


Syzen

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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-85/OA/2021

DIN : 20230364WT000000E222

आदेश की तारीख

/ Date of Order : 16.03.2023

जारी करने की तारीख

/ Date of Issue : 17.03.2023

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव

/ UPENDRA SINGH YADAV

आयुक्त

/ COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 46 /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 प्रतियाँ 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 - कारणों बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notices No. STC/15-85/OA/2021 dated 23.04.2021 against M/s. Subhashsingh C. Rajput, 11, Gayatri Complex, Juni Roshni Cinema, Nr. Power House, Sabarmati, Ahmedabad -380005

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 46 /2022-23

M/s. Subhashsingh C. Rajput, 11, Gayatri Complex, Juni Roshni Cinema, Nr. Power House, Sabarmati, Ahmedabad -380005 were issued SCN F. No. STC/15-85/OA/2021 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. SUBHASHSINGH C. RAJPUT, ARE AS FOLLOWS:

M/s. Subhashsingh C. Rajput, 11, Gayatri Complex, Juni Roshni Cinema, Nr. Power House, Sabarmati, Ahmedabad -380005 (hereinafter referred to as the 'assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. AEMPR8316LST001.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)" and "Total Amount Paid/Credited under 194C, 194H, 194I, 194J (value from 26AS)" in respect of M/s. Subhashsingh C. Rajput, 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. It appeared from the Third Party Data provided by CBDT of the said assessee for the F.Y. 2015-16 and 2016-17, that the said assessee had declared less taxable value in their Service Tax Returns (ST-3) for F.Y. 2015-16 and 2016-17 when the same was compared with the Service related taxable value declared in their ITR/Form 26AS 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.	F.Y.	Taxable Value as per ST-3 Returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (in Rs.)	Difference between Value of Services from ITR/26AS and Gross Value in Service Tax Returns (in Rs.)	Resultant Service Tax Short Paid (in Rs.)
1	2015-16	0	58186598	58186598	8437057
2	2016-17	0	121043130	121043130	18156470
			179229728	179229728	26593527

Therefore, it appeared that the said assessee had short /not paid service tax to the extent of Rs. 2,65,93,527/- (including Cess) on the differential value of Rs. 17,92,29,728/-.

4. 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 66/66B in such manner and within such period which is prescribed under Rule 6 of the Service

tax Rules 1994. In the instant case, it appeared that the assessee had not paid service tax for FY 2015-16 and 2016-17 as worked out above.

5. No data was shared by the CBDT, for the period FY 2017-18 (upto June-2017) and the assessee also had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN, it was not possible to quantify the short payment of Service Tax, if any, for the period FY 2017-18 (upto June-2017).

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 assessee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

6. As per the provisions of Section 70 of the Finance Act, 1994, 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 by disclosing wholly & truly all material facts in their service tax returns (ST-3 Returns). The form, manner and frequency of return have been prescribed under Rule 7 of Service tax Rules 1994. In the instant case, it also appeared that the assessee had not assessed the tax dues properly on services rendered by them and had also failed to file correct ST-3 Returns, thereby violating the provisions of Section 70(1) of the Finance Act, 1994 read with Rule 7 of Service Tax Rules 1994.

7. 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 the interest at applicable rate. Since, the assessee had failed to pay service tax liabilities in the prescribed time limit on the provision of services by them, the interest also appeared to be recoverable under Section 75 of the Finance Act, 1994 alongwith the service tax payable by them.

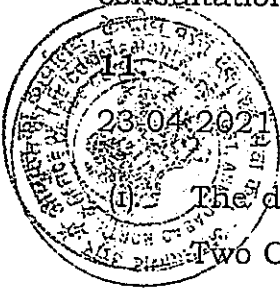
8. Therefore, it appeared that the said assessee had contravened (i) the provision of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 in as much as they had failed to pay/short paid/ deposit service tax to the extent of Rs. 2,65,93,527/- by declaring less value in their ST-3 Returns vis-à-vis their ITR/Form 26AS in such manner and within such period as prescribed with respect to the taxable services provided by them (ii) the provision of Section 70 of Finance Act, 1994 in as much as they had failed to assess their service tax liabilities under Rules 2(1)(d) of Service Tax Rules, 1994.

9. 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 providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,65,93,527/- on the differential value of service as worked out herein above. Thus, it appeared that the act of omission on the part of the assessee had resulted into non payment of service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax. Therefore, the service tax not paid by the assessee appeared to be recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, alongwith interest at appropriate rate under Section 75 of the Finance Act, 1994. Since, the above act of omission on the part of the assessee constituted an offence punishable under Section 78 of the Finance Act, 1994, the assessee also appeared to have rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

10. The assessee was given opportunity to appear for pre-SCN consultation on 22.04.2021, but the same was not attended by them.

11. Therefore, Show Cause Notice No. STC/15-85/OA/2021 dated 23.04.2021 was issued to the assessee asking them as to why:

(i) The demand for Service Tax to the extent of Rs. 2,65,93,527/- (Rupees Two Crore Sixty Five Lakh Ninety Three Thousand Five Hundred Twenty Seven only) short/ not paid by them in FY 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of Finance Act,1994.



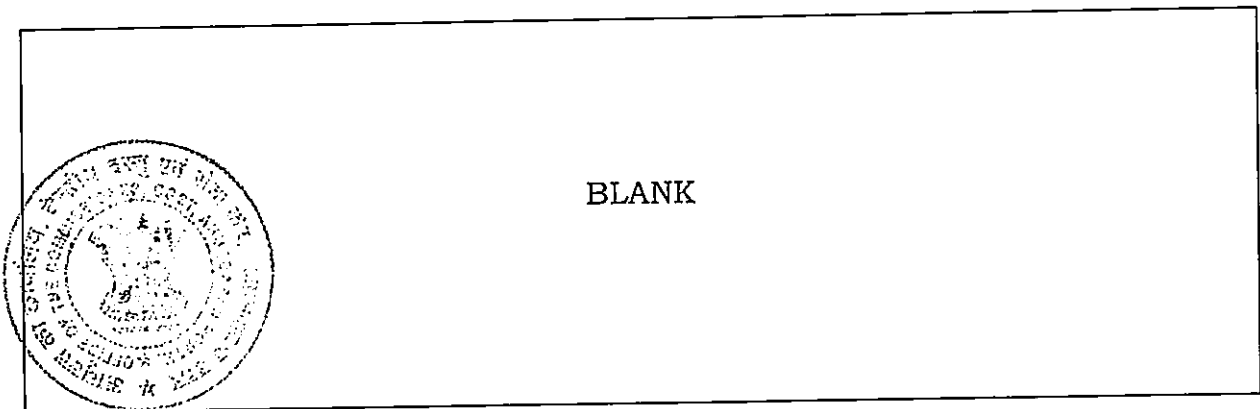
- (ii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994.
- (iii) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for their failure to assess their correct Service Tax liability and their failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY:

