and admitted position

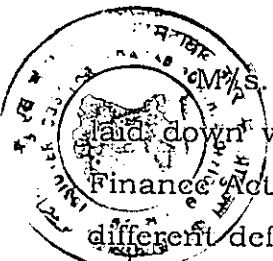
from the defense reply dated 11.03.2022 and the documents relied upon in the matter that the procedure/ conditions have not been followed or adhered to in respect of service provided to SEZ unit/ Developer. Further, it is evident that M/s. Galaxy had charged service tax in the invoice raised on various cases for provision of service purportedly to SEZ units, hence, their arguments of availing ab-initio exemption is not sustainable. In absence of any documentary evidence, it cannot even be said that the provision of service by M/s. Galaxy was for authorized operation by SEZ units/Developer. In view of the above factual matrix and legal position, I find that M/s. Galaxy, who was liable to pay service tax, has failed to establish their case with respect to claim of exemption under subject notifications. Therefore, I find that the benefit of exemption from service tax under Notification 40/2012-ST and 12/2013-ST on service provided to SEZ/Developer as claimed by M/s. Galaxy, is not available to them. Thus, they are liable to pay service tax on such service purportedly rendered to SEZ Unit/Developer.

38. I also find that M/s. Galaxy has also contended that the Service provided to SEZ/Developer were deemed to be export of services, thus the same was exempt from service tax. M/s. Galaxy was service provider and registered under Finance Act, 1994 for providing taxable service. Therefore, the provisions under Finance Act, 1994 were applicable to them for levy of tax as well as for availing exemption from service tax. As per the Rule 6A of Service Tax Rules, 1994, any service provided is treated to be export of service only if criteria (a) to (f) laid down thereunder are satisfied. The Rule 6A ibid is reproduced for ready reference as under:

“RULE 6A. Export of services. — (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

- (a) the provider of service is located in the taxable territory,
- (b) the recipient of service is located outside India,
- (c) the service is not a service specified in the section 66D of the Act,
- (d) the place of provision of the service is outside India,
- (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
- (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act.”

M/s. Galaxy have not brought out any evidence showing that the criteria laid down was satisfied by them. Further, the service tax is leviable under Finance Act, 1994, therefore, for claiming the exemption, the adoption of the different definition contained in SEZ Act, is not justified, when it is defined in the Finance Act, 1994. The ratio of the judgement of the Hon'ble High Court of Gujarat in the case of M/s. ESSAR STEEL LIMITED reported at [2010 (249)



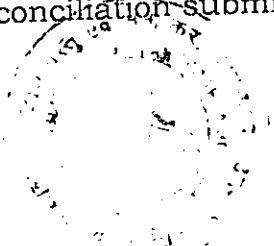
E.L.T. 3 (Guj.), as discussed hereinabove, is squarely applicable in the present case. Therefore, I find no force in the arguments put forth by them.

39. I also find that the SCN has alleged that M/s. Galaxy had (i) suppressed their taxable income in ST-3 Returns filed by them (ii) had not paid service tax on conveyance charges collected and misc. income for reimbursement of expenses (like telephone charges, Insurance) and (iii) had not accounted various invoices in their sales ledger. The details of the same are as under:

Sr. No.	Financial Year	Total taxable value as per sales register [RUD 11]	Total taxable value as per ST-3 Returns (including the value of exemptions wrongly availed)	Total suppressed taxable value/turnover
1.	2013-14	46973245	46248561	724684
2.	2014-15	50824592	50190182	634410
3.	2015-16	76948668**	68644590	8304078
4.	2016-17	76171217	75233357	937860
5.	2017-18 (upto to June)	20509977	20749345	0
	Total	271427699	261066035	10601032

Sr. No.	Financial year	Total Taxable of Conveyance charges collected form recipients of service	Taxable income not reflecting in Sales register	Miscellaneous Income
1.	2013-14	724684	0	0
2.	2014-15	801259	0	0
3.	2015-16	719332	7527747	0
4.	2016-17	801498	0	136362
5.	2017-18 (upto to June)	192577	0	390996
	Total	3239350		527358
	Grand Total	1,12,94,455/-		

