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| आयुक्त का कार्यालय<br>केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद<br>शुल्क ,अहमदाबाद उत्तर,<br>कस्टम हाँउस(तल प्रथम)<br>नवरंगपुरा- अहमदाबाद ,380009 |  | Office of the Commissioner of<br>Central Goods & Services Tax &<br>Central Excise,<br>Ahmedabad North,<br>Custom House(1st Floor)<br>Navrangpura, Ahmedabad-380009 |
| फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a>  |   |  |

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. F.NO. STC/15-196/OA/21-22

DIN : 20230164WT0000222EF4

आदेश की तारीख / Date of Order : 09.01.2023

जारी करने की तारीख / Date of Issue : 10.01.2023

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 34 /2022-23**

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

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

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

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

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, 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 क) प्रतियाँ संलग्न की जाएंगीम 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.

8. 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 Notices No. STC/15-196/OA/21-22 dated 23.04.2021 against M/s. Chirag Chotaliya, Block C-301, Sankalp Grace-2, Near Santosa Park, Opp. Ashok Vatika, Ambli-Bopal Road, Ahmedabad - 380059.

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 34 /2022-23**

M/s. Chirag Chotaliya, Block C-301, Sankalp Grace-2, Near Santosa Park, Opp. Ashok Vatika, Ambli-Bopal Road, Ahmedabad -380059 were issued SCN F. No. STC/15-196/OA/21-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

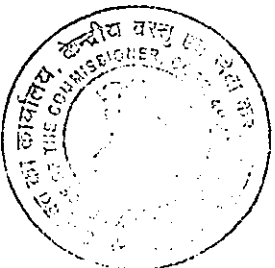
**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. M/S. CHIRAG CHOTALIYA, ARE AS FOLLOWS:**

M/s. Chirag Chotaliya, Block C-301, Sankalp Grace-2, Near Santosa Park, Opp. Ashok Vatika, Ambli-Bopal Road, Ahmedabad -380059 (hereinafter referred to as the 'assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. APKPC1688MSD001.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" in respect of M/s. Chirag Chotaliya, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and details of the said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with the Divisional Office of Division-VII and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y. 2015-16 and 2016-17, the total sales of service (Value from ITR/Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for F.Y. 2015-16 and 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value declared in their ITR/Form 26AS ("Sales/Gross Receipts from Services OR Total Amount paid /Credited Under 194C, 194H, 194I, 194J") for 2015-16 and 2016-17. The difference in value as observed for F.Y. 2015-16 and 2016-17, was as under:

| Sr. No. | Financial Year | Value Difference in ITR & STR/ TDS & STR (Whichever is higher)(In Rs.) | Service Tax (in Rs.) |
|---------|----------------|--|----------------------|
| 1       | 2015-16        | 24,86,89,357   | 3,46,97,002          |
| 2       | 2016-17        | 13,92,36,752   | 2,07,69,164          |
|         |                | 38,79,26,109   | 5,54,66,167          |



Therefore, it appeared that the said assessee had short /not paid service tax to the extent of Rs. 5,54,66,167/- (including Cess) on the differential value of Rs. 38,79,26,109/-.

4. Accordingly, the service tax liability of M/s. M/s. Chirag Chotaliya was worked out solely on the basis of income mentioned in ITR/Form 26AS, which were shared by Income tax Department. The said income was considered as the Total Taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

5. As per Section 68 of the Finance Act, 1994 every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994.

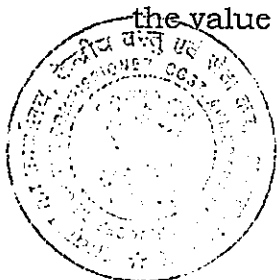
6. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act,1994:

“(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.”

7. As per the provisions of *Section 73(1)* of the Finance Act,1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

8. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that

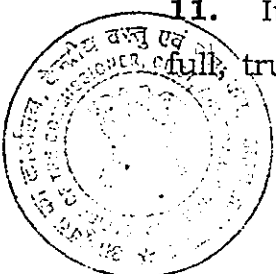


the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

9. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 5,54,66,167/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 and 2016-17 vis-à-vis "Sales /Gross Receipts from Services (ITR)" OR "Total Amount paid /Credited Under 194C, 194H, 194I, 194J" (as per Form 26AS). The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 5,54,66,167/- (including Cess) worked out on value of Rs. 38,79,26,109/- and therefore, the said Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

10. Therefore, it appeared that the said assessee had (i) failed 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; (ii) failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) 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 of 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 not paid service tax as worked out in the Table for Financial Year 2015-16 and 2016-17; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) made themselves 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; (vii) also contravened the provision of Rule 7 read with Section 70 of the Finance Act, 1994 in as much as they failed to assess their service tax liability and failed to file correct ST-3 Returns.

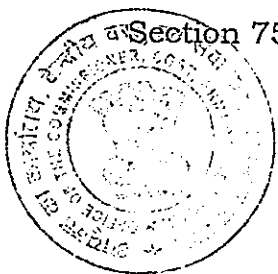
11. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by



them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 and 2016-17. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. . 5,54,66,167/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

**12.** As per Section 75 *ibid* every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 5,54,66,167/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 *ibid* not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was also liable to pay interest under Section 75 of the Finance Act.

**13.** All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the Service Tax amounting to Rs.5,54,66,167/- (inclusive of Cess) not paid was required to be demanded and recoverable from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.



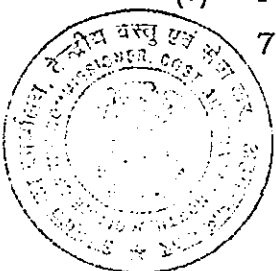
14. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 & 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & 77 of the Finance Act.

15. In addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax thus rendering them liable for penalty under Section 78 of the Finance Act, 1994.

16. The assessee was given opportunity to appear for pre-SCN consultation on 23.04.2021, but the same was not attended by them.

