


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं./ STC/15-144/OA/2021-22

DIN- 20230264WT000000A75A

आदेश की तारीख	/	Date of Order : 07.02.2023
जारी करने की तारीख	/	Date of Issue : 07.02.2023
द्वारा पारित/Passed by -		
उपेन्द्र सिंह यादव	/	UPENDRA SINGH YADAV
आयुक्त	/	COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-39/2022-23

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

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

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

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

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

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल, उसकी भी उतनी ही, की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम प्रतियाँ संलग्न की जाएंगी म 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 1.00रुपया 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 Notice No. STC/15-144/OA/2021-22 dated 23.04.2021 issued to M/s. Hirenghai Chinubhai Shah, 225, Mahasukh Nagar, B/h. Krishna Nagar, Ahmedabad - 382325

**ORDER-IN-ORIGINAL NO. AHM-EXCUS - 39/2022-23**

M/s. Hirenbhai Chinubhai Shah, 225, Mahasukh Nagar, B/h. Krishna Nagar, Ahmedabad – 382325 were issued Show Cause Notice No. STC/15-144/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

**Brief facts of the case pertaining to Show Cause Notice No. STC/15-216/OA/2021-22 dated 23.04.2021 are as follows:**

1. 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” by M/s. Hirenbhai Chinubhai Shah, 225, Mahasukh Nagar, B/h. Krishna Nagar, Ahmedabad – 382325 (hereinafter referred to as “Assessee” for sake of brevity) was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC). On the basis of the data shared by the CBDT, it was found that the Assessee was holding Service Tax Registration No. BALPS2588FST001 and it also appeared that they were engaged in providing taxable services, however the Assessee was not filing the ST-3 returns. The details of the value of I.T. return for F.Y. 2015-16 and 2016-17 are as per table below -

**TABLE - A**

F.Y.	Basic value as per ST-3 Returns (Rs.)	Basic value as per ITR/P&L account (Rs.)	Difference of value (Rs.)	Resultant Service Tax short paid (Rs.)
2015-16	0	4,60,75,280/-	4,60,75,280/-	66,80,915.59
2016-17	0	10,02,43,404/-	10,02,43,404/-	1,50,36,510.60
	0	14,63,18,684/-	14,63,18,684/-	2,17,17,426.19

2. The department requested the Assessee for clarification regarding the differential value as mentioned in above Table A with certified documentary evidences vide letter dated 09.04.2021, but the Assessee did not submit any reply w.r.t. the observations raised by Range office with supporting documents till the issuance of this notice.

3. Unquantified demand at the time of issuance of SCN -

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

*‘2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible*

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

4. From the facts available on record, it appeared that the "Total Amount Paid / Credited under Section 194C, 194H, 194I, 194J OR Sales / Gross Receipts from Services (From ITR)" for the period 2017-18 (April 2017 to June 2017) had not been disclosed by the Income Tax Department and the Assessee, even after the issuance of letters and reminders from the Department, had also not submitted the same. Therefore, the assessable value for the period 2017-18 (April 2017 to June 2017) was not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount was to be disclosed by any other sources / agencies, against the same Assessee, action was to 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) would be recoverable from the said Assessee accordingly.

5. As per Section 68 of the Finance Act, 1994 : Payment of Service Tax :- "(1) Every person providing taxable service to any person shall pay Service Tax at the rate specified in Section 66(B) in such manner and within such period as may be prescribed....". Accordingly, it appeared that the Assessee had failed to pay Service Tax, during the year 2015-16 and 2016-17 and thereby, the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994.

6. As per Section 70 of the Finance Act, 1994: (1) "Every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise a return..." Accordingly, it appeared that the Assessee had failed to assess the Service Tax on the taxable amount received by them and had also failed to furnish periodical returns and thereby the Assessee had contravened the provisions of Section 70 of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994.