40. In this regard, M/s. Galaxy have contended that the actual income of theirs had been recorded in sales ledger and they have produced chartered accountants certificate certifying the same. That they used to pay service tax on the receipt retained by them and not on reimbursement of expenses. I find that the reply of M/s. Galaxy is vague and without support of any documents or financial statements. The value suppressed as per the SCN issued is to the tune of Rs. 1,06,01,032/- as tabulated above. They have enclosed the sales reconciliation without any supporting documents. The Certificate of chartered accountant has also not been enclosed as claimed by them. The image of reconciliation submitted by M/s. Galaxy is reproduced herein as under:



Galaxy Security			
Sales Reconciliation (excluding SEZ and Exempt sales)			
Period	As per financials (Pg 50 Table H)	As per Audited Financials (excluding SEZ and Exempt sales)	Difference
2013-14	76,372,643	76,351,021	21,622
2014-15	78,477,433	78,477,434	(1)
2015-16	62,053,137	66,643,480	(4,590,343)
2016-17	72,410,665	72,216,902	193,763
2017-June 20	9,840,563		
TOTAL	299,154,441	293,688,837	(4,374,959)

41. With respect to collection of conveyance charges, and misc. income (telephone reimbursement, insurance), they have stated that they have not collected service tax, hence they have not paid service tax on these incomes. Further, they have stated that the reimbursement of expenses are not taxable, and service tax was not payable on such reimbursement in view of the Supreme Courts/Delhi High Courts decision. They have also stated that the service tax was not payable under Section 67 of Finance Act, 1994 read with Rule 5 of Service tax (Determination of Value) Rules, 2006. I find that M/s. Galaxy in their support have not cited any specific case law or decision as claimed by them. I find that the as per Rule 5(1) of Service Tax (Determination of Value) Rules 2006, "where any expenditure or costs are incurred by the service provider in the course of providing service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value of for the purpose of charging service tax on the said service". In view of this legal provision, any expenditure incurred by M/s. Galaxy, which were reimbursed by the recipient of service, were includible to the value for the purpose of charging service tax. However, I also find that as per Sub-Rule (2) of Rule 5 of Service Tax (Determination of Value) Rules 2006, the expenditure or cost incurred by the service provider was excludible from the value of the taxable service if the conditions (i) to (viii) laid down thereunder are satisfied. The Sub-Rule (2) of Rule 5 of Service Tax (Determination of Value) Rules 2006 is reproduced for ready reference as under:

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-

- (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;
- (iv) the recipient of service authorises the service provider to make payment on his behalf;
- (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.
- Explanation 1.** - For the purposes of sub-rule (2), "pure agent" means a person who -
- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services."

I also find that definition of "Consideration" provided under Section 67 of the Finance Act, includes any reimbursable expenditure or cost incurred by service provider and charged in the course of providing taxable service except in case of prescribed circumstances and conditions laid down. Therefore, as per Rule 5 Service Tax (Determination of Value) Rules, 2006 read with section 67 of the Finance Act, 1994, the reimbursement of expenses is not includible to the value of service provided if the condition laid down under said Rule 5(2) are satisfied. I find that M/s. Galaxy have not provided any documentary evidences showing that they had complied with conditions laid down in this regard. They have not provided any records/documents buttressing their argument that the income was against the expenditure incurred by them. I also find that such income otherwise is not found to be exempt income under negative list or exemption notification. Thus, the said income is liable to be included in taxable value of service for purpose of charging service tax under Section 67 of the Finance Act, 1994 read with Rule 5 of Service Tax (Determination of Value) Rules, 2006. Therefore, I find that that M/s. Galaxy are liable to pay tax on (i) suppressed value of services (ii) conveyance charges collected and misc. income for reimbursement of expenses (like telephone charges, Insurance) and (iii) Value of non accounted invoices, under Section 67 and 68 read with Section 66B of the Finance Act, 1994.