17. Therefore, Show Cause Notice dated 23.04.2021 was issued to the assessee asking them as to why:

- (i) Differential amount of Service Tax amounting to Rs. 5,54,66,167/- (Rupees Five Crore Fifty Four Lakh Sixty Six Thousand One Hundred Sixty Seven Only) short/ not paid towards provision of those services, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994, from the due date on which the service tax was liable to be paid till the date on which the service tax is paid;
- (iii) Penalty should not be imposed upon them under the provision of Section 76 of the Finance Act, 1994 for their failure to make payment of service tax payable by them within stipulated time limit;
- (iv) Penalty should not be imposed upon them under the provision of Section 77 of the Finance Act, 1994 for their failure to assess the correct tax liability.
- (v) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing



the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

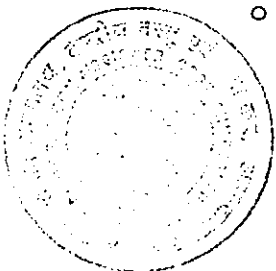
**DEFENCE REPLY:**

18. The assessee vide their letter dated 31.05.2021 tendered their written submission with reference to SCN dated 23.04.2021, wherein they denied the allegation made in the SCN and also contended that :

- They were engaged in supply of labor and work contract services for various developers for the purpose of development and construction of various commercial and residential projects.
- They were paying service tax after claiming the eligible abatement since inception of service tax.
- The data shared by the CBDT was the actual value of sales/ gross receipts as per Form 26AS and the same was not the differential value between Sales as per ITR/26AS and as per Form ST-3 Returns. They submitted the total sale/gross receipts as per Form 26AS and as per Form ST-3 as under:

| Sr. No. | Financial Year | Gross receipts as per 26AS<br>(Section 194C) | Gross receipts as<br>per ST-3 |
|---------|----------------|--|-------------------------------|
| 1       | 2015-16        | 248689357                                    | 258360700                     |
| 2       | 2016-17        | 139236752                                    | 129427233                     |
|         |                | 387926109                                    | 387787933                     |

- They contended that there is minor difference in the value and the same is due to the fact that payment for previous financial year was received during Financial Year 2015-16 to 2016-17, and the same was reflecting in the Form 26AS.
- They had disclosed full, true and correct information about the value of services provided. They added that they have not suppressed the material facts or contravened the provisions of law with intent to evade payment of service tax.
- Since there is no suppression, willful mis-statement or any deliberate intent to evade payment of duty, the demand of Service tax by invoking extended period of limitation is bad in law and deserves to be dropped. In this regard, they have relied on the following decisions:
  - Ugam Chand Bhandari Vs. CCE-[2004 (167) ELT 491 (SC)]
  - Commr. of Service tax, Bangalore Vs. Karnataka State Warehousing Corpn. [2011(23)STR 126 (kar.)]





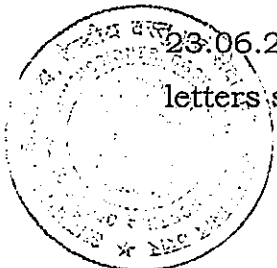
- CCE Vs. Bilag Industries Pvt Ltd. [2011(264)ELT 195(guj.)]
- No interest is payable by them as no service tax is payable by them. They have placed reliance on the following case laws:
  - CCE Vs. HMM Ltd [1995 (76)ELT 497 (SC)]
  - Pratibha Processors Vs. Union of India [1996(88) ELT 12(SC)]
  - MRK Co-Op Sugar Mills Ltd. vs. CCE, Pondichery [2014(307)ELT 128(tri.-Chennai)]
  - Union of India Vs. Valecha Engineering Limited {2010(249) ELT 167(Bom.)}
  - CCE, Aurangabad Vs. Balakrishna Industries {2006(201) ELT 325 (SC)}
  - Commissioner of Customs, Chennai Vs. Jayanthi Krishna & Co. [2000(119) ELT 4 (SC)]
- They have also contested that there is no willful suppression / misstatement with an intent to evade tax, hence no penalty is imposable on them. They have relied on the following decisions.
  - Tamil Nadu Housing Board Vs. CCE [1194(74) ELT 9 (SC)]
  - Hindustan Steel Ltd Vs. State of Orissa [1978(2) ELT 159(SC)]
  - D.D. Industries Ltd. Vs. CCE [2002(142) ELT 256(Tri-Del)]
  - Singareni Collieries Co. Ltd, Cs. CCE [1988(37)ELT361(tri. New Delhi)]
  - CCE Vs. HMM Ltd [1995(76)ELT 497(SC)]
- They have also argued that penalty can not be imposed both under Section 76 and 78 of the Finance Act, 1994.
- The SCN has sought to impose penalty under for non filing of returns. The same is also not imposable.

The assessee vide their letter dated 27.07.2022 submitted the following documents in support of their earlier written submission.

- Copy of Audit Report for FY 2015-16 and 2016-17
- Copy of Form 26AS for FY 2015-16 and 2016-17
- Copy of ST-3 Returns for FY 2015-16 and 2016-17
- Sale Bill for FY 2015-16 and 2016-17.

**PERSONAL HEARING:**

19. Personal Hearings were granted to the assessee on 11.05.2022, 23.06.2022, 29.07.2022, 12.09.2022, 19.10.2022 and 18.11.2022. The four letters sent were returned undelivered by the postal authority. As can be seen,



the assessee has been granted ample opportunities for defending their case in person, but they have chosen to remain absent for personal hearings. I am accordingly forced to proceed in the matter on the basis of available records and to decide the case ex-parte.

**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 31.05.2021 and 27.07.2022 and the documents submitted by the assessee.

21. I find that the assessee has failed to appear for Personal Hearing, inspite of being asked to do so repeatedly as mentioned in Para-19 above for defending their case. Under the circumstances, left with no recourse, I take up the matter for adjudication proceeding ex-parte on the basis of records/documents available since ample opportunities have already been given to the assessee to attend and defend their case in person.

21.1 In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals have, in several judgments/decision held, that *ex-parte* decision will not amount to violation of principles of Natural Justice, when sufficient opportunities for personal hearing were given for defending the case.

In support of the same, I rely upon the following judgments/orders as under:-

a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;

*"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.*

*(Emphasis Supplied)"*

b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, deciding on 13-9-1963, has observed that;

*"Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the assessee was issued a show cause notice, his reply considered, and he was also given a*



personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - *It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]*

(Emphasis supplied)"

(c) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.), has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

(Emphasis Supplied)"

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), has observed that;

"Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

(Emphasis Supplied)"

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.L.T. 1296 (S.C.), has observed as under:

"Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing.

