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<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 & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. . STC/15-251/OA/2021-22 DIN : 20230364WT0000212553

आदेश की तारीख / Date of Order : 17.03.2023

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- 47 & 48 /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.

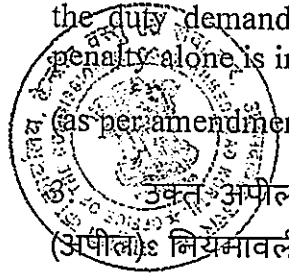
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर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



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 एक प्रतियाँ संलग्न की जाएंगी एक प्रमाणित प्रति होगी।

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

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

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

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

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

7. न्यायालय शुल्क अधिनियम 1970, की अनुसूची, 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00 रूपया 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: कारणे बलाओ सूचना:

Subject- Proceedings initiated vide two SCNs (1) F. No. STC/15-251/OA/2021-22 dated 23.04.2021 and (2) F. No. STC/15-215/OA/2021-22 dated 23.04.2021 against M/s. Manishbharthi Natvarbharthi Bava, C-32, Madhuvan Society, Kathwada Road, Nava Naroda, Ahmedabad -382345

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 47 &48 /2022-23

M/s. Manishbharthi Natvarbharthi Bava, C-32, Madhuvan Society, Kathwada Road, Nava Naroda, Ahmedabad -382345, were issued two SCNs (1) F. No. STC/15-251/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad and (2) F. No. STC/15-215/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO THE TWO SCNs ISSUED TO M/S. MANISHBHARTHI NATVARBHARTHI BAVA, ARE AS FOLLOWS:**SCN No. STC/15-251/OA/2021-22 dated 23.04.2021**

M/s. Manishbharthi Natvarbharthi Bava, C-32, Madhuvan Society, Kathwada Road, Nava Naroda, Ahmedabad -382345 (hereinafter referred to as 'the assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. ABEPG4826FSD002.

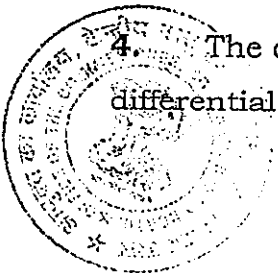
2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)" in respect of M/s. Manishbharthi Natvarbharthi Bava, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, and details of the said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. It appeared from the Third Party Data provided by CBDT of the said assessee for the F.Y. 2015-16, that the said assessee had not filed ST-3 Returns despite they having service turnover as shown in ITR/P&L account for F.Y. 2015-16. The difference in value as observed for F.Y. 2015-16, was as under:

Sr. No.	F.Y.	Basic Value as per ST-3 Returns (In Rs.)	Basic Value as per ITR/P&L account (in Rs.)	Difference of Value (in Rs.)	Resultant Service Tax Short Paid (in Rs.)
1	2015-16	0	231351165	231351165	34702674.77

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 3,47,02,674.77/- (including Cess) on the differential value of Rs. 23,13,51,165/-.

4. The department had requested the assessee for clarification regarding the differential value as mentioned in above table with certified documentary



evidences vide letter dated 12.04.2021, but the said service provider had not replied the observation raised by the Range Office with supporting documents.

5. Unquantified demand at the time of issuance of SCN.

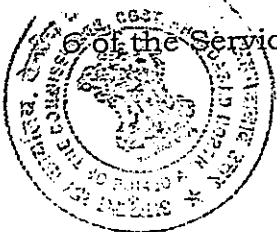
Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified that:

'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. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The assessee had also failed to provide the required information even after the issuance of letter from the Department in view of which the assessable value for the year 2017-18 (upto June-2017) was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said 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) covered under subject Show Cause Notice, was to be recovered from the assessee.

7. As per Section 68 of the Finance Act, 1994 every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period as may be prescribed.

8. It therefore appeared that the assessee had failed to pay service tax as detailed above during the year 2015-16 and thereby the assessee had contravened the provision of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service tax Rules 1994.

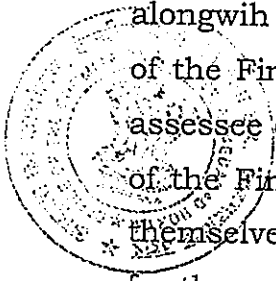


9. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994, "Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return"

10. Therefore, 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 had contravened the provisions of Section 70 of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules 1994.