12. The assessee has not filed any defence reply with reference to subject show cause notice dated 23.04.2021.


PERSONAL HEARING:

13. Personal Hearings were granted to the assessee on 20.12.2021, 19.01.2022, 26.04.2022, 19.05.2022, 16.06.2022, 25.07.2022, 05.09.2022, 13.10.2022, 15.11.2022 and 07.02.2023. The assessee has not responded to any of communication sent for personal hearing except for personal hearing granted on 20.12.2021 and 05.09.2022. The assessee vide their letters dated 20.12.2021 and 05.09.2022, has sought extension of time and had requested for another date for personal hearing. Thereafter when they were granted another dates of personal hearing, they have preferred/chosen not to avail the opportunities offered for reasons best known to them. Finally, they were granted personal hearing vide letter dated 27.02.2023 signed/issued by the adjudicating authority himself in the interest of justice and it was conveyed to them that if the personal hearing was not attended, the matter would be taken up exparte for taking an appropriate decision.



DIN: 2023024 131 830000 67213

आयुक्त पत्र कार्यालय,
केन्द्रीय वी. एस. टी. एड.
केंद्रीय उत्पाद शुल्क, उत्तमदासपुर - उत्तर,
कस्टम डिपार्ट, अहमदाबाद,
नवरांगपुरा, अहमदाबाद-380009



OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE
AHMEDABAD NORTH
CUSTOM HOUSE, 1ST FLOOR,
NAVRANGPURA, AHMEDABAD-380009

फोन नंबर 079-01-31-6727544557 ईमेल: 66611102@cbecindia.com

BY SPEED POST/AND DELIVERY.

दिनांक 27-02-2023

To
M/s Subhashinghi C/Rajput
11 Gyan Complex,
Old Rashan Cinema,
N. Power House,
Ahmedabad-380009

Gentleman

Sub: Intimation regarding Fixing of Personal Hearing in Reg.

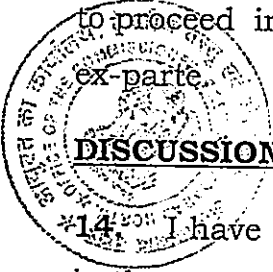
Please refer to the SCN No. STC/15-85/OA/2021 dated 29.04.2021 issued in you by the Commissioner, Central Excise & GST, Ahmedabad North. Please also refer to letters of advn no. Dated 26.11.2021, 27.12.2021, 12.03.2022, 04.05.2022, 07.05.2022, 13.07.2022, 24.08.2022, 03.10.2022, 03.11.2022, and 23.01.2023 vide which dates of personal hearing were communicated to you so that you could have your say vis-a-vis the charges levied in the SCN.

In this connection, it is to mention that you have neither filed your defence reply nor have attended any of the numerous personal hearings fixed in the intimer. Since a substantial amount of Govt. revenues involved in the matter, you are once again required to file your defence reply, if any, and also appear for personal hearing on any working day, but not later than 07.03.2023. You may also take note that this is the final opportunity given to you to defend your case in person. In case you fail to appear for personal hearing on or before 07.03.2023, the undersigned as an adjudicating authority would have no recourse left but to adjudicate the case on the basis of available records ex-parte.

Yours sincerely
(Upendra Singh Yadav)
Commissioner

Handwritten notes:
Gory Receiver
Attention the person
handprint on or before
7.3.2023
Sharma I. R.

The said letter was acknowledged by the assessee, but they however have again failed to appear for the personal hearing. As can be seen, the assessee has been granted more than ample opportunities for defending their case in person, but they have chosen to refrain from availing the many opportunities offered for defending their case in person. Thus left with no option, 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:

14. I have carefully gone through the facts of the case and records available in the case file, which include the SCN.

15. I find that the assessee has failed to appear for Personal Hearing, inspite of being asked to do so repeatedly as mentioned in Para-13 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 and matter can not be kept hanging indefinitely.

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

16. I observe that the SCN dated 23.04.2021 has been issued to the assessee by the competent authority demanding service tax totally amounting to Rs. 2,65,93,527/-. 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. 17,92,29,728/- 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. 2,65,93,527/- 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. 2,65,93,527/- on the differential taxable value of Rs. 17,92,29,728/- for the Financial Year 2015-16 and 2016-17 as demanded under the said SCN dated 23.04.2021, under proviso to section 73(1) of Finance Act, 1994 (the Act) or not.

17. I observe that after introduction of new system of taxation of services in negative list regime w.e.f. 01.07.2012, any activity carried out by a person for another person for a consideration is taxable service except those services specified in the negative list or exempt list by virtue of mega exemption notification or covered under exclusion clauses provided under the meaning of "service" as per Section 65B(44) of Finance Act, 1944.

The term "**Service**" has been defined under Section 65B (44) of the Finance Act, 1994 ('Act') as under:

"service" means any activity carried out by a person for another for consideration, and includes a declared service"

The term "**Taxable Service**" has been defined under Section 65B (51) of the Act as under:

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

Section 66B provides for levy of service tax, which reads as under:

SECTION [66B]. *Charge of service tax on and after Finance Act, 2012. — There shall be levied a tax (hereinafter referred to as the service tax) at the rate of [fourteen per cent.] on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

I find that prior to 01.07.2012 i.e. before introduction of a new system of taxation of services, the tax was levied on services of specified description only, as provided under Section 66 (in force at the material time) of the Act. In other words, the service tax was levied on services of specific description provided under the statute. The new taxation system of services had widened the scope

of levy of tax on services without specific description of service. Accordingly, any activity carried out by a person for another person in lieu of the consideration is "service" and is liable to service tax unless it is covered under negative list of services or exempt services under mega exemption notification or covered under exclusion clauses of "service".