7. It also appeared that Assessee had contravened the provisions of; (1) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they had failed to pay/short paid/deposit Service Tax to the extent of **Rs. 66,80,915.59 for F.Y. 2015-16 and Rs. 1,50,36,510.60 for F.Y. 2016-17** as per their Income Tax Return/ Form 26AS/P&L account in such manner and within such period as prescribed in respect of taxable services received/provided by them; Section 70 of Finance Act, 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994 in as much they had failed to properly assess their Service Tax liability and failed to furnish periodical returns.

8. It was also noticed that at no point of time, the Assessee had disclosed or intimated to the Department regarding receipt/providing of Service, which had come to the notice of the Department only after going through the CBDT Data generated for the Financial Year 2015-2016 and 2016-17. The Government had, from the very beginning, placed full trust on the service providers and accordingly measures like self assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the Assessee had knowingly suppressed the facts regarding receipt of/providing of services by them. It appeared that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appeared to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 by invoking proviso under sub-section (1) of Section 73 along with interest thereof, at appropriate rate, under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constituted an offence of the nature specified under Section 77(2) & 78 of the Finance Act, 1994, it appeared that the Assessee had rendered themselves liable for penalty under Section 77(2) and 78 of the Finance Act, 1994 for the contravention of Section 70 of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994 and Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 respectively.

9. The Assessee was given opportunity to appear for pre-show cause consultation on 23.04.2021, however the Assessee did not appear for the same.

10. Therefore, the Assessee (M/s. Hirenbbhai Chinubhai Shah) were issued a Show Cause Notice dated 23.04.2021 asking them as to why;

- a) The demand of Service Tax to the extent of Rs. 66,80,915.59 for F.Y. 2015-16 and Rs. 1,50,36,510.60 for F.Y. 2016-17 short paid/ not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- b) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- c) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994
- d) Penalty should not be imposed upon them under the provisions of Section 77 (2) of the Finance Act 1994

**DEFENCE REPLY:**

11. The Assessee did not file any reply to the Show Cause Notice dated 23.04.2021.

**PERSONAL HEARING:**

12. Personal hearings were granted to the Assessee on 13.05.2022, 24.06.2022, 01.08.2022, 14.09.2022, 21.10.2022 and 18.11.2022. The Assessee did not appear for personal hearing on any of the above mentioned dates which were fixed for personal hearings.

12.1 Since, the letters of Personal Hearings were returning, the jurisdictional Assistant Commissioner was directed to contact the Assessee and advise him to attend the personal hearing. The JAC was also requested to send the latest contact details of the Assessee.

12.2 The JAC vide their letter F.No. IV/16-02/Adjudication/2022-23/2014-15/1678 dated 09.09.2022 reported that as per the CBDT data sheet the following details were available vis-à-vis the Assessee –

1. Name of the Assessee – M/s. Hirenbhai Chinubhai Shah
2. Service Tax Registration No. – BALPS2588FST001
3. Contact Number – 9898028812
4. Email ID – [dhimantkhatr@gmail.com](mailto:dhimantkhatr@gmail.com) & [infozeel@gmail.com](mailto:infozeel@gmail.com)

12.3 It was also further reported by the JAC that the jurisdictional Range Officer had contacted the Assessee on the above mobile number and the consultant of the Assessee had informed that Shri Hirenbhai Chinubhai Shah had expired in 2018. The consultant was advised to attend the personal hearing and submit all documents related to the case.

12.4 Subsequently, the consultant Shri Dhimant Khatri, CA vide letter dated 11.01.2023 stated that the Assessee i.e. Shri Hirenbhai C. Shah had expired on 09.06.2019 and he also submitted the death certificate of Shri Hirenbhai Chinubhai Shah No. 083632 dated 25.11.2019 issued by the Ahmedabad Municipal Corporation (Ward – Paldi - Registration No. 2019-DW-0007-0000672 – Date of Death – 09.06.2019 – Address of the deceased – 406, Vimalvihar, Flat No. 22, Saraswati Society, Jain Merchant, Fatehpura, Paldi, Ahmedabad – 380007). Shri Khatri also submitted the copy of PanCard and the Voter ID of the Assessee. It was also stated by Shri Khatri that the Assessee i.e. Shri Hirenbhai Chinubhai Shah was not married and there was no legal heir.