11. Therefore, it appeared that the said assessee had contravened 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. 3,47,02,674.7/- for FY 2015-16 as per their ITR/Form 26AS /P&L account, in such manner and within such period prescribed with respect to the taxable services provided by them; the provision of Section 70 of Finance Act, 1994 read with Rules 2(1)(d) of Service Tax Rules, 1994, in as much as they had failed to assess their service tax liabilities properly and had failed to furnish periodical returns.

12. 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. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts and had not filed the returns regarding receipt of/ providing of services by them. 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 proviso under sub-section (1) of Section 73, alongwith 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 offence of the nature specified under Section 77(2) and 78 of the Finance Act, 1994, therefore, the assessee appeared to have rendered themselves liable for penalty under Section 77(2) & 78 of the Finance Act, 1994 for the contravention of the 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.

12. Therefore, Show Cause Notice No. STC/15-251/OA/2021-22 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. 3,47,02,674.7/- short/not paid by them for FY 2015-16 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 should not be imposed on them under the provisions of Section 77(2) of the Finance Act, 1994.

SCN No. STC/15-215/OA/2021-22 dated 23.04.2021

13. The assessee was also issued second SCN F.No. STC/15-215/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad on the basis of third party data for FY 2015-16 shared by the CBDT with respect to PAN No. ABEPG4826F.

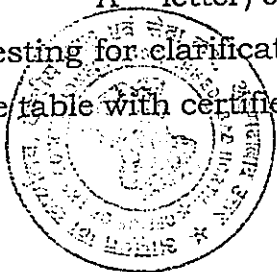
It was observed in the said SCN that that the assessee had not paid service tax on the "Gross Receipt from Service" shown in their Income Tax Return. It was also observed in the said SCN that they had neither obtained the service tax registration nor had they paid the service tax on it.

The details of the value shown in Income Tax Return for FY 2015-16 & service tax payable, was as under:

F.Y.	Basic value as per ITR/P&L account (Rs.)	Resultant Service Tax not paid (Rs.)
2015-16	231351165	33545919
Total	231351165	33545919

Therefore, it appeared that the said assessee had not paid service tax to the extent of Rs. 3,35,45,919/- (including Cess) on the differential value of Rs. 23,13,51,165/-.

14. A letter/e-mail dated 09.03.2021 was issued to the assessee requesting for clarification regarding the service turnover as mentioned in the above table with certified documentary evidences but the said assessee had not



replied to the observation raised by the Range Office with supporting documents.

15. Other allegation /charges regarding contravention of the provisions of Finance Act, 1994 and Rules made thereunder made in the subject SCN, are akin to the SCN No. STC/15-251/-2021-22 dated 23.04.2021, which have already been narrated herein above. The same are not repeated herein, in order to avoid duplication.

16. The second Show Cause Notice No. STC/15-215/OA/2021-22 dated 23.04.2021 was issued to the assessee asking them as to why:

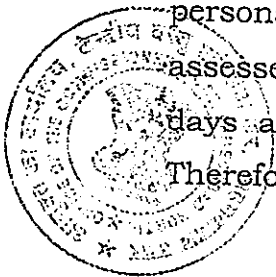
- (i) The demand for Service Tax to the extent of Rs. 3,35,45,919/- (Rupees Three Crore Thirty Five Lakh Forty Five Thousand Nine Hundred Nineteen only) not paid by them in FY 2015-16, should not be confirmed and recovered from them under the provisions of Section 73 of Finance Act,1994.
- (ii) Interest 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 provisions of Section 77(1)(a) of the Finance Act, 1994, for failure to take Service Tax Registration.
- (iv) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994 for non payment of service tax by knowingly suppressing the facts from the department with intent to evade payment of service tax.

DEFENCE REPLY:

17. The assessee has not filed any defence reply with reference to both the show cause notices dated 23.04.2021.

PERSONAL HEARING:


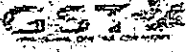
18. Personal Hearings for both the SCNs were granted to the assessee on 06.05.2022, 25.05.2022, 21.06.2022, 27.07.2022, 08.09.2022, 17.10.2022, and 16.11.2022. The assessee had not responded to any of communication sent for personal hearing except for personal hearing granted on 17.10.2022. The assessee vide their letter dated 17.10.2022, had sought extension of time of 15 days and had assured to submit the documents required for their defence/say. Therefore, they were granted another dates of personal hearing on 16.11.2022



(Speed Post ID EG247670961IN), which was acknowledged by them on 09.11.2022, however, they have preferred/chosen not to avail the personal hearing 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 by them or their representative, the matter would be taken up ex-parte for taking an appropriate decision.