- If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(Emphasis Supplied)"

(f) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), has observed as under;

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of

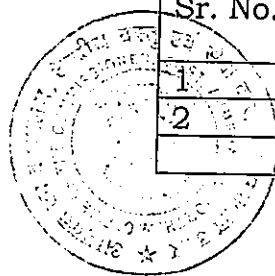


*audi alteram partem* and it was argued that an *ex parte* hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

22. I observe that SCN dated 23.04.2021 has been issued to the assessee by the competent authority demanding Rs. 5,54,66,167/- as service tax liability. On going through the said SCN, I find that basically the essence of the case is that data of “Sales /Gross Receipts from Services (ITR)” / “Total Amount Paid/Credited under 194C, 194H, 194I, 194J” (as per TDS Statement-Form 26AS) were shared by the CBDT with CBIC for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared in Form ITR/26AS vis-à-vis taxable value disclosed in ST-3 Returns. As per the said SCN dated 23.04.2021, the difference of Rs. 38,79,26,109/- in value was observed for FY 2015-16 and 2016-17, therefore, it was alleged vide SCN dated 23.04.2021, that the assessee had short paid/not paid the service tax of Rs. 5,54,66,167/- on such differential value, for providing the taxable service. Therefore, the subject SCN was issued to the assessee. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 5,54,66,167/- on the differential taxable value of Rs. 38,79,26,109/- for the Financial Year 2015-16 and 2016-17 as demanded under SCN dated 23.04.2021, under proviso to section 73(1) of Finance Act, 1994 or not.

23. I find that the assessee in their defence reply dated 31.05.2021, has contested that they have disclosed the value of sales in the ST-3 Returns filed by them. They have also paid appropriate service tax after availing eligible abatement during FY 2015-16 and 2016-17. They have also stated that there is a minor difference in the value and the same was due to the fact that payment for previous financial year was received during Financial Year 2015-16 to 2016-17 and provided the summary of Form 26AS and ST-3 Returns as under:

| Sr. No. | Financial Year | Gross receipts as per 26AS<br>(Section 194C) | Gross receipts as<br>per ST-3 |
|---------|----------------|--|-------------------------------|
| 1       | 2015-16        | 248689357                                    | 258360700                     |
| 2       | 2016-17        | 139236752                                    | 129427233                     |
|         |                | 387926109                                    | 387787933                     |



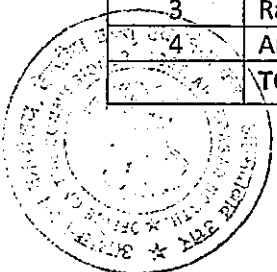
In defence of the arguments tendered, the assessee have submitted the following documents.

- Copy of Audit Report for FY 2015-16 and 2016-17
- Copy of Form 26AS for FY 2015-16 and 2016-17
- Copy of ST-3 Returns for FY 2015-16 and 2016-17
- Sale Bill for FY 2015-16 and 2016-17.

24. I find that the SCN dated 23.04.2021 mentions about the sharing of data from ITR/26AS, however, it does not mention specifically, which data i.e. ITR data or 26AS data, has been considered for computing the tax liability upon the assessee. On going through the corresponding data of Form 26AS & P&L for FY 2015-16 & 2016-17 vis-à-vis value of services considered in the impugned SCN, the same are found to be not tallying with each other, except for the year for Form 26AS for FY 2015-16. The value of services as considered in the SCN for FY 2016-17, is higher than the value of services as appearing in Form 26AS for 2016-17. The assessee has not given any reasons for mismatch of data, however, the assessee has stated that the data considered in the SCN is from 26AS. I am of the view that the mismatch in the data of 26AS can be attributed to subsequent updation of the data of Form 26AS. Therefore, I would proceed with the data shared by CBDT for deciding the matter. I also find that there is no dispute as far as the question of provision of services by the assessee is concerned. The figures of Sales / amount paid / credited for FY 2015-16 and 2016-17, as per P&L accounts, Form 26AS and value of taxable service considered in the SCN, are reproduced herein below for ready reference:

| Details of FORM 26AS for FY 2015-16 |                                  |                      |                                  |
|-------------------------------------|----------------------------------|----------------------|----------------------------------|
| Sr. No.                             | Name of TDS Deductor             | Amount paid/credited | Section under which TDS deducted |
| 1                                   | A Shridhar Infracon LLP          | 158106019            | 194C                             |
| 2                                   | Dharmishthaben Ashokbhai Thakkar | 1573778              | 194C                             |
| 3                                   | Ray Banquet And Hotels Pvt Ltd   | 70000000             | 194C                             |
| 4                                   | A Shridhar Construction Pvt Ltd  | 19009560             | 194C                             |
|                                     | <b>TOTAL</b>                     | <b>248689357</b>     |                                  |

| Details of FORM 26AS for FY 2016-17 |                                  |                      |                                  |
|-------------------------------------|----------------------------------|----------------------|----------------------------------|
| Sr. No.                             | Name of TDS Deductor             | Amount paid/credited | Section under which TDS deducted |
| 1                                   | A Shridhar Infracon LLP          | 84737836             | 194C                             |
| 2                                   | Dharmishthaben Ashokbhai Thakkar | 3375688              | 194C                             |
| 3                                   | Ray Banquet And Hotels Pvt Ltd   | 22100000             | 194C                             |
| 4                                   | Art Nirman Pvt Ltd               | 25914428             | 194C                             |
|                                     | <b>TOTAL</b>                     | <b>136127952</b>     |                                  |



| Income from Sales as per Profit and Loss Account (in Rs.) |            |            |
|---|------------|------------|
|   | FY 2015-16 | FY 2016-17 |
| Labour Works Receipt                                      | 257114850  | 131715607  |

24.1 The details of above tables are summarized herein below for comparison of value of services rendered by the assessee, as appearing in different records.

| Summarized Details of above details |  |   |  |                     |
|-------------------------------------|--|---|--|---------------------|
| FY                                  | Amount paid as per Form 26AS (in Rs.) on which TDS has been deducted under 194C of Income tax Act. | Income from Sales as per P&L Accounts (Rs.) | Value of services considered in the SCN (in Rs.) for computation of service tax liability of the assessee. | Diff. between D & B |
| (A)                                 | (B)  | (C)   | (D)  | (F)                 |
| 2015-16                             | 248689357  | 257114850                                   | 248689357  | 0                   |
| 2016-17                             | 136127952  | 131715607                                   | 139236752  | 3108800             |
|                                     | 384817309  | 388830457                                   | 387926109  | 3108800             |