**DISCUSSION AND FINDINGS:**

13. On the basis of facts available on records, I find that in the instant case, the Assessee has expired on 09.06.2019 i.e. much before the issuance of the subject Show Cause Notice dated 23.04.2021. Accordingly, in the present matter there is no submission given by the Assessee against the SCN. Therefore the only thing that is to be decided by me in the subject matter is whether the demand is sustainable in view of the expiry of the Assessee.

14. I find that Shri Dhimant Khatri, CA vide letter dated 11.01.2023 has informed that the Assessee i.e. Shri Hirenbhai C. Shah, has expired on 09.06.2019. He has also attached a Death Certificate issued by the Ahmedabad Municipal Corporation (Ward – Paldi - Registration No. 2019-DW-0007-0000672 – Date of Death – 09.06.2019 – Address of the deceased – 406, Vimalvihar, Flat No. 22, Saraswati Society, Jain Merchant, Fatehpura, Paldi, Ahmedabad – 380007). On perusal of the name & address of the noticee mentioned in the SCN, I find the name and address i.e. 225, Mahasukh Nagar, B/h. Krishna Nagar, Ahmedabad – 382325 of the Assessee does not match with the address mentioned in the death certificate i.e. 406, Vimalvihar, Flat No. 22, Saraswati Society, Jain Merchant, Fatehpura, Paldi, Ahmedabad – 380007. However, I find that the address of the Assessee matches with the address i.e. 225, Mahasukh Nagar, Naroda, Ahmedabad, mentioned in the Voter ID. I also find that the report of the JAC also confirms that the Assessee





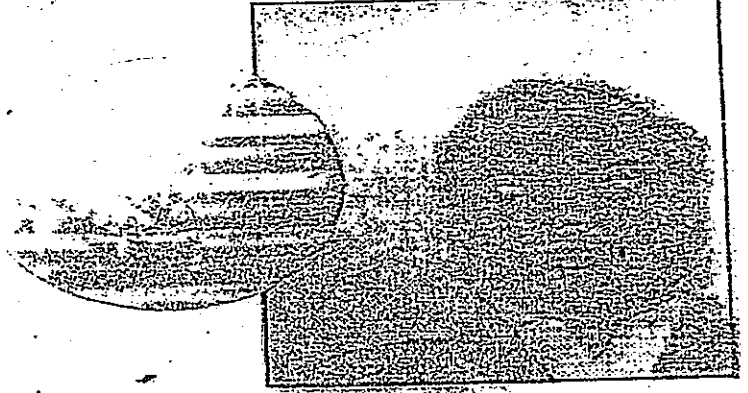


# ELECTION COMMISSION OF INDIA

ભારતનું ચૂંટણી પંચ

IDENTITY CARD | ઓળખ પત્ર

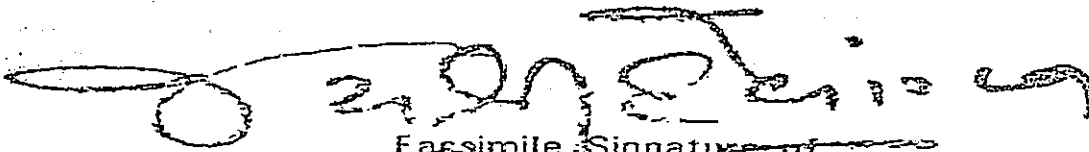
GJ/19/078/589074



Elector's Name : SHAH HIRENKUMAR  
 મતદારનું નામ : શાહ હિરેનકુમાર  
 Father's/Mother's/  
 Husband's Name : CHINUBHAI  
 પિતા/માતા/પતિનું નામ : ચિનુભાઈ  
 Sex / જાતિ : Male / પુરુષ  
 Age as on 1.1.1995 : 32 Years  
 ૧.૧.૧૯૯૫ ના રોજ ઉંમર : ૩૨ વર્ષ

Address : 225, MAHASUKHNAGAR,  
 NARODA, AHMEDABAD DIST.