19. I find that the SCN mentions that the value of service has been derived from the value of services declared in Income Tax Return/Form 26AS, and the same was shared by the CBDT with CBIC. The said information provided by the income tax is nothing but is either the revenue from sale of services, as declared by the assessee in their Income Tax Return (ITR) or the amount paid/credited to the assessee for receiving the services from service provider, which are declared by the recipients of services (Form 26AS). It is pertinent to mention here that the Income Tax Act, 1961 requires the income tax assessee to provide the information regarding revenue from sale of service while filing the ITR by the income tax assessee. Similarly, the Income Tax Act, 1961 requires the person to deduct the TDS under various provision of IT Act, while making payment to the provider of service and it also requires the person to provide information of such payments made & TDS deducted in the TDS returns to be filed by the recipients of such services. Form 26AS is such consolidated statement, which provides details of amount of TDS deducted from various source of income of a taxpayer/income tax assessee, including the TDS deducted from payment made by the recipient of services. CBDT has shared such data related to provision of services by the tax payer. As discussed hereinabove, I find that the amount received by the assessee is subject to service tax under Section 66B of the Act, unless the services rendered for which the said amount has been received, is shown to be covered under negative list of services or exempt services under mega exemption notification or covered under exclusion clauses of "service".

20. I find that the SCN alleges that the assessee is registered with the department with Service Tax Registration No. AEMPR8316LST001, but they have not filed service tax returns and have not paid service tax due to the government, however, on verifying the GSTN portal, it is found that the assessee has filed the ST-3 Returns. Therefore, the differential taxable value of service worked out in the SCN is apparently not correct as the taxable value of service disclosed in ST-3 Returns filed by the assessee were not considered while computing the service tax liability of the assessee. The taxable value of service declared in ST-3 Returns filed by the assessee for FY 2015-16 and 2016-17, is as under:

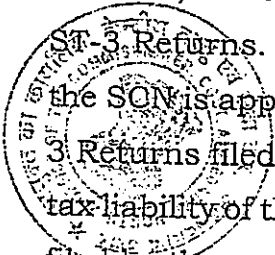


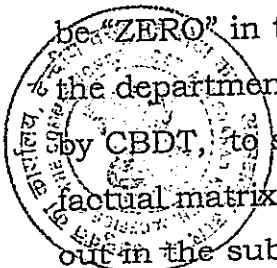
TABLE-A

As per ST-3/ FY 2015-16	April - Sept		Oct-March		Total
Description of services	Erection, Commissioning and installation service	Works Contract service	Erection, Commissioning and installation service	Works Contract service	
Gross amt of service (A)	32279010	0	22492524	0	54771534
Less: Exempt service	0	0	0	0	0
Net taxable value	32279010		22492524	0	54771534
As per SCN, taxable value of service (B)	----	----	----	----	58186598
Difference (B-A)	----	----	----	----	3415064
Service tax Payable on differential value (B-A) @ 14.5%	----	----	----	----	495184

TABLE-B

As per ST-3/FY 2016-17	April - Sept		Oct-March		Total
Description of services	Erection, Commissioning and installation service	Works Contract service	Erection, Commissioning and installation service	Works Contract service	
Gross amt of service (A)	29221588	7797186	74525900	4184719	115729393
Less: Abatement/ deduction	0	5068171	0	2720068	7788239
Net taxable value	29221588	2729015	74525900	1464651	107941154
As per SCN, taxable value of service (B)	----	----	----	----	121043130
Difference (B-A)	----	----	----	----	5313737
Service tax Payable on differential value (B-A) @ 15%	----	----	----	----	797061

As can be seen from the subject SCN that the difference of taxable value has been worked out by comparing the value of services appearing in ITR/26AS vis-à-vis Value of services declared in ST-3 Returns, for demanding the service tax from the assessee. It is also seen that the entire value of service reflecting in ITR/26AS has been considered to be taxable value for demanding service tax for FY 2015-16 & 2016-17, considering the value of service declared in ST-3 Returns to be "ZERO". I find that though the assessee has filed ST-3 Returns and the taxable value of services rendered by them has been declared in ST-3 Returns filed by them, the value of service declared in ST-3 Returns has been shown to be "ZERO" in the Subject SCN, which is factually not correct. I also find that the department has not adduced any other evidence other than the data shared by CBDT to substantiate the charges levelled against the assessee. From this factual matrix, I find that the difference in value of service as has been worked out in the subject SCN, is not correct. Thus, the correct difference needs to be worked out, considering the taxable value of services declared in ST-3 Returns filed by the assessee for FY 2015-16 and 2016-17. Therefore, the difference in



value of services has been worked out in TABLE-A & B above and accordingly, the difference in value comes out to be Rs. 87,28,801/- (Rs. 34,15,064/- for FY 2015-16 Plus Rs. 53,13,737/- for FY 2016-17) instead of Rs. 17,92,29,728/- as alleged in the subject SCN. It is also apparent from the ST-3 Returns, that the assessee has paid the service tax on the taxable value declared in ST-3 Returns. Thus, I find that the assessee is liable to pay service tax on differential value of service of Rs. 87,28,801/- only, as calculated above.

Scanned images of ST-3 Returns- Relevant Extract
 FY 2015-16- H1

Sl.No.	Code	Error	Remarks	
PART - A - General Information				
A1.	Original Return	Yes		
	Revised Return	No		
A2.	STC Number	AEAPR3118LST001		
	Return Number	AEAPR3118LST001_STC101A001_ST3_042015		
	Name of the Assessee	A M ERECTORS		
	Trade Name	A. M. ERECTORS		
	Commissionerate			
	Division	DIVISION-VB - S G 100H/HAY EAST		
A3.	Range	RANGE V		
	Address of Registered Unit	GAYATRI COMPLEX, SHAHJHADABAD,280005		
	Due date filing for this return	25/12/2015		
	Actual date of filing	16/12/2015		
	No. of days beyond due date	0		
A4.	Financial Year	2015-2016		
A5.	Return for the period	Apr-September		
A6.				
A6.1.	Has the Assessee opted to operate as "Large Taxpayer" Unit (LTU) (As defined under Rule 2(i) (ta) of the Central Excise Rules, 2002 read with Rule 2(i) (i)(c) of	No		
A6.2.	If reply to column A6.1 is "Y", name of Large Taxpayer Unit opted for			
A7.	Premises Code Number	SD1101A001		
A8.	Constitution of assessee	Proprietorship/individual		
A8 - Taxable Service(s) for which Tax is being paid				
Description of Taxable Services		Sub Clause		
Maintenance or repair service		(221)		
Erection, commissioning and installation service		(222)		
Wholesale service		(222A)		
Taxable Service for which Tax is being paid: Maintenance or repair service				
A10 - Assessee is liable to pay Service Tax on this taxable service as				
A10.1	A Service Provider under Section 64(1)	Yes		
A10.2	A Service Receiver under Section 64(2)	No		
A10.3	A Service Provider under partial reverse charge under provision in Section 64(2)	No		
A10.4	A Service Receiver under partial reverse charge under provision in Section 64(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 (LTU)	No		
A12 - Abatement				
A12.1	Has any abatement from the value of services been claimed (LTU)	No		
A13 - Provisional Assessment				
A13.1	Whether provisionally assessed (LTU)	No		
PART B - Value of Taxable Service and Service Tax Payable				
PART B1 - For Service Provider				
Sl.No.	Character	Apr-Jun	Jul-Sep	Total
B1.	Service provided (including services received in advance, wherever taxable in receipt form, for which the invoices/Receipts or any other documents may not have been issued) for which the invoices/Receipts or any other documents are issued relating to service provided or to be provided (including export of service and imported service)	0	0	0
B2.	Amount received in respect of services for which invoices/Receipts or any other documents have not been issued	0	0	0
	Amount payable in respect of service tax and provided to the [1] of service tax payable, total			

