



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. STC/15-198/OA/2020

DIN- 20220964WT000000A7C0  
आदेश की तारीख/Date of Order :- 29.09.2022  
जारी करने की तारीख/Date of Issue :- 29.09.2022

द्वारा पारित/Passed by:- लोकेश डामोर /Lokesh Damor  
सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 44/JC/ LD /2022-23**

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(79) उक्त अपील की प्रति।

(80) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(79) Copy of accompanied Appeal.

(80) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.



विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-198/OA/2021 dated 29.12.2020 issued to M/s Bhupendra Shashikant Patel, A-16, Ganeshdham Bunglows, Opp. Gujarat High Court, S g Highway, Ghatlodiya Ahmedabad, Gujarat-380061.



## BRIEF FACTS OF THE CASE

M/s. Buhendra Shashikant Patel, A-16, Ganeshdham Bunglows, Opp.Gujarat High Court, S.G.Highway, Ghatlodiya, Ahmedabd , 380061 having PAN NO: AFYPP1649D (hereinafter referred to as the 'assessee') was engaged in providing taxable services without taking registration.

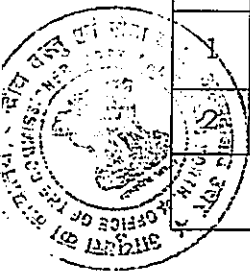
2. On perusal of the data received from CBDT, it was noticed that the said assessee has earned substantial service income by way of providing taxable services, but has neither obtained Service Tax registration nor paid service tax thereon. In order to seek information in the matter, a letter dated 06.10.2020 & reminders dated 20.11.2020 & 07.12.2020 were issued to the assessee with a request to produce the documents mentioned therein to this office within a period of three days from the date of receipt of that letter/reminder. However, the assessee has failed to submit the required details / documents.

3. With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. The nature of activities carried out by the assessee as Service Provider appears to be covered under the definition of service and appears to be not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. These services also appear to not be exempted under mega exemption notification No. 25/2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the assessee appear to be subjected to Service Tax.

4. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16 & 2016-17, the service tax liability of the service tax assessee is ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994. The Service tax payable is calculated on the basis of value of "sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J" as provided by the Income Tax Department for the financial year 2015-16 & 2016-17. By considering the said amount as taxable income, the service tax liability is calculated as detailed below:-

(Amount in Rs)

S. No.	F.Y.	TOTAL VALUE for TDS(including 194C,194Ia,194Ib,194J,194)	TOTAL SALE OF SERVICES (ITR)	HIGHER VALUE (VALUE OF SALE OF SERVICES ) OR (TOTAL VALUE for TDS)	Service Tax rate	Service Tax Payable
1	2015-16	4,60,35,846	4,60,35,842	4,60,35,846	14.50%	66,75,198/-
2	2016-17	3,23,54,911	3,23,94,935	3,23,94,935	15%	48,59,240/-
<b>TOTAL</b>						<b>1,15,34,438/-</b>



5. No data was available with this office, for the period 2017-18 (upto June 2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issuance of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June 2017). Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

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

6. From the facts, it was noticed that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)" for the F.Y. 2017-18 (upto June 2017) has not been disclosed thereof by the Income Tax Department. Further, the assessee has also failed to provide the required information even after the issuance of letter/reminders from the Department. Therefore, the assessable value for the year 2017-18 (upto June 2017) was not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2017-18 (upto June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

7 The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purposes of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appears that the said assessee has not taken registration and thereafter has not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appears to have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and breach of trust deposited on them. Such outright act in

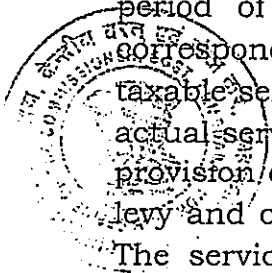


defiance of law, appear to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax. In the light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the notice, M/s.Bhupendra Shashikant Patel, have contravened the following provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (i) Section 69(1) of the Finance Act, 1994 read with Notification No.33/2012-Service Tax dated 20.06.2012 in as much as they have failed to obtain Service Tax Registration.
- (ii) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above;
- (iii) Failed to register with the department and fail to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;
- (iv) 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 have failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision ;
- (v) Section 77 of the Finance Act, 1994, in as much as failed to take registration and did not provide required data/documents as called from them.
- (vi) All the above acts of contravention on the part of the said assessee appear to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with Rule 6, and 7 of Service Tax Rules, 1994 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vii) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

8. The above said service tax liabilities of the assessee has been worked out on the basis of limited data/ information received from the Income Tax Department for the financial years 2015-16 & 2016-17.