Image of letter dated 27.02.2023:

DIN: 20230264WT000001310

आयुक्त का कार्यालय केंद्रीय वी. वी. ए. ए. ए. केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, पथमलत, नवरंगपुरा, अहमदाबाद-380009		 OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE AHMEDABAD-NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009.
फोन नंबर / PHONE No.: 079-27544557 वेबसाई / FAX: 079-27544463 ई-मेल: aahmedabad2@gmail.com		

BY SPEED POST/HAND DELIVERY

का. सं. STC/15-251/OA/2021-22

दिनांक: 27.02.2023

To,

M/s. Manishbharthi Natvarbharthi Bava
 C-32, Madhuvan Society,
 Nava Naroda, Ahmedabad -382345

Gentleman,

Sub: Intimation regarding Fixing of Personal Hearing m/reg:

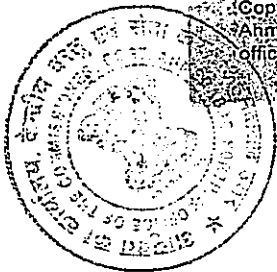
Please refer to the SCN No. STC/15-251/OA/2021-22 and STC/15-215/OA/2021-22, both dated 23.04.2021 issued to you by the Commissioner, Central Excise & CGST, Ahmedabad North. Please also refer to letters of even no. dated 19.04.2022, 12.05.2022, 07.06.2022, 13.07.2022, 24.08.2022, 03.10.2022 and 03.11.2022 vide which dates of personal hearing were communicated to you so that you could have your say vis-à-vis the charges levelled in the SCN.

In this connection, it is to mention that you have neither filed your defence reply nor have attended any of the numerous personal hearings fixed in the matter. Since, a substantial amount of govt. revenue is involved in the matter, you are once again requested to file your defence reply, if any, and also appear for personal hearing on any working day, but not later than 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.