B1.16 Specific Rate (applicable as per Rule 8 of ST Rules)							
Sl.No.	Taxable Rate				Taxable Value		
	Tax Rate %	Swachh Bharat Cess	EDU Cess %	SHEOU Cess	Apr-Jun	Jul-Sep	
Total					0	0	0

B1.17	Service Tax payable	0	0	0
B1.18	Less R and D Cess payable	0	0	0
B1.19	Net Service Tax payable B1.17 + (B1.17 * B1.18)	0	0	0
B1.20	Education Cess payable	0	0	0
B1.21	Secondary and Higher Education Cess payable	0	0	0
B1.22	Swachh Bharat Cess payable based on entries in B1.15	0	0	0
B1.23	Swachh Bharat Cess payable based on entries in B1.16	0	0	0
B1.24	Total Swachh Bharat Cess payable B1.22 + (B1.22 * B1.23)	0	0	0

PART D2 - For Service Receiver

Sl.No.	Quarter	Apr-Jun	Jul-Sep	Total
B2.1	Gross Amount (excluding amounts paid in advance, amounts payable on payment made, for which bills/invoices/claims or any other documents may not have been issued) for which bills/invoices/claims or any other documents are issued relating to service received or to be received	0	0	0
B2.2	Amount paid in advance for services for which bills/invoices/claims or any other documents have not been issued	0	0	0
B2.3	Amount payable on receipt bills under Part B1(1) of Service Tax Rules, 1994 for which bills/invoices/claims or any other documents have not been issued	0	0	0
B2.4	Amount charged for exempted services provided or to be provided (other than export of services)	0	0	0
B2.5	Amount paid for services received from Non-Taxable Territory - Imports	0	0	0
B2.6	Amount paid for services received from Non-Taxable Territory - Other than imports	0	0	0
B2.7	Amount on which Service Tax is payable under partial reverse charge	0	0	0
B2.8	Gross Taxable Amount B2.1 + (B2.1 * B2.2) + B2.3 + B2.4 + B2.5 + B2.6	0	0	0
B2.9	Amount paid for exempted services received or to be received	0	0	0
B2.10	Amount paid as Pure Agent	0	0	0
B2.11	Amount claimed as abatement	0	0	0
B2.12	Any other amount claimed as deduction	0	0	0
B2.13	Total Amount Claimed as Deduction B2.10 + B2.11 + B2.12	0	0	0
B2.14	NET TAXABLE VALUE B2.8 - (B2.9 + B2.10 + B2.11 + B2.12)	0	0	0

B2.16 Service Tax Rate-wise break up of NET TAXABLE VALUE (B2.14): Advalorem Rate							
Sl.No.	Taxable Rate				Taxable Value		
	Tax Rate %	Swachh Bharat Cess	EDU Cess %	SHEOU Cess	Apr-Jun	Jul-Sep	
Total					0	0	0

B2.16 Specific Rate (applicable as per Rule 8 of ST Rules)							
Sl.No.	Taxable Rate				Taxable Value		
	Specific	Swachh Bharat Cess	EDU Cess %	SHEOU Cess	Apr-Jun	Jul-Sep	
Total					0	0	0

B2.17	Service Tax payable	0	0	0
B2.18	Less R and D Cess payable	0	0	0
B2.19	Net Service Tax payable B2.17 + (B2.17 * B2.18)	0	0	0
B2.20	Education Cess payable	0	0	0
B2.21	Secondary and Higher Education Cess payable	0	0	0
B2.22	Swachh Bharat Cess payable based on entries in B2.15	0	0	0
B2.23	Swachh Bharat Cess payable based on entries in B2.16	0	0	0
B2.24	Total Swachh Bharat Cess payable B2.22 + (B2.22 * B2.23)	0	0	0

Taxable Service for which Tax is being paid: Erection, commissioning and installation Service

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

Sl.No.	Assessee is liable to pay Service Tax on this taxable service as	Yes/No
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
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A12 - Abatements

A12.1	Has any abatement from the value of services been claimed ("Y/N")	No
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A13 - Provisional Assessment



A13.1	Whether provisionally assessed ("Y/N")	No
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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 payable on receipt bills, for which bills/invoices/claims or any other documents may not have been issued) for which bills/invoices/claims or any other documents are issued relating to service provided or to be provided (including export of service and exempted service)	8415383	23813877	32279260
B1.2	Amount received in advance for services for which bills/invoices/claims or any other documents have not been issued	0	0	0
B1.3	Amount payable on receipt bills under Part B1(1) of Service Tax Rules, 1994 for which bills/invoices/claims or any other documents have not been issued	0	0	0
B1.4	Amount charged for exempted services provided or to be provided (other than export of services)	0	0	0
B1.5	Money received from other corporations charged, if any, as a loan under own authority	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	8415383	23813877	32279260
B1.7	Gross Taxable Amount B1.1 + (B1.1 * B1.2) + B1.3 + B1.4 + B1.5 + B1.6	8415383	23813877	32279260
B1.8	Amount charged for exempted services provided or to be provided	0	0	0
B1.9	Amount charged for exempted services provided or to be provided (other than export of services)	0	0	0
B1.10	Amount charged as Pure Agent	0	0	0
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 B1.10 + B1.11 + B1.12	0	0	0
B1.14	NET TAXABLE VALUE: B1.7 - (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)	8415383	23813877	32279260

FY 2015-16 H2


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
1	V2SRC12	The Chatan Number (CJ400560501201500748) for (Rs.2204774) 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	Yes
	Revised Return	No
A2.	BYC Number	AEMPR8316LST001
	Return Number	AEMPR8316LST001_SD0101A001_ST3_102015
A3.	Name of the Assessee	A M ERECTORS
	Trade Name	A. M. ERECTORS
	Commissionerate	
	Division	DIVISION-VII - S G HIGHWAY EAST
	Range	RANGE V
	Address of Registered Unit	GAYATRI COMPLEX,11,AHMEDABAD,360005
	Due date filing for this return	29/04/2018
	Actual date of filing	18/04/2015
	No. of days beyond due date	0
A4.	Financial Year	2015-2018
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) (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	SD0101A001
A8.	Constitution of assessee	Proprietorship/Individual