42. I find from the subject SCN that the total service tax payable by M/s. Galaxy has been worked out on the basis of income booked in sales ledger/register and invoices recovered during the investigation, which comes out to be Rs. 2,14,78,571/-. The details of which are as under:

F.Y.	Taxable Sales	SEZ Sales	Conveyance	Misc. income	Income not reflected in Sales ledger	Total Taxable income	ST payable	ST paid as per Returns ST-3	Balance ST payable
2013-14	31601151	14647410	724684	0	0	46973245	5805893	3905902	1899991
2014-15	28475099	21548234	801259	0	0	50824592	6281920	3352673	2929247
2015-16	26025001	42676588	719332	0	7527747	76948668	10792058	3634925	7157133
2016-17	25407166	49826191	801498	136362	0	76171217	11394914	3797655	7597259
2017-18 (Apr-Jun)	4232264	15694140	192577	390996	0	20509977	3076497	1181554	1894942
TOTAL	115740681	144392563	3239350	527358	7527747	271427699	37351282	15872710	21478571

43. I find that it was also alleged in the SCN that the Service tax was charged separately in invoices by M/s. Galaxy in some of the case issued to SEZ unit, that the said income was booked under head of Exempted Category in the sales ledger. In some of these cases, the invoice value inclusive of service tax has been booked in Sales Ledger. Therefore, it was alleged that in some of cases though they have charged service tax in invoices raised they have shown the same as exempt income/ sez sale in sales ledger. It was further alleged that they had not charged the service tax in invoice issued to same SEZ unit in some cases, to which they have charged service tax as well. The invoices were also raised for additional amount for reimbursement of expenses like telephone , insurance expenses, for conveyance bill, to whom they were providing service of security services. It was also alleged that in some the cases, value of services rendered were booked in sales ledger under the head of "SEZ Sales", but the recipients of service were not SEZ units.

44. In order to examine the allegation, random check of invoices and corresponding entries/posting in sales register/ledger was carried out. On conducting this exercise the allegations contained in the SCN were found to be correct. Similarly, the incomes considered, as per the table provided in para 42 above, for computing the service tax liability was also found to be tallying with sales ledger/register. Some of the data is given below for showing the correctness of allegation made in the subject SCN.

2015-16	Invoice Details						Head in Sales ledger entries			
Recipient of service	Invoice No.	Date	Service	Value of service	Tax	Invoice total	Sale (taxable)	Sales SEZ	Sales Exempted	conveyance/insurance
Adani Gas Ltd.	2015-16/14	21/04/2015	Conveyance	25016	0	25016				25016
Adani Gas Ltd.	2015-2016/10	21/04/2015	operational maintenance	24799	3003	27302	24799			
Adani Ports & Special Economic Zone Ltd.	2015-2016/S1/04/78	01/05/2015	Menpower	1545578	191033	1736611	1605126			
Adani Ports & Special Economic Zone Ltd.	2015-2016/S1/04/79	01/05/2015	Menpower	21316	2635	23951	22149			
Adani Ports & Special Economic Zone Ltd.	2015-2016/S1/04/40	01/05/2015	Fire services	320553	0	320553		320553		
Adani Ports & Special Economic Zone Ltd.	2015-2016/S1/05/79	01/06/2015	Fire services	312680	0	312680		312680		
Adani Q&S Ltd.	2015-2016/143	01/08/2015	conveyance	1166	0	1166				1166
Adani Ports & Special Economic Zone Ltd.	2015-2016/S1/06/87	01/07/2015	Fire services	263694	36917	300611		300611		
Adani Vidyamandir	S1/07/148	31/07/2015	Security	49000	6860	55860		55860		
Adani Ports & Special Economic Zone Ltd.	2015-2016/S1/07/153	01/08/2015	Menpower	287691	40777	327968		327968		

Adani Vidyamandir	SI/09/239	01/10/2015	Security	49000	6860	55860		55860		
Adani DAV Public School	2015-2016/SI/09/251	01/10/2015	Menpower	132537	18555	151092		151082		
Adani Gas Ltd.	2015-16/579	21/10/2015	Conveyance	7143	0	7143		7143		
Adani Power Ltd/Adani Vidyamandir	2015-2016/ST/09/400	01/10/2015	Security	216568	30320	246888				
Adani Ports & Special Economic Zone Ltd.	2015-2016/ST/03/835	23/03/2016	Menpower	1623240	235370	1858610	1623240			
PMC Projects India Pvt Ltd	2015-2016/SI/07/820	01/03/2016	Menpower	169897	24633	194533		194533		