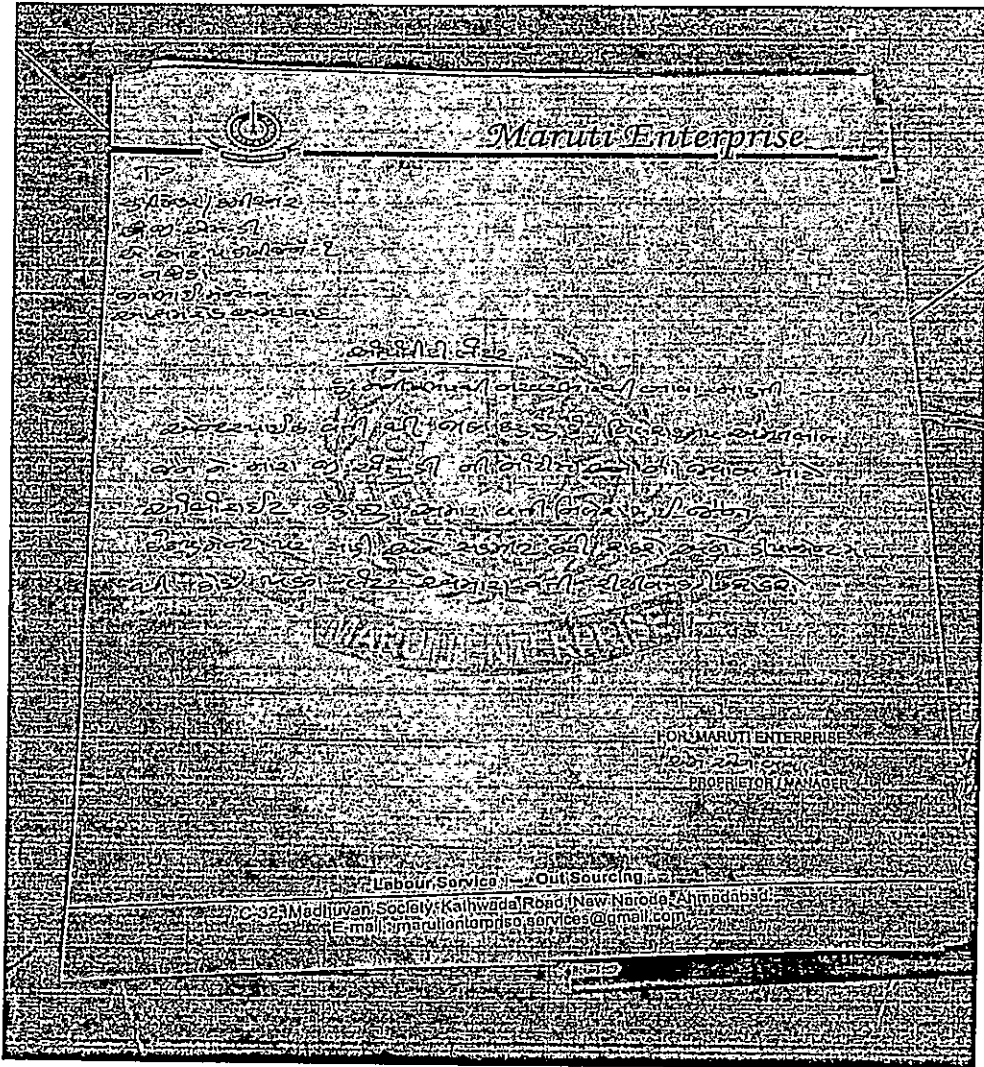
Yours sincerely,

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

Copy to: The Assistant/Deputy, Commissioner, Central Excise & CGST, Div. I Ahmedabad North, Ahmedabad for serving the letter on the notice (through Range Office)




Authority Letter received on Whatsapp:



ACKNOWLEDGEMENT

I, Shri. Nilesh Jain, C.A., Authorized representative of M/s. Manishbharthi Natvarbharthi Bava, hereby receive the letter F.No. STC/15-251/OA/2021-22 dated 27/02/2023, Issued by Shri Upendra Singh Yadav, Commissioner, Central Excise & CGST, Ahmedabad North, Ahmedabad, addressed to M/s. Manishbharthi Natvarbharthi Bava, C-32, Madhuvan Society, Nava Naroda, Ahmedabad subject regarding intimation regarding fixing of Personal Hearing fixed on any working day but not later than 07/03/2023 in respect of SCN No. STC/15-251/OA/2021-22 and STC/15-215/OA/2021-22 both dated 23/4/2021 issued by the Commissioner of Central Excise & CGST, Ahmedabad North.

Place: Ahmedabad
Date: 02-03-2023


 (Nilesh Jain)
 Chartered Accountant - F.T.P.

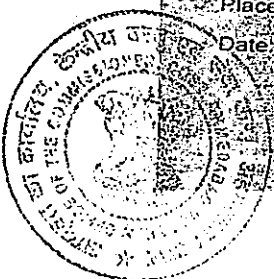





Image of Speed Post Tracking:

17/03/22, 5:58 PM <https://www.indiapost.gov.in/layou2/15/dep.portaltracking/trackconsignment.aspx>

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* Consignment Number
EG247970961IN Track More


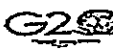


Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
BNPL AHMEDABAD	04/11/2022 09:27:11	382330	17.70	Inland Speed Post	Salpur Bogha SO	09/11/2022 17:30:03

Event Details For : EG247970961IN
Current Status : Item Delivery Confirmed

Date	Time	Office	Event
09/11/2022	17:30:03	Naroda I E SO	Item Delivery Confirmed
09/11/2022	11:12:55	Naroda I E SO	Out for Delivery
07/11/2022	18:10:31	Naroda I E SO	Not Delivered Addressee cannot be located
07/11/2022	15:39:35	Naroda I E SO (Box Number:3)	Item Delivered (B; kutariya Ahushban (Adresssee) I
07/11/2022	12:28:11	Naroda I E SO	Out for Delivery
07/11/2022	05:41:04	Naroda I E SO	Item Received
06/11/2022	05:40:38	Ahmedabad NSH	Item Dispatched
06/11/2022	04:18:38	Ahmedabad NSH	Item Bagged
05/11/2022	20:18:42	Ahmedabad NSH	Item Received
05/11/2022	12:03:56	Salpur Bogha SO	Item Dispatched
05/11/2022	12:02:13	Salpur Bogha SO	Item Bagged
05/11/2022	11:24:14	Salpur Bogha SO	Item Redirected to Naroda I E SO INSUFFICIENT ADDRESS
05/11/2022	08:04:53	Salpur Bogha SO	Item Received
04/11/2022	23:07:55	BNPL AHMEDABAD	Item Dispatched
04/11/2022	10:32:03	BNPL AHMEDABAD	Item Bagged
04/11/2022	09:27:11	BNPL AHMEDABAD	Item Booked