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

Description of Taxable Services	Sub Clause
Maintenance or repair service	(zzz)
Erection, commissioning and installation Service	(zzd)
Works contract service	(zzza)

Taxable Service for which Tax is being paid: Maintenance or repair 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
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A12 - Abatements

A12.1	Has any abatement from the value of services been claimed ["Y/N"]	No
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A13 - Provisional Assessment

A13.1	Whether provisionally assessed ["Y/N"]	No
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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)	0	0	0
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)	0	0	0
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	0	0	0
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)	0	0	0
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	0	0
B1.15	Service Tax @ 12% on break up of NET TAXABLE VALUE (B1.14): Advalorem Rate	0	0	0

Sl.No.	Taxable Rate				Taxable Value	
	Tax Rate %	Swachh Bharat Cess	Krishi Kalyan Cess %	EDU Cess %	SHEDU Cess	Total
1	12	0	0	0	0	0
Total						0

B2.27	Total Krish Kalyan Cess payable B2.27 = (B2.25 + B2.26)	0	0	0
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Taxable Service for which Tax is being paid: Erection, commissioning and installation 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
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A12 - Abatements

A12.1	Has any abatement from the value of services been claimed ('Y/N')	No
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A13 - Provisional Assessment

A13.1	Whether provisionally assessed ('Y/N')	No
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PART - B - Value of Taxable Service and Service Tax Payable

PART B1 - For Service Provider

SLNo.	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 (excluding export of service and exempted service)	14385678	8106346	22492024
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)	14385678	8106346	22492024
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

SLNo.	Quarter	Oct-Dec	Jan-Mar	Total
B1.10	Amount charged as Pure Agent	0	0	0
B1.11	Amount claimed as abatement	0	0	0
B1.12	Any other amount claimed as deduction 0	0	0	0
B1.13	Total Amount Claimed as Deduction B1.13 = (B1.10 + B1.11 + B1.12)	0	0	0
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	14385678	8106346	22492024

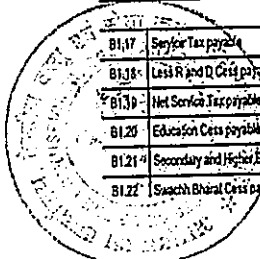
B1.15 Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate

SLNo.	Taxable Rate					Taxable Value	
	Tax Rate %	Swachh Bharat Cess	Krish Kalyan Cess %	EDU Cess %	SHEДУ Cess		Total
1	14	0.5	0	0	0	0	0
						Total	0

B1.16 Specific Rate (applicable as per Rule 6 of ST Rules)

SLNo.	Taxable Rate					Taxable Value	
	Tax Rate %	Swachh Bharat Cess	Krish Kalyan Cess %	EDU Cess %	SHEДУ Cess		Total
						Total	0

B1.17	Service Tax payable	2013925	1134958	3148883
B1.18	Leads Rend It Cess payable	0	0	0
B1.19	Net Service Tax payable B1.19 = (B1.17 - B1.18)	2013925	1134958	3148883
B1.20	Education Cess payable	0	0	0
B1.21	Secondary and Higher Education Cess payable	0	0	0
B1.22	Swachh Bharat Cess payable based on entries in B1.15	0	40534	40534



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)	Yes
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	50%
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")	Yes
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A11.2 Notification No. and Sl. No. in the Notification under which such exemption is availed

Sl. No	Notification No.	Notification Sl. No
1	03/2012-S.T.	9

A12 - Abatements

A12.1	Has any abatement from the value of services been claimed ("Y/N")	Yes
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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
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PART - B - Value of Taxable Service and Service Tax Payable

PART B1 - For Service Provider

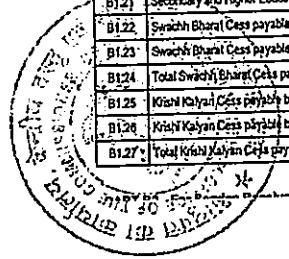
Sl.No.	Month	Apr	May	Jun	Jul	Aug	Sep	Total
B1.1	Gross Amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/challans or any other documents may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service provided or to be provided (including export of service and exempted service)	0	0	0	0	0	7797166	7797166
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0

Sl.No.	Month	Apr	May	Jun	Jul	Aug	Sep	Total
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	0	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	0	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0	0	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	0	0	7797166	7797166
B1.7	Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)	0	0	0	0	0	0	0
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	0	0	0
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given in B1.8 above)	0	0	0	0	0	0	0
B1.10	Amount charged as Pure Agent	0	0	0	0	0	2339156	2339156
B1.11	Amount claimed as abatement	0	0	0	0	0	2729015	2729015
B1.12	Any other amount claimed as deduction 0	0	0	0	0	0	0	0
B1.13	Total Amount Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)	0	0	0	0	0	5068171	5068171
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	0	0	0	0	2729015	2729015

Sl.No.	Taxable Rate					Taxable Value						
	Tax Rate %	Swachh Bharat Cess	Krishni Kalyan Cess %	EDU Cess %	SHEDU Cess	Apr	May	Jun	Jul	Aug	Sep	Total
1	14	0.5	0.5	0	0	0	0	0	0	0	2729015	2729015
Total						0	0	0	0	0	2729015	2729015

Sl.No.	Taxable Rate					Taxable Value						
	Tax Rate %	Swachh Bharat Cess	Krishni Kalyan Cess %	EDU Cess %	SHEDU Cess	Apr	May	Jun	Jul	Aug	Sep	Total
Total						0	0	0	0	0	0	0

B1.17	Service Tax payable	0	0	0	0	0	0	332062	332062
B1.18	Less R and D Cess payable	0	0	0	0	0	0	0	0
B1.19	Net Service Tax payable B1.19 = (B1.17 - B1.18)	0	0	0	0	0	0	332062	332062
B1.20	Education Cess payable	0	0	0	0	0	0	0	0
B1.21	Secondary and Higher Education Cess payable	0	0	0	0	0	0	13645	13645
B1.22	Swachh Bharat Cess payable based on entries in B1.15	0	0	0	0	0	0	0	0
B1.23	Swachh Bharat Cess payable based on entries in B1.16	0	0	0	0	0	0	13645	13645
B1.24	Total Swachh Bharat Cess payable B1.24 = (B1.22 + B1.23)	0	0	0	0	0	0	13645	13645
B1.25	Krishni Kalyan Cess payable based on entries in serial number B1.15	0	0	0	0	0	0	0	0
B1.26	Krishni Kalyan Cess payable based on entries in serial number B1.16	0	0	0	0	0	0	13645	13645
B1.27	Total Krishni Kalyan Cess payable B1.27 = (B1.25 + B1.26)	0	0	0	0	0	0	13645	13645