સરનામું : ૨૨૫, મહાસુખનગર,  
 નરોડા, અમદાવાદ જિલ્લો

  
 Facsimile Signature of  
 Electoral Registration Officer  
 for 078 - NARODA Constituency  
 ૦૭૮ - નરોડા મતદાર વિભાગના  
 મતદાર નોંધણી અધિકારીની  
 સહીનો નમૂનો  
 Place : AHMEDABAD  
 સ્થળ : અમદાવાદ

Date : 12.04.1996

તારીખ : ૧૨.૦૪.૧૯૯૬

This card may be used as identity card  
 under different government schemes.

આ પત્રનો - જુદા જુદા સરકારી યોજનાઓ માટે  
 ઓળખપત્ર તરીકે ઉપયોગ કરી શકાય.

15. As far as the issue regarding the sustainability of demand where the Assessee has expired is concerned, I find that the Hon'ble Supreme Court in the case of SHABINA ABRAHAM & ORS Vs COLLECTOR OF CENTRAL EXCISE & CUSTOMS in CIVIL APEAL NO.5802 OF 2005 has stated as under –

*The precise question that arises in the present case is whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacturer after he is dead. The facts of the case are as follows:*

*One Shri George Varghese was the sole proprietor of Kerala Tyre and Rubber Company Limited. By October, 1985, this proprietary concern had stopped manufacture and production of tread rubber. By a show cause notice dated 12-6-1987, for the period January, 1983 to December, 1985, it was alleged that the assessee had manufactured and cleared tread rubber from the factory premises by suppressing the fact of such production and removal with an intent to evade payment of Excise duty. The provisions of Section 11A, as they then stood, of the Central Excises and Salt Act were invoked and duty amounting to Rs. 74,35,242/- was sought to be recovered from the assessee together with imposition of penalty for clandestine removal.*

*On 14-3-1989, the said Shri George Varghese died. As a result of his death, a second show cause notice was issued on 18-10-1989 to his wife and four daughters asking them to make submissions with regard to the demand of duty made in the show cause notice dated 12-6-1987. By their reply dated 25-10-1989, the said legal heirs of the deceased stated that none of them had any personal association with the deceased in his proprietary business and were not in a position to locate any business records. They submitted that the proceedings initiated against the deceased abated on his death in the absence of any provision in the Central Excises and Salt Act to continue assessment proceedings against a dead person in the hands of the legal representatives. The said show cause notice was, therefore, challenged as being without jurisdiction.*

*As the Central Excise Authorities posted the matter for hearing and refused to pass an order on the maintainability of the show cause notice alone, the legal heirs approached the High Court under Article 226 of the Constitution by filing a Writ Petition in January, 1990. The learned single Judge of the High Court quashed the proceedings against the legal heirs stating that the Central Excises and Salt Act did not contain any provisions for continuing assessment proceedings against a dead person. Against this, revenue went in appeal. The Division Bench of the High Court of Kerala reversed the single Judge's judgment.*

While deciding the case the Hon'ble Supreme Court found that

*It remains to consider a judgment cited by learned counsel for the appellants, namely, Commissioner of Central Excise, Bangalore-III v. Dhiren Gandhi, 2012 (281) E.L.T. 64 (Karnataka) = 2012 (27) S.T.R. 452*

(Kar.). This judgment is correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To the extent that this judgment holds what is set out hereinbelow, it is correct :-

*"We do not find any provision in the Act which foists any such liability in the case of intestate succession. In other words, there is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. The way Section 11 and 11A are worded, it is amply clear, the legislature has consciously kept away the legal heirs from answering to liabilities under the Act." (at page 69)*

The Hon'ble Supreme Court has also observed that -

**7. Recovery of duty.** - *Every person who produces, cures or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty or duties leviable on such goods, at such time and place and to such persons as may be designated, in, or under authority of these rules, whether the payment of such duty or duties is secured by bond or otherwise.*

*Provided that nothing contained in this rule shall apply to molasses produced in a khandsari sugar factory.*

*Provided further that in respect of goods falling under Chapter 62 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), manufactured on job work, the provisions of these rules shall apply subject to the provisions of Rule 7AA."*