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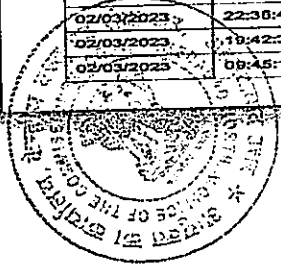
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EG264798889IN Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
BNPL AHMEDABAD	02/03/2023 09:45:18	382330	17.70	Inland Speed Post	Naroda I E SO	04/03/2023 17:02:34

Event Details For : EG264798889IN
Current Status : Item Delivery Confirmed

Date	Time	Office	Event
04/03/2023	17:02:34	Naroda I E SO	Item Delivery Confirmed
04/03/2023	08:17:32	Naroda I E SO	Out for Delivery
04/03/2023	06:12:05	Naroda I E SO	Item Received
04/03/2023	04:11:30	Ahmedabad NSH	Item Dispatched
03/03/2023	23:35:11	Ahmedabad NSH	Item Bagged
03/03/2023	22:29:40	BNPL AHMEDABAD	Item Dispatched
03/03/2023	19:46:15	Ahmedabad NSH	Item Received
03/03/2023	10:29:24	Salpur Bogha SO	Item Dispatched
03/03/2023	10:26:04	Salpur Bogha SO	Item Bagged
03/03/2023	09:03:19	Salpur Bogha SO	Item Redirected to Naroda I E SO Insufficient Address
03/03/2023	08:47:33	Salpur Bogha SO	Item Received
02/03/2023	22:36:40	BNPL AHMEDABAD	Item Dispatched
02/03/2023	19:42:37	BNPL AHMEDABAD	Item Bagged
02/03/2023	09:45:18	BNPL AHMEDABAD	Item Booked



The said letter was sent to the assessee through Range Office as well as through Speed Post. The letter sent through the Range Office was received by their authorized representative Shri Nilesh Jain, CA on 02.03.2023 and letter sent through Speed Post (ID EG264798889IN) was received by the assessee on 04.03.2023. It is clearly evident that the said letter was acknowledged by the assessee, but they however have again failed to appear for the personal hearing and have not offered any explanation for not attending the personal hearing on any of the dates offered. 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:

19. I have carefully gone through the facts of the case and records available in the case file, which include two SCNs.

20. I find that the assessee has failed to appear for Personal Hearing, inspite of being asked to do so repeatedly as mentioned in Para-18 above for defending their case in person. 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 the matter can not be kept hanging indefinitely.

20.1 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.

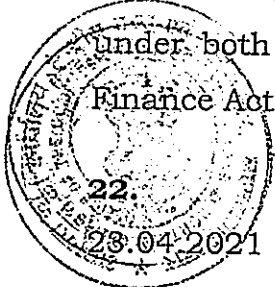
- If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(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.”

21. On going through the said SCNs, I find that basically the essence of the case is that data of “Sales /Gross Receipts from Services (ITR)” were shared by the CBDT with CBIC for FY 2015-16. The difference in taxable value was worked out after comparing the income declared in Form ITR vis-à-vis taxable value disclosed in ST-3 Returns. As per the said SCN No. STC/15-251/OA/2021-22 dated 23.04.2021, the difference of Rs. 23,13,51,165/- in value was observed for FY 2015-16, therefore, it was alleged vide the said SCN No. STC/15-251/OA/2021-22 dated 23.04.2021, that the assessee had short paid/not paid the service tax of Rs. 3,77,02,674.7/- on such differential value, for providing the taxable service. Similarly, as per SCN No. STC/15-215/OA/2021-22 dated 23.04.2021, the difference of Rs. 23,13,51,165/- in value was observed for FY 2015-16, therefore, it was alleged vide the said SCN No. STC/15-215/OA/2021-22 dated 23.04.2021, that the assessee had short paid/not paid the service tax of Rs. 3,35,45,919/- on such differential value, for providing the taxable service. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax in both the cases on the differential taxable value of service for the Financial Year 2015-16 as demanded under both the SCNs dated 23.04.2021, under proviso to section 73(1) of Finance Act, 1994 or not.