B2.26	Krishi Kalyan Cess payable based on entries in serial number B2.16	0	0	0	0	0	0	0	0
B2.27	Total Krishi Kalyan Cess payable B2.27 = (B2.25 + B2.26)	0	0	0	0	0	0	0	0

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)	Yes
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	50%
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")	Yes
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A11.2 Notification No. and Sl. No. in the Notification under which such exemption is availed

Sl. No	Notification No.	Notification Sl. No
1	0302012-S.T.	8

A12 - Abatement

A12.1	Has any abatement from the value of services been claimed ("Y/N")	Yes
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A12.2 Notification No. and Sl. No. in the Notification under which such abatement is availed

Sl. No	Notification No.	Notification Sl. No
1	0212012-S.T.	1

A13 - Provisional Assessment

A13.1	Whether provisionally assessed ("Y/N")	No
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PART - B - Value of Taxable Service and Service Tax Payable

PART B1 - For Service Provider

SLNo.	Month	Oct	Nov	Dec	Jan	Feb	Mar	Total
B1.1	Gross Amount (including amounts received in advance, amounts payable on receipt basis for which bills/invoices/contracts or any other documents may not have been issued) for which bills/invoices/contracts or any other documents are issued relating to service provided or to be provided (including export of service and exempted service)	0	0	0	0	0	0	0
B1.2	Amount received in advance for services for which bills/invoices/contracts or any other documents have not been issued	0	0	0	0	0	0	0

SLNo.	Month	Oct	Nov	Dec	Jan	Feb	Mar	Total
B1.3	Amount payable on receipt basis under this proviso to clause (1) of Service Tax Rules, 1994 for which bills/invoices/contracts or any other documents have not been issued	0	0	0	0	0	0	0
B1.4	Amount payable for services provided for which bills/invoices/contracts or any other documents have not been issued	0	0	0	0	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0	0	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	4184719	0	0	0	4184719
B1.7	Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)	0	0	4184719	0	0	0	4184719
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	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	0	0	0	0
B1.10	Amount charged as Pure Agent	0	0	0	0	0	0	0
B1.11	Amount claimed as abatement	0	0	1252416	0	0	0	1252416
B1.12	Any other amount claimed as deduction	0	0	1464651	0	0	0	1464651
B1.13	Total Amount Charged as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)	0	0	2720068	0	0	0	2720068
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	0	1464651	0	0	0	1464651

SLNo.	Taxable Rate					Taxable Value			
	Tax Rate %	Swachh Bharat Cess	Krishi Kalyan Cess %	EDU Cess %	SHEДУ Cess	Jan	Feb	Mar	Total
1	14	0.5	0.5	0	0	1464651	0	0	1464651
Total						0	0	0	1464651

SLNo.	Taxable Rate					Taxable Value			
	Tax Rate %	Swachh Bharat Cess	Krishi Kalyan Cess %	EDU Cess %	SHEДУ Cess	Jan	Feb	Mar	Total
Total						0	0	0	0

B1.17	Service Tax payable	0	0	205051	0	0	0	205051
B1.18	Less R and D Cess payable	0	0	0	0	0	0	0
B1.19	Net Service Tax payable B1.19 = (B1.17 - B1.18)	0	0	205051	0	0	0	205051
B1.20	Education Cess payable	0	0	0	0	0	0	0
B1.21	Secondary and Higher Education Cess payable	0	0	0	0	0	0	0
B1.22	Swachh Bharat Cess payable based on entries in B1.15	0	0	7323	0	0	0	7323
B1.23	Swachh Bharat Cess payable based on entries in B1.16	0	0	0	0	0	0	0
B1.24	Total Swachh Bharat Cess payable B1.24 = (B1.22 + B1.23)	0	0	7323	0	0	0	7323
B1.25	Krishi Kalyan Cess payable based on entries in serial number B1.15	0	0	0	0	0	0	0
B1.26	Krishi Kalyan Cess payable based on entries in serial number B1.16	0	0	0	0	0	0	0
B1.27	Total Krishi Kalyan Cess payable B1.27 = (B1.25 + B1.26)	0	0	7323	0	0	0	7323



21. The assessee was given numerous opportunities, in fact as many as 10 opportunities for defending their case in person, but they have chosen to remain absent. They were granted other dates for personal hearing (PH), when

they had sought extension of time vide their letter dated 20.12.2021 and 05.09.2022, which indicates clearly that they were receiving the communications from the department. The PH letter intimating the date of PH granted on 13.10.2022 and 07.02.2023, were also sent on their Email-id: amerectros@yahoo.co.in and aamerectors@ yahoo.com, these Email-id were appearing on their aforementioned letters dated 20.12.2021 and 05.09.2022. Finally, they were granted personal hearing vide letter dated 27.02.2023 by the adjudicating authority himself in the interest of justice and it was conveyed to them that if the personal hearing was not attended, the matter would be taken up exparte. However, the assessee has not filed any defence reply with respect to the subject SCN dated 23.04.2021 knowingly for either scuttling, delaying or avoiding the proceedings initiated against them by the department. They have not turned up to show with tangible/documentary evidences that the services rendered by them do not attract service tax under Section 66B of the Act. All the acts of inaction on the part of the assessee lead me to a conclusion that the assessee has nothing on them to prove inapplicability of service tax on the services rendered by them. Under such circumstances, I am constrained to hold that the differential value of Rs. 87,28,801/- (Rs. 34,15,064/- for FY 2015-16 Plus Rs. 53,13,737/- for FY 2016-17), as worked in TABLE-A & B above, is the taxable value for rendering the services by the assessee and is thus liable to service tax amounting to Rs. 12,92,245/- (Rs. 4,95,184/- for FY 2015-16 and Rs. 7,97,061/- for FY 2016-17) as worked in TABLE-A & B above, under Section 66B of the Act, instead of Service tax of Rs. 2,65,93,527/- as has been sought to be demanded under the subject SCN dated 23.04.2021. Therefore, I hold that the assessee has short paid the service tax to the extent of Rs. 12,92,245/- for 2015-16 and 2016-17 and the rest of the demand of service tax amounting to Rs. 2,53,01,282/- needs to be dropped as the same being not sustainable and legally not tenable. Thus, the service tax of Rs. Rs. 12,92,245/- is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