25. As regards filing of ST-3 Returns by the assessee, I find that the assessee has contested that they have filed ST-3 Returns and in support of their contention, they have submitted the copy of ST-3 Returns for 2015-16 and 2016-17. On perusing the said ST-3 Returns filed by the assessee, the following facts are emerging:

| Details as per ST-3 Returns for FY 2015-16              |  |                   |                     |           |
|---|--|-------------------|---------------------|-----------|
| Description of service Provided: Works Contract Service |  |                   |                     |           |
|   | Period   | Apr 2015-Sep 2015 | Oct 2015-March 2016 | Total     |
| A   | Gross amount in relation to service provided or to provided (including exempt and export of service) | 68182081          | 190178617           | 258360698 |
|   | Less: Amount charged for Exempted service  | 00                |                     |           |
|   | Amount liable to tax   | 0                 |                     |           |
|   | Less: Amount claimed as Abatement  | 40909248          | 113692417           | 154601665 |
|   | Net Taxable Value  | 27272833          | 76486200            | 103759033 |
|   | Service tax paid (including Cess)  | 3724898           | 11090499            | 14815397  |
| B   | Value of service as considered in the SCN  | ----              | ----                | 248689357 |
|   | Diff: A-B  |                   |                     | 9671341   |



| Details as per ST-3 Returns for FY 2016-17              |  |                   |                     |           |
|---|--|-------------------|---------------------|-----------|
| Description of service Provided: Works Contract Service |  |                   |                     |           |
|   | Period   | Apr 2016-Sep 2016 | Oct 2016-March 2017 | Total     |
| <b>A</b>  | Gross amount in relation to service provided or to provided (including exempt and export of service) | 65508649          | 63918584            | 129427233 |
|   | Less: Amount charged for Exempted service  | 0                 | 0                   | 0         |
|   | Amount liable to tax   | 0                 |                     | 0         |
|   | Less: Amount claimed as Abatement  | 39305189          | 33764506            | 73069695  |
|   | Net Taxable Value  | 26203460          | 30154078            | 56357538  |
|   | Service tax paid (including Cess)  | 3930519           | 4523112             | 8453631   |
| <b>B</b>  | Value of service as considered in the SCN  | ----              | -----               | 139236752 |
|   | Diff: A-B  |                   |                     | -9809519  |
|   | Overall difference for FY 2015-16 & 2016-17  |                   |                     | -138178   |



**25.1** The assessee has also stated there appears minor difference of Rs. 138178/- between value of service considered in the SCN and value of service disclosed in ST-3 Returns. The said difference is on account of the payment pertaining to previous financial year being received during FY 2015-16 and 2016-17. The plea tendered by the assessee appears to be correct, as can be seen from the above tables. The value of service declared in the ST-3 Return for 2015-16 was more than the value of services appearing in Form 26AS for 2015-16, whereas in FY 2016-17, the value shown in ST-3 Returns is less than the value of services appearing in Form 26AS.

**25.2.** It is also observed that the ST-3 Returns submitted by the assessee are pertaining to Service Tax Registration No. APKPC1688MSD002, however, subject SCN dated 23.04.2021 pertains to Service Tax Registration No. APKPC1688MSD001.

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Image of ST-3 Returns :

|  |
|--|
|  <b>Ministry of Finance - Department of Revenue</b><br><b>Central Board of Indirect Taxes and Customs</b>  |
| Form ST - 3  |
| (Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994) - Filed   |

Observation Report

| Sl.No. | Code    | Error   | Remarks |
|--------|---------|---|---------|
| 1      | V2SRG12 | The Chakan Number (03203332011201500000) for (Rs.10000) in H1 section does not exist and/or is not matching with the Registration Number available in the database.   |         |
| 2      | V2SRG12 | The Chakan Number (03203332011201500000) for (Rs.2333666) in H1 section does not exist and/or is not matching with the Registration Number available in the database. |         |

PART - A - General Information

|       |   |  |
|-------|---|--|
| A1.   | Original Return   | No   |
|       | Revised Return  | Yes  |
| A2.   | STC Number  | APKPC1688MSD002                              |
|       | Return Number   | APKPC1688MSD002_SD0201A001_ST3_042015        |
| A3.   | Name of the Assessee  | CHOTALIYA CHRAG GUNVANTBHAI                  |
|       | Trade Name  | CHOTALIYA CHRAG GUNVANTBHAI                  |
|       | Commission rate   |  |
|       | Division  | DIVISION-VII - SATELLITE                     |
|       | Range   | RANGE I                                      |
|       | Address of Registered Unit  | M/S CHRAG CORPORATION,502-E,ANMEDABAD,380015 |
|       | Due date filing for this return   | 25/10/2015                                   |
|       | Actual date of filing   | 08/12/2015                                   |
|       | No. of days beyond due date   | 44   |
| A4.   | Financial Year  | 2015-2016                                    |
| A5.   | Return for the period   | Apr-Sep                                      |
| A6.   |   |  |
| A6.1. | Has the Assessee opted to operate as "Large Taxpayer" Unit ("YFN") (As defined under Rule 2(e) (aa) of the Central Excise Rules, 2002 read with Rule 2 (1) (c)(cc) of | No   |
| A6.2. | If reply to column A6.1 is "Y", name of Large Taxpayer Unit opted for   |  |
| A7.   | Premises Code Number  | SD0201A001                                   |
| A8.   | Constitution of assessee  | Proprietorship/Individual                    |

A9 - Taxable Service(s) for which Tax is being paid

| Work contract service   | Description of Taxable Services | Sub Clause |
|---|---------------------------------|------------|
|   |                                 | (xxxx)     |
| Taxable Service for which Tax is being paid: Works contract service |                                 |            |

A10 - Assessee is liable to pay Service Tax on this taxable service as

|       |   |     |
|-------|---|-----|
| A10.1 | A Service Provider under Section 82(1)  | Yes |
| A10.2 | A Service Receiver under Section 82(2)  | No  |
| A10.3 | A Service Provider under partial reverse charge under provision to Section 82(2)              | No  |
| A10.4 | A Service Receiver under partial reverse charge under provision to Section 82(2)              | No  |
| A10.5 | If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service  | 0%  |
| A10.6 | If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service | 0%  |