2016-17		Invoice Details					Head under Sales ledger entries			
Recipient of service	Invoice No.	Date	Service	Value of service	Tax	Invoice total	Sale (taxable)	Sales SEZ	Sales Exempted	conveyance/insurance
Adani Ports & Special Economic Zone Ltd.	2016-2017/SI/04/35	01/04/2016	Menpower	1640887	237927	1878810	1640882			
MPSEZ Utilities P L	2016-2017/ST/04/36	01/04/2016	Menpower	14300	0	14300		14300		
Adani Public School	2016-2017/SI/04/44	01/04/2016	Security	150254	21787	172041		172041		
Adani Gas Ltd.	2016-2017/22	21/04/2016	Coveyance	24191	0	24191				24191
Adani Vidhyaviahr Mandir	2016-17/05/49	01/06/2016	Security	52500	7876	60375		60375		
Adani Ports & Special Economic Zone Ltd.	2016-2017/ST/04/45	01/07/2016	Menpower	534589	80188	614778		614778		
Adani Ports & Special Economic Zone Ltd.	2015-2016/SI/03/904	15/07/2016	insurance	85200	0	85200				82500
Adani Ports & Special Economic Zone Ltd.	2015-2016/SI/01/177	01/08/2016	Menpower	1425368	213806	1639173	1425368			
Adani Gas Ltd.	2016-2017/224	21/08/2016	operational maintenance	26961	4044	31005	26961			
Adani International Container Terminal P L	2016-2017/SI/08/193	01/09/2016	Menpower	39501	0	39501		39501		

2017-18		Invoice Details					Head in Sales ledger entries			
Recipient of service	Invoice No.	Date	Service	Value of service	Tax	Invoice total	Sale (taxable)	Sales SEZ	Sales Exempted	conveyance/insurance
Adani Ports & Special Economic Zone Ltd.	2017-2018/ST/04/50	01/05/2017	Fire service	640526	0	640526		640526		
Adani Ports & Special Economic Zone Ltd.	2017-2018/SI/05/94	01/05/2017	Fire service	459286	4597	528179		528179		
Adani Ports & Special Economic Zone Ltd.	2017-2018/ST/04/39	01/05/2017	Menpower	123414	18517	141926		141926		
Adani Gas Ltd.	2017-2018/149	21/06/2017	Coveyance	2659	0	3978				2659
Adani Public School	2017-2018/SI/06/110	26/06/2017	Menpower	150254	22538	172792		172792		
MPSEZ Utilities P L	20172018/ST/05/86	01/06/2017	Menpower	14603	0	14603		14603		
Adani Ports & Special Economic Zone Ltd.	2017-2018/SI/05/91	01/05/2017	Menpower	66585	9988	76573		76573		
Adani Ports & Special Economic Zone Ltd.	2017-2018/ST/06/114	29/06/2017	Menpower	157388	0	157388		157388		

In view of the above discussion, submission made by M/s. Galaxy, documents available on records, and legal position / precedents as discussed, I find that M/s. Galaxy had availed the exemption from payment of service tax for purportedly providing services to SEZ units / Developer without satisfying the conditions / procedures laid down under Notification No. 40/2012-ST dated

20.06.2012 and 12/2013-ST dated 01.07.2013. Therefore, it is established that the exemption had been wrongly availed on service purportedly provided to the SEZ units/Developer. Further, I find that M/s. Galaxy are liable to pay tax on (i) suppressed value of services (ii) conveyance charges collected and misc. income for reimbursement of expenses (like telephone charges, Insurance) and (iii) Value of non accounted invoices, under Section 68 read with Section 66B of the Finance Act, 1994. In view of the above factual matrix, M/s. Galaxy are liable to pay service tax on their entire income as per sales ledger during the period from April 2013 to June 2017, after deducting service tax liability already discharged by them. Therefore, I hold that they are liable to pay service tax of Rs. 2,14,78,571/- (as per Annexure- A to the notice) under the proviso to Section 73(1) of the Finance Act, 1944 as proposed in the subject SCN. I also find that the provisions of Section 75 of the Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate. I, thus hold that the assessee is also liable to pay the interest on Service Tax of Rs. 2,14,78,571/-. I also find that the SCN has proposed to appropriate the amount of Rs. 24,20,000/- towards their service tax liability. I find that at para 2.7 of the SCN, it has been mentioned that M/s. Galaxy have paid Rs. 24,20,000/- in cash vide various challans towards payment of their service tax liability. In view of this fact, I hold the said amount Rs. 24,20,000/- is liable to be appropriated against the service tax liability of M/s. Galaxy.