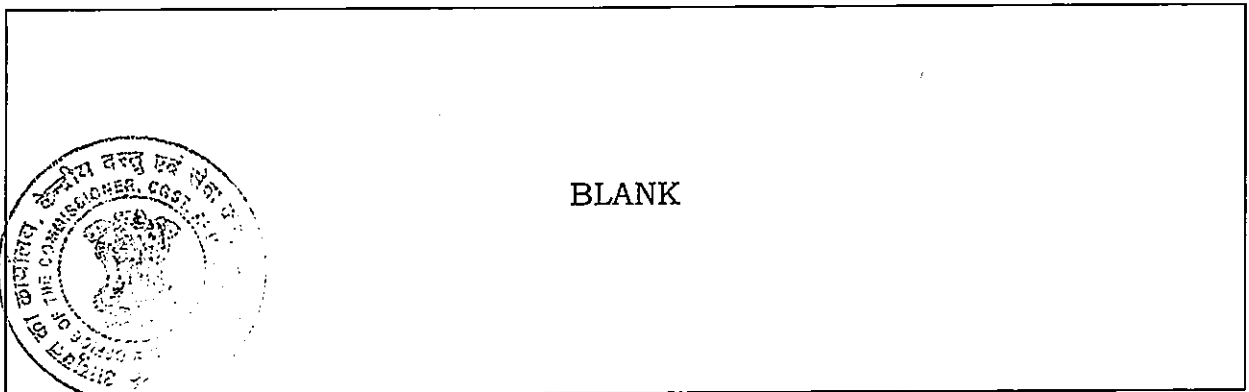
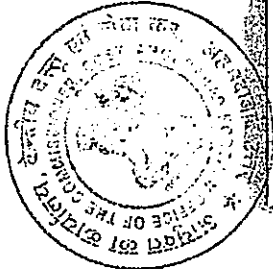
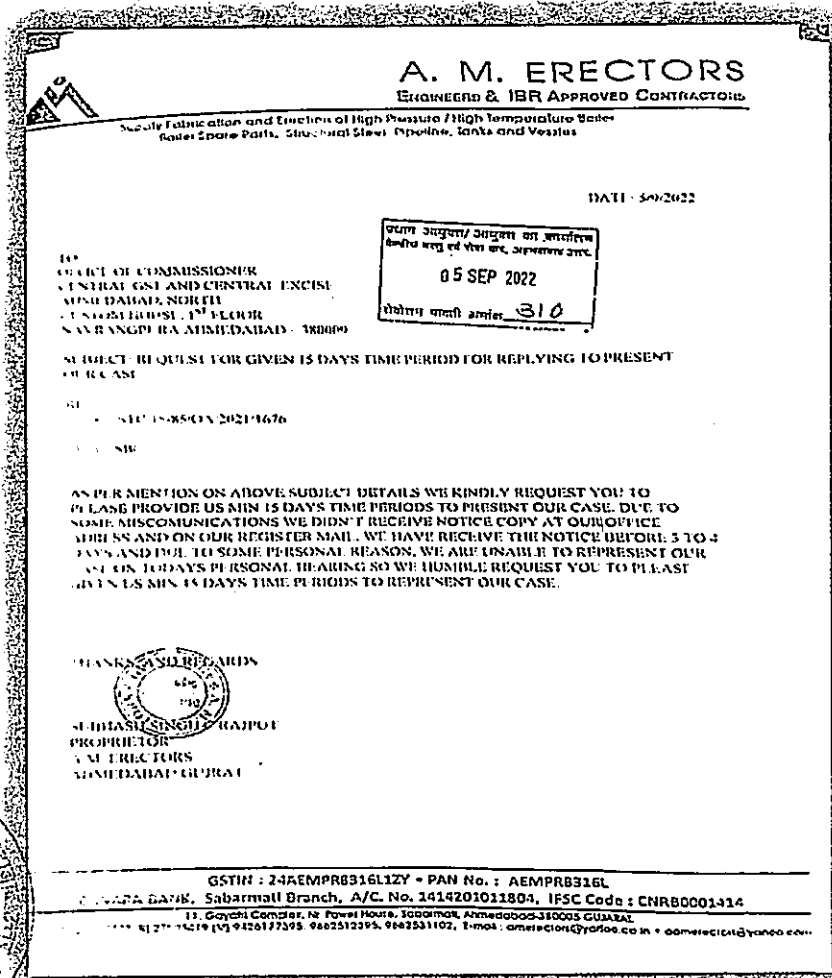
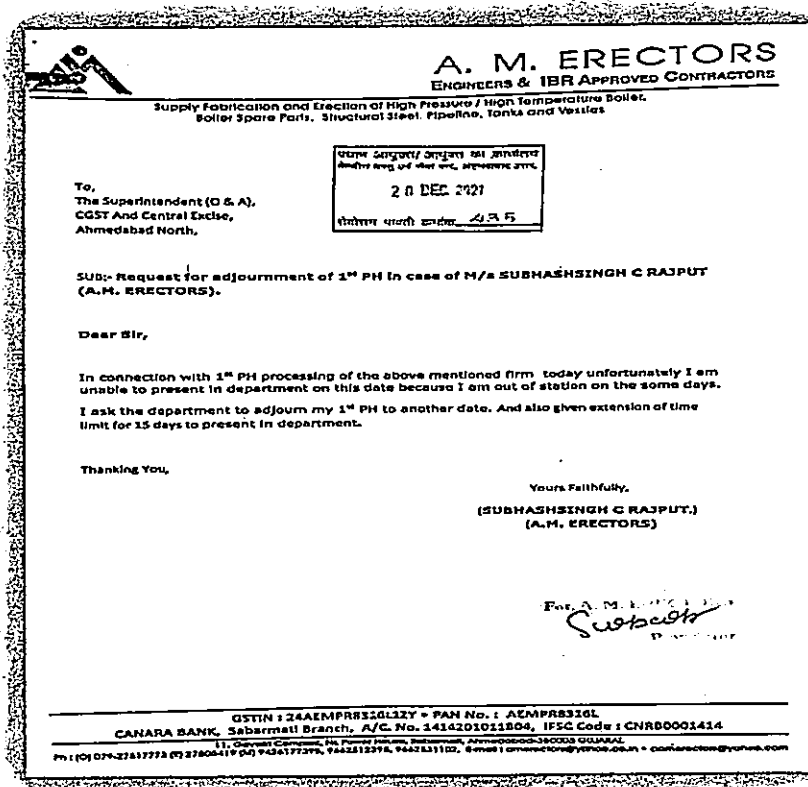


Image of letters received from the assessee:



22. I find that the assessee is registered with the department with Service Tax Registration No. AEMPR8316LST001, but they have not filed correct service tax returns and have short paid service tax due to the government as calculated in TABLE-A & B above, as required under Section 68 of the Act read

with Rule 6 of Service Tax Rules, 1994. Therefore, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service by not declaring the correct value of services rendered, in ST-3 Returns filed by them during the period FY 2015-16 and 2016-17, as required under Section 70 of the Act, read with Rule 7 of Service Tax Rules, 1994.