A11 - Exemptions

|       |  |    |
|-------|--|----|
| A11.1 | Has the assessee availed benefit of any exemption Notification ("YFN") | No |
|-------|--|----|

A12 - Abatements

|       |   |     |
|-------|---|-----|
| A12.1 | Has any abatement from the value of services been claimed ("YFN") | Yes |
|-------|---|-----|

A12.2 Notification No. and Sl. No. in the Notification under which such abatement is availed

| Sl.No | Notification No. | Notification Sl.No |
|-------|------------------|--------------------|
| 1     | 02/2012-S.T.     | 1                  |

A13 - Provisional Assessment

|       |  |    |
|-------|--|----|
| A13.1 | Whether provisionally assessed ("YFN") | No |
|-------|--|----|



PART - B - Value of Taxable Service and Service Tax Payable

PART B1 - For Service Provider

| Sl.No. | Quarter   | Apr-Jun  | Jul-Sep  | Total    |
|--------|---|----------|----------|----------|
| B1.1   | Gross Amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/challans or any other documents may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service provided or to be provided (including export of service and exempted service) | 28112482 | 40009599 | 68122081 |
| B1.2   | Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued   | 0        | 0        | 0        |
| B1.3   | Amount taxable on receipt basis under proviso to Rule 2(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued   | 0        | 0        | 0        |
| B1.4   | Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued  | 0        | 0        | 0        |
| B1.5   | Money equivalent of other considerations charged, if any, in a form other than money  | 0        | 0        | 0        |
| B1.6   | Amount on which Service Tax is payable under partial reverse charge   | 0        | 0        | 0        |
| B1.7   | Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)   | 28112482 | 40009599 | 68122081 |
| B1.8   | Amount charged against export of service provided or to be provided   | 0        | 0        | 0        |
| B1.9   | Amount charged for exempted service provided or to be provided (other than export of service) as (B1.8 above)   | 0        | 0        | 0        |
| B1.10  | Amount charged as Pura Agent  | 0        | 0        | 0        |
| B1.11  | Amount claimed as abatement   | 10867489 | 24041759 | 40909248 |
| B1.12  | Any other amount claimed as deduction 0   | 0        | 0        | 0        |
| B1.13  | Total Amounts Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)  | 10867489 | 24041759 | 40909248 |
| B1.14  | NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)  | 17244993 | 16027840 | 33272833 |
| B1.15  | Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14); Advalorem Rate   |          |          |          |






**Ministry of Finance - Department of Revenue**  
**Central Board of Indirect Taxes and Customs**


Form ST - 3  
(Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994) - Filed

Observation Report

| Sl.No. | Code | Error | Remarks |
|--------|------|-------|---------|
|--------|------|-------|---------|

PART - A - General Information

|       |  |  |
|-------|--|--|
| A1.   | Original Return  | Yes  |
|       | Revised Return   | No   |
| A2.   | STC Number   | APKPC1688MSD002                                |
|       | Return Number  | APKPC1688MSD002_SD0201A001_ST3_102015          |
|       | Name of the Assessee   | CHOTALIYA CHIRAG GURVANTBHAI                   |
|       | Trade Name   | CHOTALIYA CHIRAG GURVANTBHAI                   |
|       | Commissionerate  |  |
| A3.   | Division   | DIVISION-VII - SATELLITE                       |
|       | Range  | RANGE I  |
|       | Address of Registered Unit   | M/S CHIRAG CORPORATION,502-E, AHMEDABAD,380015 |
|       | Due date filing for this return  | 23/04/2015                                     |
|       | Actual date of filing  | 21/04/2015                                     |
|       | No. of days beyond due date  | 0  |
| A4.   | Financial Year   | 2015-2016                                      |
| A5.   | Return for the period  | October-March                                  |
| A6.   |  |  |
| A6.1. | Has the Assessee opted to operate as "Large Taxpayer" Unit ["YFN"] (As defined under Rule 2(e) (ii) of the Central Excise Rules, 2002 read with Rule 2 (1) (c) (cc) of | No   |
| A6.2. | If reply to column A6.1 is "Y", name of Large Taxpayer Unit opted for  |  |
| A7.   | Premises Code Number   | SD0201A001                                     |
| A8.   | Constitution of assessee   | Proprietorship                                 |

A9 - Taxable Service(s) for which Tax is being paid

| Works contract service | Description of Taxable Services | Sub Clause |
|------------------------|---------------------------------|------------|
|                        |                                 | (zzzzz)    |

Taxable Service for which Tax is being paid: Works contract service

A10 - Assessee is liable to pay Service Tax on this taxable service as

|       |   |     |
|-------|---|-----|
| A10.1 | A Service Provider under Section 68(1)  | Yes |
| A10.2 | A Service Reciever under Section 68(2)  | No  |
| A10.3 | A Service Provider under partial reverse charge under provision to Section 68(2)              | No  |
| A10.4 | A Service Reciever under partial reverse charge under provision to Section 68(2)              | No  |
| A10.5 | If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service  | 0%  |
| A10.6 | If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service | 0%  |

A11 - Exemptions

|       |  |    |
|-------|--|----|
| A11.1 | Has the assessee availed benefit of any exemption Notification ("YFN") | No |
|-------|--|----|

A12 - Abatements

|       |   |     |
|-------|---|-----|
| A12.1 | Has any abatement from the value of services been claimed ("YFN") | Yes |
|-------|---|-----|

A12.2 Notification No. and Sl. No. in the Notification under which such abatement is availed

| Sl. No | Notification No. | Notification Sl. No |
|--------|------------------|---------------------|
| 1      | 0242012-S.T.     | 1                   |

A13 - Provisional Assessment

|       |  |    |
|-------|--|----|
| A13.1 | Whether provisionally assessed ("YFN") | No |
|-------|--|----|