**8.** *On a reading of the aforesaid provisions, it is clear that Shri Rajshekhar Rao, learned counsel appearing on behalf of the appellants is correct - there is in fact no separate machinery provided by the Central Excises and Salt Act to proceed against a dead person when it comes to assessing him to tax under the Act.*

The Hon'ble Supreme court also held that

**17.** *It will be seen that the definition of "assessee" contained in Section 4(3)(a) of the Central Excises and Salt Act is similar to the definition of assessee contained in the Income Tax Act, 1922. Under that Act, as we have already seen, an assessee means "a person by whom income tax is payable." Under the Central Excises and Salt Act, an assessee means "the person who is liable to pay the duty of excise under this Act". The present tense being used, it is clear that the person referred to can only be a living person as was held in Ellis C. Reid (supra). Further, the only extension of the definition of "assessee" under the Central Excises and Salt Act is that it would also include an assessee's agent, which has nothing to do with the facts of the present case. It is well settled that a "means and includes" definition is exhaustive in nature and that there is no scope to read anything further into the said definition.*

And finally the Hon'ble Supreme Court concluded that -

*34. We are, therefore, of the view that this appeal must be allowed and the judgment of the High Court of Kerala is, accordingly set aside and that of the learned Single Judge restored.*



16. On perusal of the above order of the Hon'ble Supreme Court, it is quite clear that there is no separate enabling provision in Act to recover the duty from legal heirs of a deceased person. The definition of assessee as contained in Section 4(3)(a) of Central Excise Act, 1944 provides that an assessee means " *the person who is liable to pay the duty of excise under this Act.* The present tense being used, it is clear that the person referred to can only be a living person. Such use of present tense indicates that the one of modes of recovery as provided in Section 11 by way of attachment of property of the assessee even if the estate was available cannot be so attached. Thus, the legal heirs inheriting the estate of deceased person cannot be made liable to pay duty as payable by assessee during his life. In the instant case, as submitted by Shri Dhimant Khatri, consultant of the Assessee, late Shri Hirenbhai Chinubhai Shah was unmarried and does not have any legal heir.

17. Further in the case of Azad Engineering Works Vs Commissioner Of C. Ex. & S.T., Allahabad's 2019 (24) G.S.T.L. 46 (Tri. - All.) the Honble CESTAT decided that in a similar issue Recovery of Service Tax dues of proprietorship firm cannot be effected against legal heirs of partner after his death - Section 87 of Finance Act, 1994. [para 1] Finance Act, 1994 - Provisions of Section 87 of Finance Act, 1994 are pari materia to provisions of Section 11 of Central Excise Act, 1944. While deciding the case the Hon'ble CESTAT observed that -

*We note that Learned Counsel for the appellant has relied on ruling by Hon'ble Supreme Court in the case of Shabina Abraham v. Collector of Central Excise & Customs reported as 2017 (50) S.T.R. 241 (S.C.). Learned AR fairly agrees with that the said ruling of Hon'ble Supreme Court is squarely applicable in the present case. We note that Hon'ble Supreme Court in the said case of Shabina Abraham had held that "in the absence of machinery provisions for proceeding against dead person's legal heirs, duty and other sums do not become payable to apply recovery provisions under Section 11 of Central Excise Act, 1944." We note that present proceedings are initiated under Finance Act, 1994 and Section 87 of Finance Act, 1994 is invoked for recovery. We also note that provisions of Section 11 of Central Excise Act, 1944 and provisions of Section 87 of Finance Act, 1994 are pari materia. We, therefore, hold the ruling of Hon'ble Supreme Court in the case of Shabina Abraham is squarely applicable in the present case. Therefore, we hold that the demand confirmed through Order-in-Original dated 25-2-2014 sustained through impugned Order-in-Appeal cannot be recovered from the legal heirs of Shri Kailash Nath Singh.*

*2. In above terms the appeal is allowed.*

18. I also find that the Service Tax Registration number of the Assessee is BALPS2588FST001. Scanned copy of the ST-1 (Application for Service Tax Registration) is reproduced below for reference -