46. From the above facts and discussion, I find that M/s. Galaxy have contravened that provision of (i) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct taxable value of taxable service and declare 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 had failed to pay the service tax on the taxable services provided to SEZ units /Developer 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 had failed to furnish correct and proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, correct value of taxable service provided and other particulars in the manner as provided therein.

47. From the facts and discussion aforementioned, I find in the instant case that M/s Galaxy had failed to declare the actual taxable income in the ST-3 Returns filed by them and had not paid appropriate Service Tax despite the fact that they were engaged in providing taxable services. Thus, M/s Galaxy had

suppressed the material facts from the Department by not showing their actual taxable income in the ST-3 Returns by way of claiming exemptions wrongly, by not paying the Service Tax due to them and also suppressed the taxable value in the ST-3 Returns. They also deliberately had not accounted for certain invoices during FY 2015-16. This appears to have been done intentionally so as not to bring their taxable activities to the notice of the Department, though they were engaged in providing taxable services, as discussed here-in-above. 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 payers' behaviour. The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-assessment. The omission or commission on the part of M/s Galaxy has clearly demonstrated the intention of M/s. Galaxy to evade payment of service tax, though they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. M/s. Galaxy have failed to disclose to the department at any point of time, regarding the claiming of exemption without satisfying the conditions stipulated under Notification 40/2012-ST and 12/2013-ST and non-payment of service tax on reimbursement of expenses and other misc. income recovered by them, during the period from April 2013 to June, 2017. These facts would not have come to light but for the investigation conducted by DGGI officers. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence are in place. Further, the assessee are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise & Service tax laws. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that such facts of contravention and short/non paying the service tax by short declaring /under reporting taxable value of the service provided, as discussed earlier, on the part of M/s. Galaxy came to the notice of the department only when the DGGI initiated the investigation against M/s Galaxy. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255)*

ELT 241, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under proviso to Section 73(1) of the Finance Act, 1994. By invoking the extended period of time of 5 years, service tax totally amounting to Rs 21478571/- (including cess) is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from M/s. Galaxy. For the same reasons, all ingredient for imposing penalty on M/s. Galaxy under Section 78 exists, therefore M/s. Galaxy is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

48. 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.

49. 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.

50. As far as the proposal for imposition of penalty under Section 77(1)(b) and Section 77(1)(e) is concerned, I find that M/s. Galaxy had failed to keep, maintain or retain books of account and other documents as required in accordance with the provision of Act and Rules made thereunder. Thus, the

assessee have rendered themselves liable to penalty under Section 77(1)(b) of the Finance Act, 1944. Further, M/s. Galaxy had failed to issue invoices in accordance with the provisions of Finance Act, with correct and complete details, they have also failed to account for invoices in their books of account. Thus they have also rendered themselves liable to penalty under Section 77(1)(e) of the Finance Act, 1994.

51. I also find that Shri Shrikant Rambhuvan Tiwari, Director of M/s Galaxy was at the helm of the affairs of his company. During the course of recording of his statement, he had interalia admitted evasion of service tax by his company and also admitted that he was in know of the fact that his company had claimed exemptions wrongfully, collected service tax from the recipients but had not deposited the same to the exchequer and had taken responsibility for the same. As such, he had a decisive role to play in the present evasion unearthed by DGGI, AZU, Ahmedabad. By committing such an act, he has rendered himself liable to penalty under Section 78A of the Finance Act, 1994.