9. It was observed that the assessee has neither obtained the Service Tax registration from the Department for the services provided by them for the period of F.Y.2015-16 & 2017-18 ( upto June 2017), nor responded to correspondence made by the department in order to ascertain the actual taxable service income. Therefore, it was noticed that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provision of the Finance Act, 1994 and the Rules made there under relating to levy and collection of service tax, with intent to evade payment of service tax. The service tax amounting to Rs.1,15,34,438/-is therefore recoverable from



them by invoking extended period of five years as per first proviso to sub-section (1) of Section 73 of Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No 450/61/2020-Cus. IV (Part-I). For this reason applicable interest under Section 75 of the Finance Act, 1994 is also to be demanded & is recoverable from the assessee and the assessee are also liable to penalty under Section 78 of Finance Act, 1994. Further, the said assessee is liable to penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994, for failure to take registration in accordance with the provisions of section 69; and for failure to furnish information / documents called for from them.

16. Pre show cause consultation in the matter was fixed on 28.12.2020 at 11.30 but no one appeared for the same neither any submission has been made by the said assessee. Therefore, Show Cause Notice was issued to M/s. Bhupendra Shashikant Patel called upon to show cause as to why:

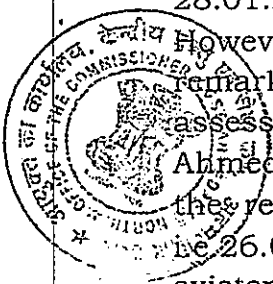
- (i) Service Tax of Rs.1,15,34,438/- which was not paid for the financial year 2015-16 & 2016-17, as per Table -A mentioned above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No 450/61/2020-Cus. IV (Part-I).
- (ii) Service Tax liability not paid during the Financial Year 2017-18 (upto June 2017), ascertained in future should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax as explained herein above.

#### DEFENCE REPLY

17. In response to Show Cause Notice dated 29.12.2020, the assessee has not filed any reply till date even though they are required to file reply within 30 days of the receipt of the SCN.

#### PERSONEL HEARING

18. Personal Hearing in this case has been granted to the assessee on 28.01.2022, 23.02.2022, 23.03.2022, 21.04.2022, 13.05.2022 & 20.07.2022.. However the said P.H. letters were returned by the postal authroites with the remark "left". Therefore, another P.H. notice for 31.08.2020 was issued to the assessee and the same was forwarded to jurisdiction CGST office, Div-VII, Ahmedabad, however the same was also returned by the concerned office with the remark that " an officer was deputed to serve the said letter today on 26.08.2022, but on personal visit the said address was not found to be existence, hence the documents are returned herewith for further necessary action". Hence the same is served as per Section 37C(1) ( c) of the Central Excise Act. As the assessee was given seven opportunities of personal hearing,



but they neither availed any of these opportunities, nor filed any submissions in response to SCN, I am therefore bound to decide the case on the basis of the available facts on record.

#### DISCUSSION AND FINDINGS

19. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

20. I have carefully gone through the records of the case and the facts available on record. It was noticed that seven opportunities of personal hearing were given to the said assessee, however, they have not availed the same to defend their case. They have also not filed any reply to SCN in this regard. Therefore, I am proceeding to decide the case ex-parte based upon the records available with this office. I find that the show cause notice was served to the assessee as can be seen from the acknowledgement receipt received from the assessee which is available in the records.

21. As per the SCN, the said assessee is not registered with department and is having the PAN No. AFYPP1649D and are engaged in the business of providing taxable services without taking registration. As per the facts of case in order to verify whether the said noticee have discharged their Service Tax liability properly, Jurisdictional Range Officer (JRO) had written letter dated 06.10.2022 & reminders dated 20.11.2020 & 07.12.2020 to said assessee to provide the details of such services provided during the period from 2015-16 & 2016-17. However, the said assessee neither submitted any details /documents explaining such difference nor responded to the letters in any manner. As per SCN, the said assessee has not filed ST-3 returns for the SCN period.

22. The Service tax payable of Rs.1,15,34,438/- is arrived at on the basis of value of "sales of services" shown in the 26AS for the Financial year 2015-16 & 2016-17. As per the data, the total value as per Form 26AS is Rs.4,60,35,846/- for the FY 2015-16 and Rs.3,23,54,911/- for the year 2016-17. By considering the said amount as taxable income, the service tax liability of Rs.1,15,34,438/- is calculated as tabulated supra.

23. A taxable person is required to provide information/documents to the department as and when required. However, in this case the assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to service tax being the service tax provider. Even during the course of personnel hearing also the assessee failed to submit any documents proving that they are eligible for exemption from payment of service tax or abatement of value for the purpose of calculating service tax liability. In view of the above facts, it is proved that the assessee may not have the data of the service receivers or they might have been try to avoid furnishing the details which may have lead to proof that the service provider is liable to pays service tax.