 <b>Ministry of Finance - Department of Revenue</b> <b>Central Board of Indirect Taxes and Customs</b> <b>Goods and Services Tax</b> 			
<b>FORM ST-1</b>			
[Application form for registration under Section 69 of The Finance Act, 1994(32 of 1994)]			
Application Date :	20/9/05 12:00 AM		
<b>IDENTIFICATION OF BUSINESS REQUIRING REGISTRATION</b>			
Name of Applicant :	NAND CONTRACTORS		
Address of the Applicant :	225, MAHASUKH NAGAR,,B/H. KRISHNA NAGAR,,NARODA,AHMEDABAD,GUJARAT,382325		
<b>Details of Permanent Account Number(PAN) of the applicant</b>			
PAN Status :	Allotted		
PAN (if Allotted) :	BALPS2588F		
Name of the Applicant(as appearing in PAN) :	NAND CONTRACTORS		
Constitution Of applicant :	Others		
Government Department Type			
Name of			
Category of Registrant :	Service Provider		
Nature of registration :	Registration of a single premise		
Taxable services provided :	Business auxiliary service		
<b>ADDRESS OF PREMISES FOR WHICH REGISTRATION IS SOUGHT</b>			
Name of Premises/Building :	NAND CONTRACTORS	Flat/Door/Block No :	225, MAHASUKH NAGAR.
Road/Street/Lane :	B/H. KRISHNA NAGAR,	Village/Area/Locality :	-
Block/Taluk/Sub-Division/	NARODA	Post office :	-
City/District :	AHMEDABAD	State/ Union Territory :	Mizoram
PIN :	382325	Phone No. :	0
Mobile No. :		Fax Number 1 :	
Fax Number 2 :		E-mail Address :	BALPS2588FST001@hotmail.com
Commissionerate :	AHMEDABAD-NORTH	Division :	DIVISION-I - NARODA
Range :	RANGE IV	Premises Code :	WT0104A001
In case of application for Centralized Registration, furnish address of all the premises from where taxable services are provided or intended to be provided			
Download Centralized Addresses (PDF) No. of		0	

NAME, ADDRESS AND PHONE NUMBER OF PROPRIETOR / PARTNER / DIRECTOR / TRUSTEES ALONG WITH DETAILS OF AUTHORIZED SIGNATORIES			
Name :-		Designation :	Director
Address :-		Email Address :-	
Phone Number :-			
List of Accounting Codes		Accounting Codes	
S.No.	Types of Services	Tax Collection	Other Receipts
1	Business auxiliary service	00440225	00440226
			Penalties
			00441371