PART - B - Value of Taxable Service and Service Tax Payable

PART B1 - For Service Provider

| Sl.No. | Quarter   | Oct-Dec  | Jan-Mar  | Total     |
|--------|---|----------|----------|-----------|
| B1.1   | Gross Amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/couchers or any other documents may not have been issued) for which provided (including export of service and exempted service) | 64389568 | 12578043 | 190176617 |
| B1.2   | Amount received in advance for services for which bills/invoices/couchers or any other documents have not been issued   | 0        | 0        | 0         |
| B1.3   | Amount taxable on receipt basis under provision to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/couchers or any other documents have not been issued   | 0        | 0        | 0         |
| B1.4   | Amount taxable for services provided for which bills/invoices/couchers or any other documents have not been issued  | 0        | 0        | 0         |
| B1.5   | Money equivalent of other considerations charged, if any, in a form other than money  | 0        | 0        | 0         |
| B1.6   | Amount on which Service Tax is payable under partial reverse charge   | 0        | 0        | 0         |
| B1.7   | Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)   | 64389568 | 12578043 | 190176617 |
| B1.8   | Amount charged against export of service provided or to be provided   | 0        | 0        | 0         |
| B1.9   | Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)   | 0        | 0        | 0         |
| B1.10  | Amount charged as Pure Agent  | 0        | 0        | 0         |
| B1.11  | Amount claimed as abatement   | 32219010 | 74472807 | 113692417 |
| B1.12  | Any other amount claimed as deduction 0   | 0        | 0        | 0         |
| B1.13  | Total Amount Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)   | 32219010 | 74472807 | 113692417 |
| B1.14  | NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)  | 32170558 | 51307236 | 83477794  |
| B1.15  | Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate   |          |          |           |

| Sl.No. | Tax Rate % | Taxable Rate       |                      |            |            | Taxable Value |          |
|--------|------------|--------------------|----------------------|------------|------------|---------------|----------|
|        |            | Swachh Bharat Cess | Krishi Kalyan Cess % | EDU Cess % | SHEDU Cess | Total         |          |
| 1      | 14         | 0.5                | 0                    | 0          | 0          | 25169950      | 25169950 |
|        |            |                    |                      |            |            | Total         | 25169950 |




**Ministry of Finance - Department of Revenue**  
**Central Board of Indirect Taxes and Customs**


Form ST - 3

(Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994) - Filed

| Sl.No.             | Code | Error | Remarks |
|--------------------|------|-------|---------|
| Observation Report |      |       |         |

**PART - A - General Information**

|              |   |   |
|--------------|---|---|
| <b>A1.</b>   | Original Return   | Yes   |
|              | Revised Return  | No  |
| <b>A2.</b>   | STC Number  | APKPC1688MSD002                               |
|              | Return Number   | APKPC1688MSD002_SD0201A001_ST3_042016         |
| <b>A3.</b>   | Name of the Assessee  | CHOTALIYA CHIRAG GUNVANTBHAI                  |
|              | Trade Name  | CHOTALIYA CHIRAG GUNVANTBHAI                  |
|              | Commissionerate   | DIVISION-VII - SATELLITE                      |
|              | Division  | RANGE I                                       |
|              | Range   | M/S CHIRAG CORPORATION,502-E,AHMEDABAD,380015 |
|              | Address of Registered Unit  | 25/10/2016                                    |
|              | Due date filing for this return   | 24/10/2016                                    |
|              | Actual date of filing   | 0   |
| <b>A4.</b>   | Financial Year  | 2016-2017                                     |
| <b>A5.</b>   | Return for the period   | April-September                               |
| <b>A6.</b>   | Has the Assessee opted to operate as "Large Taxpayer" Unit [Y/N] (As defined under Rule 2(n) (ii) of the Central Excise Rules, 2002 read with Rule 2 (1) (c)(cc) of | No  |
| <b>A6.2.</b> | If reply to column A6.1 is "Y", name of Large Taxpayer Unit opted for   | SD0201A001                                    |
| <b>A7.</b>   | Premises Code Number  | Proprietorship                                |
| <b>A8.</b>   | Constitution of assessee  |   |

|   |            |  |
|---|------------|--|
| <b>A9 - Taxable Service(s) for which Tax is being paid</b>          |            |  |
| Description of Taxable Services                                     | Sub Clause |  |
| Works contract service  | (xxxx)     |  |
| Taxable Service for which Tax is being paid: Works contract service |            |  |

|   |   |     |
|---|---|-----|
| <b>A10 - Assessee is liable to pay Service Tax on this taxable service as</b> |   |     |
| A10.1   | A Service Provider under Section 68(1)  | Yes |
| A10.2   | A Service Receiver under Section 68(2)  | No  |
| A10.3   | A Service Provider under partial reverse charge under provision to Section 68(2)              | No  |
| A10.4   | A Service Receiver under partial reverse charge under provision to Section 68(2)              | No  |
| A10.5   | If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service  | 0%  |
| A10.6   | If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service | 0%  |

|                         |  |    |
|-------------------------|--|----|
| <b>A11 - Exemptions</b> |  |    |
| A11.1                   | Has the assessee availed benefit of any exemption Notification (Y/N) | No |



|   |   |                      |
|---|---|----------------------|
| <b>A12 - Abatements</b>   |   |                      |
| A12.1   | Has any abatement from the value of services been claimed (Y/N) | Yes                  |
| <b>A12.2 Notification No. and Sl. No. in the Notification under which such abatement is availed</b> |   |                      |
| Sl. No.   | Notification No.  | Notification Sl. No. |
| 1   | 024/2012-S.T.   | 1                    |

|                                     |                                      |    |
|-------------------------------------|--------------------------------------|----|
| <b>A13 - Provisional Assessment</b> |                                      |    |
| A13.1                               | Whether provisionally assessed (Y/N) | No |