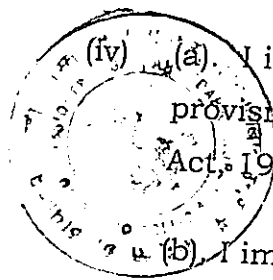
52. As regard the plea of Shri Rambhuvan Tiwari, Managing Director that statements recorded during the investigation from him were under pressure, and wrong promise and temptation and by applying coercion to him and that he was made to sign the statements. From the records, it can be discerned that statements were recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, and he never retracted his statements or not raised any complaint of recording of statements under threat, stress or duress by the officers of DGGI, till the case has come to the undersigned for final stage of adjudication. Therefore, the plea taken by the assessee that the statement were given under stress, pressure and duress is not acceptable as the same appears to be an afterthought. I find that the proceedings under Section 14 of Central Excise Act, 1944 is deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860) and if any retraction of the confession has to be made, the same should be made before the same authority who originally recorded the statement. I am of the view that merely alleging the recording of the statement being done under pressure or stress at the time of adjudication stage, can not take away the evidential value of the statements. Therefore, I find that the statements recorded during the investigation process have vital evidence value and can be relied upon in the adjudication process. In this regard, I rely on the decision of the Tribunal in the case of P.B. NAIR C&F PVT. LTD. Vs. Commissioner of Custom (General),

Mumbai reported at 2015 (318) E.L.T. 437 (Tri. - Mumbai), wherein the Tribunal at para 5.5 held that the *Confessional statements never retracted before the authority before whom the statement was recorded, belated retractions of statements after about one and half years cannot take away the evidentiary value of original statement*. I also taken support of the decision of the Hon'ble High Court of Delhi in the case of H.R. SIDDIQUE Vs. DIRECTOR, ENFORCEMENT DIRECTORATE reported at 2015 (318) E.L.T. 182 (Del.), wherein the Hon'ble High court observed that "*Had the appellant subjected to threat, coercion or pressure, as alleged by him rather belatedly, he would have retracted his confessional statement soon after making the same once the alleged threat, coercion or pressure ceased to influence the action of appellant - Appellant failed to disclose as to how he was pressurized, coerced, or tortured, and by whom, when he made the earlier confessional statement*".

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

ORDER

- (i) I confirm the demand of Service Tax of Rs. 2,14,78,571/- (Including Cess) [Rupees Two Crore Fourteen Lakhs Seventy Eight Thousand Five hundred Seventy one only] as detailed in Annexure-'A' to the SCN, on providing taxable services during the period from April, 2013 to June, 2017 and order to recover the same from M/s. Galaxy under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017;
- (ii) I order to appropriate the Service Tax amount of Rs. 24,20,000/- (Including Cess) paid by M/s Galaxy during investigation, their Service Tax liability;
- (iii) I order to charge Interest and order to recover the same from M/s. Galaxy under Section 75 of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 on the Service Tax amount at (i) above;
- (iv) (a) I impose Penalty of Rs. 10,000/- on M/s. Galaxy for contravention of provisions of the Finance Act, 1994 under Section 77(1)(b) of the Finance Act, 1994, read with Section 174 of CGST Act, 2017;
- (b) I impose Penalty of Rs. 10,000/- on M/s. Galaxy for contravention of provisions of the Finance Act, 1994 under Section 77(1) (e) of the Finance Act, 1994, read with Section 174 of CGST Act, 2017; and



- (v) I impose penalty of Rs. 2,14,78,571/- on M/s. Galaxy under Section 78 of the Finance Act, 1994, read with Section 174 of CGST Act, 2017, for suppression and mis-declaration of correct taxable. value and evasion of Service Tax with deliberate intention to evade Service Tax on the aforesaid taxable services. I refrain from imposing penalty on M/s. Galaxy under Section 76 of the Finance Act, 1994, read with Section 174 of CGST Act, 2017.
- (vi) I impose Penalty of Rs. 1,00,000/- on Shri Shrikant Rambhuvan Tiwari, Director of M/s Galaxy under Section 78A of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 for wilfully suppressing the facts and thereby evading Service Tax liability.

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.

Date: .03.2022.

By Regd. Post AD./Hand Delivery
F. No. STC/15-29/OA/2019

To
M/s Galaxy Security and Menpower Services Private Limited,
302, Narayan Complex, Opp. Havmor Restaurant,
Navrangpura, Ahmedabad -380009

Shri Shrikant Rambhuvan Tiwari, Director
M/s Galaxy Security and Menpower Services Private Limited,
302, Narayan Complex, Opp. Havmor Restaurant,
Navrangpura, Ahmedabad -380009

Copy to:

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



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