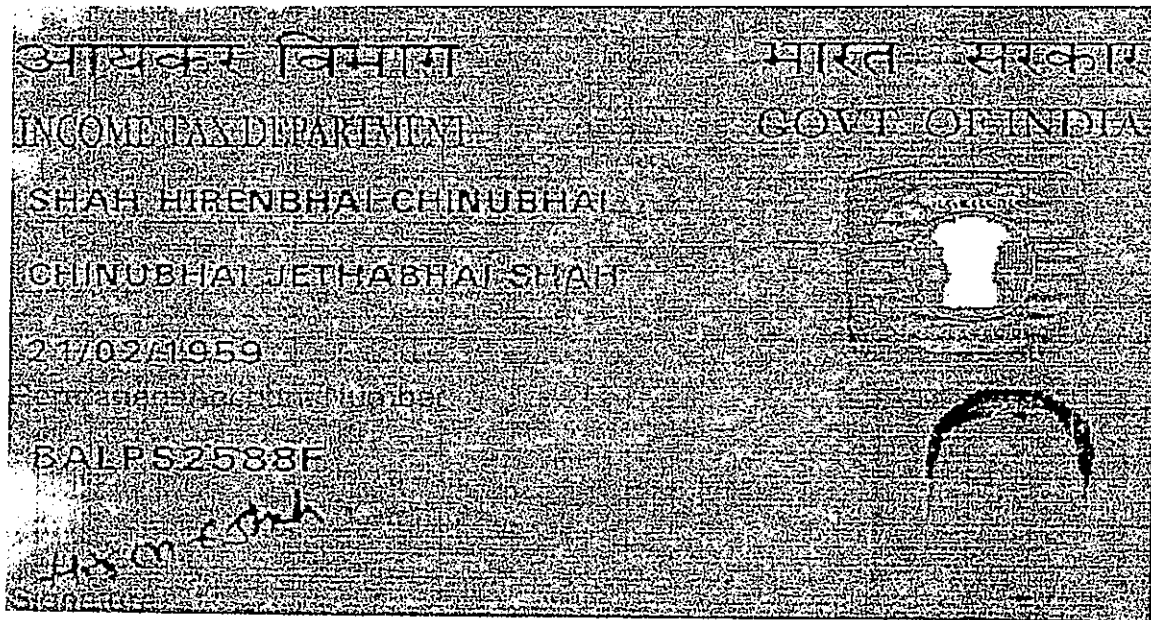
## Declaration

I, null, hereby declare that the information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the Registrant.

- (a) For new Registration : I would like to receive the Registration Certificate by mail/by hand/E-MAIL  
 (b) For amendments to information pertaining to existing Registrant : Date from which amendments are made:

Date : 17/9/09 10:59 PM

As per the ST-1 filed by the Assessee for obtaining Service Tax Registration, the name of the applicant is mentioned as "NAND CONTRATORS" and the pancard No. is mentioned BALPS2588F. The constitution of the applicant is mentioned as "Others". Although name of the Authorised Signatory is not mentioned, the designation of the authorized signatory is mentioned as "Director". There is also no mention of the Assessee i.e. Hirenbhai Chinubhai Shah in the ST-1. Thus on the basis of the ST-1 it is not possible to conclusively derive as to what is the constitution of the Assessee. However, as per the copy of the pancard given by the consultant of the Assessee, the pancard number of the Assessee is BALPS2588F in the name of Hirenbhai Chinubhai Shah. Scanned copy of the pancard of the Assessee is reproduced below for reference.



The pancard mentioned in the ST-1 is also BALPS2588F, which is the same as submitted by the consultant of the Assessee. Though constitution of the Assessee mentioned in the ST-1 is others, on the basis of the fact that the pancard number (BALPS2588F) mentioned by the Assessee in the ST-1, the pancard part appearing in the Service Tax Registration (BALPS2588FST001) being BALPS2588F and the pancard number (BALPS2588F) submitted by the consultant of the Assessee being the same, I discern that the Assessee is a proprietary firm, because had the constitution of the Assessee been anything else than Proprietorship, then the pancard of the firm and the person would have been different. Therefore I hold that the Assessee is a Proprietorship firm.

19. On perusal of the above referred orders of Hon'ble Supreme Court and CESTAT, other aspects of the case and considering that the Assessee is a proprietary firm, I find that the assessment proceedings against a deceased person are not lawful and proper. Therefore the show cause notice dated 23.04.2021 issued in the name of the deceased person, late Shri Hirenbhai

Chinubhai Shah is liable to be vacated. As the SCN itself is vacated, the question of charging interest or imposing of penalty does not arise.

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

**ORDER**

I hereby vacate the proceedings initiated against M/s. Hirenbhai Chinubhai Shah, 225, Mahasukh Nagar, B/h. Krishna Nagar, Ahmedabad – 382325, vide Show Cause Notice STC/15-144/OA/2021-22 dated 23.04.2021.



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

By Regd. Post AD./Hand Delivery

F.No. STC/15-144/OA/2021-22

Date: \_\_\_/02/2023

To,  
M/s. Hirenbhai Chinubhai Shah,  
225, Mahasukh Nagar,  
B/h. Krishna Nagar,  
Ahmedabad – 382325

Copy for information to:

1. The Principal Chief Commissioner of CGST & Central Excise, Ahmedabad Zone.
2. The Assistant Commissioner, Division-I, CGST & C.Ex., Ahmedabad North.
3. The Superintendent, Range-IV, Division-I, CGST & C.Ex., Ahmedabad North.
- ✓ 4. The Superintendent (Systems), Hq., CGST & C.Ex., Ahmedabad North.
5. Guard File.