23. Based on above facts and discussion, I find that the assessee has contravened the provisions of (i) Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 in as much as they have short paid service tax to the extent of Rs. 12,92,245/- by not declaring the correct value of service in their ST-3 Returns vis-à-vis their ITR/Form 26AS in such manner and within such period as prescribed with respect to the taxable services provided by them (ii) the provision of Section 70 of Finance Act, 1994 in as much as they had failed to assess their service tax liabilities under Rules 2(1)(d) of Service Tax Rules, 1994.

24. Having considered these factual and documentary evidences available on record, I find that the assessee has failed to assess their service tax liability correctly on the services rendered by them. Accordingly, the assessee has short paid service tax of Rs. 12,92,245/- under section 66B read with Rule 2 of Service Tax Rules 1994 for rendering taxable services by them. Therefore, I hold that the assessee has failed to pay service tax amounting to Rs. 12,92,245/-, which was required to be paid under Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 for taxable services provided during FY 2015-16 and 2016-17 by them. Therefore, I hold that the assessee is required to pay service tax of Rs. 12,92,245/- and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

25. I also find that Section 75 of Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate for the period by which crediting of tax or part thereof is delayed. I thus hold that the assessee is also liable to pay the interest on the demand of service Tax of Rs. 12,92,245/- .

26. From the facts and discussion aforementioned, I find that in the instant case the assessee had failed to assess their service tax liability correctly, accordingly there was a short payment of service tax amounting to Rs. 12,92,245/- for FY 2015-16 and 2016-17 on taxable services rendered by them. Thus, the assessee had failed to pay legitimate service tax due to the government. They had not disclosed the correct value of services rendered by them in ST-3

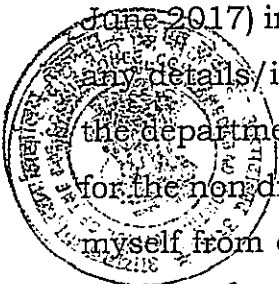
Returns filed by them as discussed hereinabove. Thus, the assessee has suppressed the material facts from the Department by not showing their actual taxable income in the ST-3 Returns and also by not paying the Service Tax due on them. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour. The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-assessment. The omission or commission on the part of the assessee has clearly demonstrated their intention to evade payment of service tax, as they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. They have failed to disclose the correct value of services rendered by them and have failed to pay appropriated service tax due to them on services rendered by them during FY 2015-16 & 2016-17. These facts would not have come to light if the department had not initiated inquiry on the basis of data shared by the Income Tax Department. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the assesseees are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise & Service tax laws. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provision is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is also evident that such fact of contravention and short payment of service tax by not declaring correct taxable value of the service provided, as discussed earlier, on the part of the assessee came to the notice of the department only when the inquiry was initiated by the department. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period

under proviso to Section 73(1) of the Finance Act, 1994. By invoking the extended period of time of 5 years, service tax totally amounting to Rs. 12,92,245/- is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee.

27. Thus, for the same reasons as discussed above, I find that the assessee has not paid the service tax by resorting to suppression of facts and contravention of the provisions of law with intent to evade payment of the tax. The Hon'ble Supreme Court has settled the issue in the case of UOI Vs. Dharmendra Textiles Processors reported in [2008(231) ELT 3(SC)] and further clarified in the case of UOI vs. RAJASTHAN SPINNING & WEAVING MILLS reported in [2009 (238) E.L.T. 3 (S.C.)]. The Hon'ble Supreme Court has held that the presence of malafide intention is not relevant for imposing the penalty and *mens rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Accordingly, I hold that the assessee have rendered themselves liable for penalty in terms of the provision of Section 78 of the Finance Act, 1994.

28. As regards, the proposal for imposition of penalty under Section 77(2) of the Finance Act, 1994, I find that the assessee has failed to assess their service tax liability correctly and has failed to file correct service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994, as discussed at length hereinabove, thus, they have rendered themselves liable to penal action under Section 77(2) of the Finance Act, 1994.

29. As regards the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the SCN dated 23.04.2021, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. However, I do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part of the SCN. Further, the assessee has not provided any details/information/ documents for the F.Y.2017-18 (upto June,2017) and the department also has not adduced any information/evidence and the reason for the non-disclosure has also not been made known to the department, I refrain myself from entering in to the said period to determine liability as otherwise of assessee for service tax.

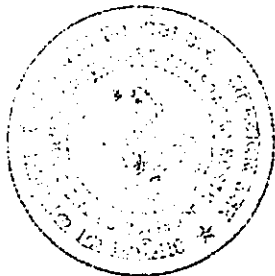


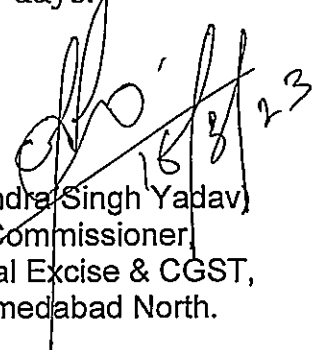
30. In view of the above discussion and findings, I pass the following order:

ORDER

- (i) I hereby confirm the demand of service tax of Rs. 12,92,245/- (Rupees Twelve Lakh Ninety Two Thousand Two Hundred Forty Five only), not paid by the assessee and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act,1994. I further drop the rest of the demand of Service Tax of Rs. 2,53,01,282/- accordingly
- (ii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 12,92,245/- and to recover the same from the assessee under Section 75 of the Finance Act,1994;
- (iii) I impose penalty of Rs. 12,92,245/- on the assessee under the provision of Section 78 of the Finance Act, 1994.
- (iv) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their service tax liability and also for failure to file ST-3 Returns.

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




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

By Regd. Post AD./Hand Delivery
F.No. STC/15-85/OA/2021

Date: .03.2023.

To
M/s. Subhashsingh C. Rajput,
11, Gayatri Complex,
Juni Roshni Cinema,
Nr. Power House, Sabarmati,
Ahmedabad -380005

Copy to:

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