22. I find that the SCNs i.e. (i) STC/15-251/OA/2021-22 dated 23.04.2021 has been issued to the assessee with reference to Service Tax

Registration No. ABEPG4826FSD002, whereas SCN No. (ii) STC/15-215/OA/2021-22 dated 23.04.2021 has been issued to the assessee with reference to PAN No. ABEPG4826F, considering them to be unregistered assessee. As can be seen from the Service Tax registration number ABEPG4826FSD002 that the same has been allotted to the assessee by the department on the basis of PAN No. ABEPG4826F. It is also pertinent to note here that the data shared by the income tax department was with reference to the specific PAN number. By using the same data, two different SCNs for demanding service tax, have been issued to the assessee. It is also seen from the ST-1s (Registration Application for ABEPG4826FSD002) that the assessee is a proprietorship firm and Shri Manishbharthi Natvarbharthi Bava is the proprietor of the firm. Therefore, it is quite evident that two SCNs have been issued and service tax demands have been raised twice by using the same data of PAN number ABEPG4826F. I find that demanding of service tax twice on the amount received by the assessee as per the data shared by the income tax department, is absolutely incorrect, unjustified and the same is not sustainable in law. I find that the SCN No. STC/15-215/OA/2021-22 dated 23.04.2021 has been issued to the assessee with reference to PAN No. ABEPG4826F, considering the assessee to be not registered assessee with department, which is factually not correct as already discussed above. Thus, the SCN No. STC/15-215/OA/2021-22 dated 23.04.2021 is liable to be dropped as the same being factually incorrect, not permissible and unsustainable in law. Under such factual matrix, I would therefore proceed with respect to the SCN No. STC/15-251/OA/2021-22 dated 23.04.2021 issued to the assessee for Service Tax Registration Number ABEPG4826FSD002 for deciding the matter.

23. 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.*

24. 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”.

25. I find that the data regarding the value of services declared in Income Tax Return/Form 26AS 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".

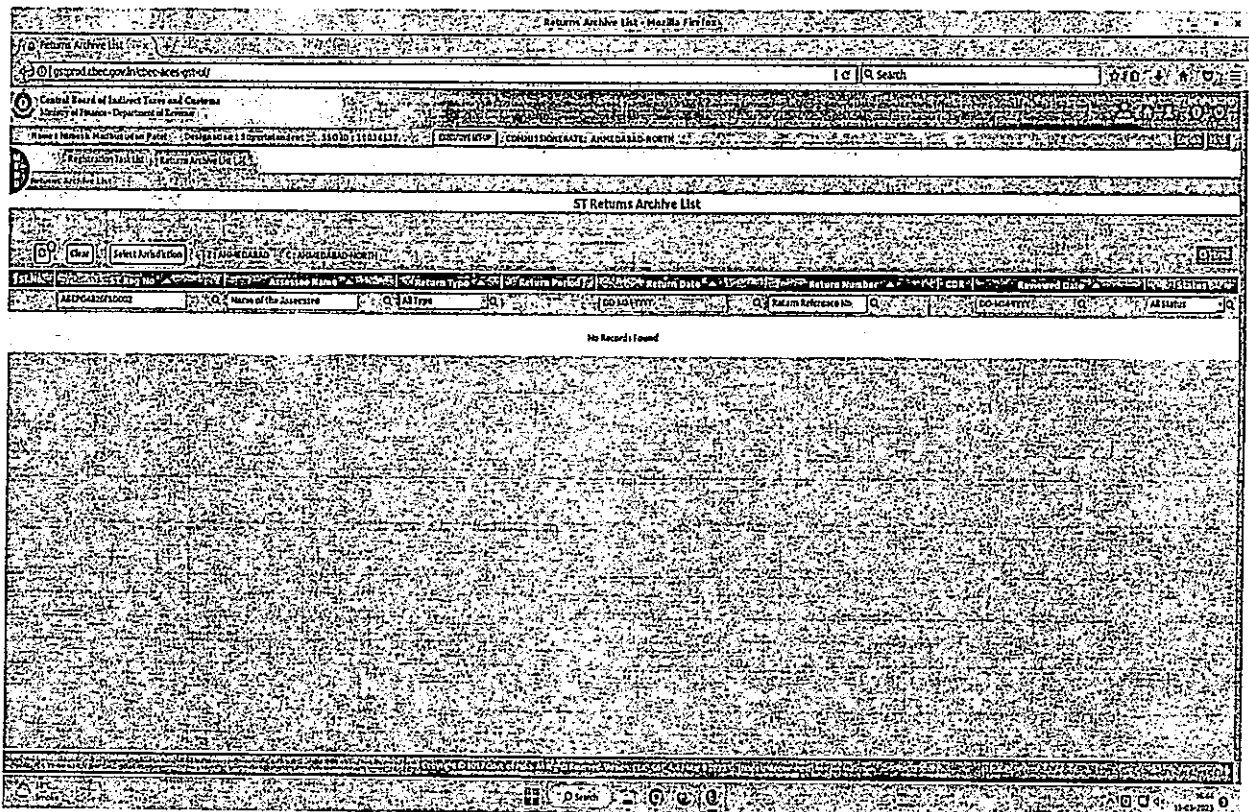
25.1 I find that the SCN mentions that the value of service has been derived from the value of services declared in Income Tax Return/P&L and the same was shared by the CBDT with CBIC. I also find that the assessee vide letter dated 17.10.2022, while seeking extension of time for personal hearing, has admitted that they had provided services of Man Power (Labour Supply) to various companies under their proprietary concern M/s. Maruti Enterprise. They have assured to submit all detail and required documents. But till date, the assessee has neither turned up for personal hearing in spite of being offered innumerable opportunities nor has the assessee bothered to submit any evidences for claiming the exemption from service tax and showing that they are not liable to pay the demanded service tax.