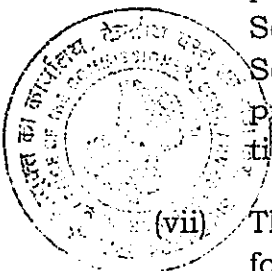
Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period nor did they have sought any specific clarification from the jurisdictional



Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service in the ST-3 Returns during the relevant period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

25. I further find that M/s.Bupendra Shashikant Patel had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period from 2015-16 & 2016-17:

- (i) Section 69(1) of the Finance Act, 1994 read with Noti.No.33/2012 dated 20.06.2012 as much as they failed to obtain service tax registration.
- (ii) Section 67 of the Finance Act, 1994 as much as they failed to determine the correct value of taxable service provided by them as discussed above.
- (iii) Failed to register with the Department and fail to declare correctly assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e.ST 3 and in such manner and at such frequency, as required under section 70 of Finance Act, 1994 read with Rule 6 & 7 of the service Tax Rules, 1994.
- (iv) Section 66B and Section 68 of Finance Act, 1994 and Rule 2&6 of Service Tax Rules, 1994 in as much as they failed to pay service tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision.
- (v) Section 77 of Finance Act, 1994, in as much as failed to take registration.
- (vi) All the above acts of contravention on the part of the said assessee appear to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appears to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vii) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.





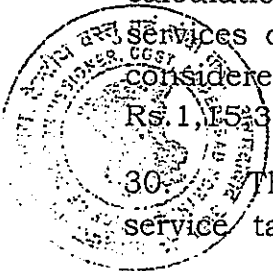
26. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of the assessee has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said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

27. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Act, rendering themselves liable to penalty under Section 77 of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994

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

29. In view of facts stated hereinabove, the Value of Services mentioned/declared in Form 26AS for Financial Year F.Y. 2015-16 & 2016-17 is considered as taxable Value of Services provided and since the said assessee has not provided any details/data and the reasons for non-payment of service tax, therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice, the value of Services declared/mentioned in Form 26AS filed by the assessee has been considered for non-payment of total service tax, which comes to Rs. 1,15,34,438/- including cess for Financial Year F.Y. 2015-16 & 2016-17.

30. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly



measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. From the information/data received from CBDT, it appeared that the assessee has not discharged service tax liability in spite of declaring before Income Tax Department. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposed on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax of Rs.1,15,34,438/- not paid by the assessee worked out in Tables supra for financial Year F.Y. 2015-16 & 2016-17 is required to be recovered from them under Section 73 (1) of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

31. 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 said assessee deliberately not supplied their documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. The said assessee himself admits in their reply to SCN that they were provided various services. Moreover, the Hon'ble apex court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.

*"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.*

*12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.*

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



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

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

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

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

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

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

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period



cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

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

22. The Apex Court in the case of *Rajasthan Spinning and Weaving Mills (supra)* has held thus :

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

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

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

32. On perusal of relevant paras of the SCN, I find that the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I, however, do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income shown in 26AS. I therefore

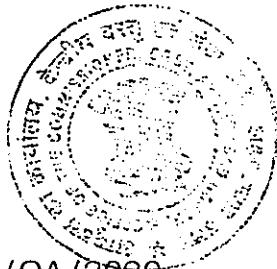
refrain from discussing the taxability on other income other than the income shown in 26AS.

33. In view of the above facts and findings, I pass the following order.

**ORDER**

1. I confirm the demand of Service Tax of Rs.1,15,34,438/- (including cess) (Rupees One Crore Fifteen Lac Thirty Four Thousand Four Hundred Thirty Eight only), which was not paid/short paid during the Financial Years 2015-16 & 2016-17 as per Table supra and order to recover from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;
2. I confirm the demand of Interest at the appropriate rate and order to recover from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
3. I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Buhpendra Shashikant Patel under Section 77(1)( a) of the Finance Act, 1994
4. I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Buhpendra Shashikant Patel under Section 77(1)( c) of the Finance Act, 1994.
5. I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Buhpendra Shashikant Patel under Section 77(2) of the Finance Act, 1994.
6. I impose Penalty of Rs.1,15,34,438/- (including cess) (Rupees One Crore Fifteen Lac Thirty Four Thousand Four Hundred Thirty Eight only), under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Buhpendra Shashikant Patel pays the amount of Service Tax as determined at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Buhpendra Shashikant Patel shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

29. Accordingly the Show Cause Notice bearing F.No. STC/15-198/OA/2020 dated 31.12.2020 is disposed off.



*(Signature)*  
29/09/2022  
(LOKESH DAMOR)  
Joint Commissioner  
Central GST & Central Excise  
Ahmedabad North

F.No. STC/15-198/OA/2020

Dt.



To  
M/s. Buhendra Shashikant Patel,  
A-16, Ganeshdham Bungalows,  
Opp.Gujarat High Court, S.G.Highway,  
Ghatlodiya, Ahmedabd , 380061

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The D.C/A.C, Central Excise & CGST, Division-VII, Ahmedabad North.
3. The Supdt, , C. Ex. & CGST, Range-III, Division-VII,Ahmedabad North
- ✓ 4. The Supdt(system) CGST, Ahmedabad North for uploading on website.
5. Guard File