**PART - B - Value of Taxable Service and Service Tax Payable**

| <b>PART B1 - For Service Provider</b> |   |                    |                       |            |               |          |
|---------------------------------------|---|--------------------|-----------------------|------------|---------------|----------|
| Sl.No.                                | Quarter   | Apr-Jun            | Jul-Sep               | Total      |               |          |
| B1.1                                  | Gross Amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/challans or any other documents may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service provided or to be provided (including export of service and exempted service) | 33976568           | 31532083              | 65508651   |               |          |
| B1.2                                  | Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued   | 0                  | 0                     | 0          |               |          |
| B1.3                                  | Amount taxable on receipt basis under third proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued   | 0                  | 0                     | 0          |               |          |
| B1.4                                  | Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued  | 0                  | 0                     | 0          |               |          |
| B1.5                                  | Money equivalent of other considerations charged, if any, in a form other than money  | 0                  | 0                     | 0          |               |          |
| B1.6                                  | Amount on which Service Tax is payable under partial reverse charge   | 0                  | 0                     | 0          |               |          |
| B1.7                                  | Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)   | 33976568           | 31532083              | 65508651   |               |          |
| B1.8                                  | Amount charged against export of service provided or to be provided   | 0                  | 0                     | 0          |               |          |
| B1.9                                  | Amounts charged for exempted service provided or to be provided (other than export of service given at B1.8 above)  | 0                  | 0                     | 0          |               |          |
| B1.10                                 | Amount charged as Pure Agent  | 20385940           | 18919249              | 39305189   |               |          |
| B1.11                                 | Amount claimed as abatement   | 0                  | 0                     | 0          |               |          |
| B1.12                                 | Any other amount claimed as deduction   | 0                  | 0                     | 0          |               |          |
| B1.13                                 | Total Amount Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)   | 20385940           | 18919249              | 39305189   |               |          |
| B1.14                                 | NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)  | 13590628           | 12612834              | 26203462   |               |          |
| B1.15                                 | <b>Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate</b>  |                    |                       |            |               |          |
| Sl.No.                                | Taxable Rate  |                    |                       |            | Taxable Value | Total    |
|                                       | Tax Rate %  | Swachh Bharat Cess | Kirishi Kalyan Cess % | EDU Cess % |               |          |
| 1                                     | 14  | 0.5                | 0.5                   | 0          | 0             | 13590628 |
| Total                                 |   |                    |                       |            | 13590628      | 26203462 |




**Ministry of Finance - Department of Revenue**  
**Central Board of Indirect Taxes and Customs**


Form ST - 3  
(Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994) - Filed

**Observation Report**

| Sl.No. | Code | Error | Remarks |
|--------|------|-------|---------|
|--------|------|-------|---------|

**PART - A - General Information**

|       |   |  |
|-------|---|--|
| A1.   | Original Return   | Yes  |
|       | Revised Return  | No   |
| A2.   | STC Number  | APKPC1688MSD002                                |
|       | Return Number   | APKPC1688MSD002_S00201A001_ST3_102016          |
| A3.   | Name of the Assessee  | Chirag CholaFya                                |
|       | Trade Name  | CHOTALIYA CHIRAG GUNVANTBHAI                   |
|       | Commissionerate   |  |
|       | Division  | DIVISION-VII - SATELLITE                       |
|       | Range   | RANGE I  |
|       | Address of Registered Unit  | M/S CHIRAG CORPORATION,502-E, AHMEDABAD,380015 |
|       | Due date filing for this return   | 30/04/2017                                     |
|       | Actual date of filing   | 25/04/2017                                     |
|       | No. of days beyond due date   | 0  |
| A4.   | Financial Year  | 2016-2017                                      |
| A5.   | Return for the period   | October-March                                  |
| A6.   |   |  |
| A6.1. | Has the Assessee opted to operate as "Large Taxpayer" Unit ["Y/N"] (As defined under Rule 2(e) (aa) of the Central Excise Rules, 2002 read with Rule 2 (1) (c)(cc) of | No   |
| A6.2. | If reply to column A6.1 is "Y", name of Large Taxpayer Unit opted for   |  |
| A7.   | Premises Code Number  | SD0201A001                                     |
| A8.   | Constitution of assessee  | Proprietorship                                 |

**A9 - Taxable Service(s) for which Tax is being paid**

| Description of Taxable Services | Sub Clause |
|---------------------------------|------------|
| Works contract service          | (2222a)    |

Taxable Service for which Tax is being paid: Works contract service

**A10 - Assessee is liable to pay Service Tax on this taxable service as**

|       |   |     |
|-------|---|-----|
| A10.1 | A Service Provider under Section 68(1)  | Yes |
| A10.2 | A Service Receiver under Section 68(2)  | No  |
| A10.3 | A Service Provider under partial reverse charge under provision to Section 68(2)              | No  |
| A10.4 | A Service Receiver under partial reverse charge under provision to Section 68(2)              | No  |
| A10.5 | If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service  | 0%  |
| A10.6 | If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service | 0%  |

**A11 - Exemptions**

|       |  |    |
|-------|--|----|
| A11.1 | Has the assessee availed benefit of any exemption Notification ("Y/N") | No |
|-------|--|----|

**A12 - Abatements**

|       |   |     |
|-------|---|-----|
| A12.1 | Has any abatement from the value of services been claimed ("Y/N") | Yes |
|-------|---|-----|

**A12.2 Notification No. and Sl. No. in the Notification under which such abatement is availed**

| Sl. No | Notification No. | Notification Sl. No |
|--------|------------------|---------------------|
| 1      | 02/2012-S.T.     | 1                   |

**A13 - Provisional Assessment**

|       |  |    |
|-------|--|----|
| A13.1 | Whether provisionally assessed ("Y/N") | No |
|-------|--|----|

**PART - B - Value of Taxable Service and Service Tax Payable**

**PART B1 - For Service Provider**

| Sl.No. | Quarter   | Oct-Dec  | Jan-Mar  | Total    |
|--------|---|----------|----------|----------|
| B1.1   | Gross Amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/challans or any other documents may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service provided or to be provided (including export of service and exempted service) | 33385777 | 25552807 | 63918584 |
| B1.2   | Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued   | 0        | 0        | 0        |
| B1.3   | Amount taxable on receipt basis under provisions to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued  | 0        | 0        | 0        |
| B1.4   | Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued  | 0        | 0        | 0        |
| B1.5   | Money equivalent of other considerations charged, if any, in a form other than money  | 0        | 0        | 0        |
| B1.6   | Amount on which Service Tax is payable under partial reverse charge   | 0        | 0        | 0        |
| B1.7   | Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)   | 33385777 | 25552807 | 63918584 |
| B1.8   | Amount charged against export of service provided or to be provided   | 0        | 0        | 0        |
| B1.9   | Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)   | 0        | 0        | 0        |
| B1.10  | Amount charged as Pure Agent  | 0        | 0        | 0        |
| B1.11  | Amount claimed as abatement   | 23019466 | 10745040 | 33764506 |
| B1.12  | Any other amount claimed as deduction 0   | 0        | 0        | 0        |
| B1.13  | Total Amount Charged as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)   | 23019466 | 10745040 | 33764506 |
| B1.14  | NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)  | 15346311 | 14807767 | 30154078 |
| B1.15  | Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate   |          |          |          |

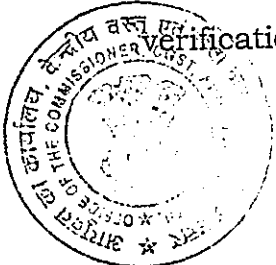
| Sl.No. | Tax Rate % | Taxable Rate       |                      |            |            | Taxable Value |          |
|--------|------------|--------------------|----------------------|------------|------------|---------------|----------|
|        |            | Swachh Bharat Cess | Krishi Kalyan Cess % | EDU Cess % | SHEDU Cess |               | Total    |
| 1      | 14         | 0.5                | 0.5                  | 0          | 0          | 15346311      | 15346311 |
| Total  |            |                    |                      |            |            | 15346311      | 15346311 |



26. I find from the documents that the data of 26AS as shared by CBDT are for PAN No. APKPC1688M, which belongs to Shri Chirag Chotaliya. Further, the entire income as appearing in Form 26AS /Data Shared by CBDT for FY 2015-16 and 2016-17, have been evidently disclosed by the assessee (Shri Chirag Chotaliya) in ST-3 Returns filed for ST Registration No. APKPC1688MSD002, with minor difference of Rs. 1,38,178/-. I find that such difference is found/noticed when the higher value of Form 26AS for FY 2016-17 is considered. The services rendered by them have been classified under the Category of Works Contract Service on which the service tax has been paid by the assessee after availing the abatement from the value of services.

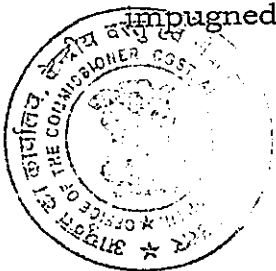
27. In the subject SCN dated 23.04.2021, the entire income as appearing in Form 26AS/Data shared by CBDT, has been considered to be differential value of services for demanding the service tax, which is factually not correct. It is evident that the value of service disclosed in ST-3 Returns has not been taken into account by the department despite the same having been filed by the assessee. I find that mere non declaration of value of services in ST-3 Returns for ST Registration No. APKPC1688MSD001 will not make any difference, when the entire income has been disclosed in ST-3 Returns pertaining to other Service Tax Registration number i.e. APKPC1688MSD002, which is also having the same PAN number. Therefore, the difference in value of services as worked out in the SCN is evidently not correct and accordingly, the service tax liability worked out without considering the value of services disclosed in the ST-3 Returns, is also not correct. Further, the demand of service tax under the impugned SCN, on the same income which has already been disclosed in ST-3 Returns for different ST Registration, is also not sustainable and tenable in law. Accordingly, the demand of service tax vide SCN dated 23.04.2021 deserves to be dropped on merit.

28. From the above factual matrix, and documents submitted by the assessee, I find the difference in the value of service as alleged in the subject SCN is on account of the taxable value of service disclosed in ST-3 returns filed by the assessee not being taken into consideration while computing the service tax liability for FY 2015-16 and 2016-17 by the department. Therefore, I find that the entire demand has been raised on the presumption that the amount credited to the assessee as per Form 26AS/ITR was the differential value of taxable service, which is evidently not correct. I also find that no primary verification appears to have been carried out by the department. I also find that



apart from the differences noticed in the figures reported in ST-3 returns and in Form 26AS, that too based on wrong set of facts, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of such high quantum of service tax. I find that the SCN is basic and crucial foundation of adjudication process. If the allegations in SCN are not specific and on the contrary vague, lack details and /or unintelligible, then the SCN is not tenable and sustainable in eyes of law. In this regard, I rely on the decision of the Hon'ble Supreme Court in the case of BRINDAVAN BEVERAGES (P) LTD [2007 (213) E.L.T. 487 (S.C.)], wherein it was held that "SCN is foundation on which the Department has to build up its case - If allegations in show cause notice not specific and on the contrary vague, lack details and/or unintelligible, sufficient to hold that noticee not given proper opportunity to meet allegations indicated in show cause notice". I also rely on the decision of the Hon'ble Supreme Court in the case of GARWARE NYLONS LTD [1996 (87) E.L.T. 12 (S.C.)] wherein it was held that "The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority". Having considered these factual and documentary evidences available on records and legal precedents, I find that the assessee can not be held liable to pay service tax on the difference of Rs. 1,38,178/-, when higher value of Form 26AS of FY 2016-17, is considered. Accordingly, I hold that assessee is not liable to pay service tax as alleged and demanded in the subject SCN. Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

29. In view of the aforementioned detailed discussion and in view of the facts and circumstances pertaining to the subject case, the demand is also not tenable in law as there is no suppression of facts whatsoever as alleged in the SCN, as it was based on wrong set of facts. Therefore, invocation of extended period of five years is not sustainable as well. Accordingly, the SCN fails on this count as well and issuance of SCN beyond 30 months from the relevant date is barred by limitation. Further, since there is no short payment of tax by the assessee, as alleged in the SCN, no penalty is imposable as proposed in the impugned SCN. Similarly, no interest is leviable from the assessee.



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

**ORDER**

I hereby drop the proceedings initiated against M/s. Chirag Chotaliya, Block C-301, Sankalp Grace-2, Near Santosa Park, Opp. Ashok Vatika, Ambli-Bopal Road, Ahmedabad -380059 vide Show Cause Notice F. No. STC/15-196/OA/21-22 dated 23.04.2021.



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

By Regd. Post AD./Hand Delivery  
F.No. STC/15-196/OA/21-22

Date: .01.2023.

To  
M/s. Chirag Chotaliya,  
Block C-301, Sankalp Grace-2,  
Near Santosa Park, Opp. Ashok Vatika,  
Ambli-Bopal Road,  
Ahmedabad -380059

Copy to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Deputy/Assistant Commissioner, CGST & C.Ex., Division-VI, Ahmedabad North.
- 3 The Superintendent, Range-I, Division-VI, Ahmedabad North.
- 4 ✓ The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 Guard File