Image of Letter dated 17.10.2022 of the assessee

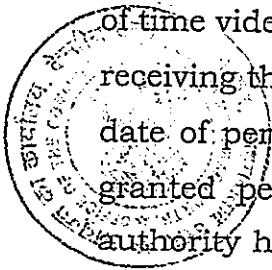


26. I find that the SCN alleges that the assessee is registered with the department with Service Tax Registration No. ABEPG4826FSD002, but it has been ascertained that they have not filed service tax returns and have not paid service tax due to the government. On verifying the GST portal, the said allegation is found to be correct; the assessee has not filed ST-3 Returns for FY 2015-16.

Screen Shot of GST portal /System:



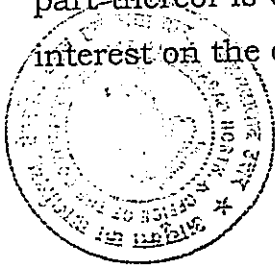
27. As can be seen, the assessee was given numerous opportunities, in fact as many as 08 opportunities for defending their case in person, but they have chosen to remain absent for reasons best known to them. They were granted other dates for personal hearing (PH), when they had sought extension of time vide their letter dated 17.10.2022, which indicates clearly that they were receiving the communications from the department. The letters intimating the date of personal hearings, were sent through speed post. 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 far from attending the personal hearing, the assessee has not bothered to file 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 an inescapable 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. 23,13,51,165/-, is the taxable value for rendering the services by the assessee during FY 2015-16 and the assessee is thus liable to pay service tax amounting to Rs. 3,47,02,674.7/- under Section 66B of the Act, as has been sought to be demanded under the subject SCN dated 23.04.2021. Therefore, I hold that the assessee has not paid the service tax to the extent of Rs. 3,47,02,674.7/- for 2015-16 and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

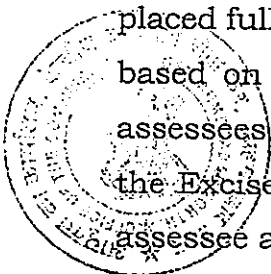
28. Having considered these factual and documentary evidences available on record, I find that the assessee has failed to assess their service tax liability on the services rendered by them during FY 2015-16. Accordingly, the assessee has not paid service tax of Rs. 3,47,02,674.7/- under section 66B 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. 3,47,02,674.7/-, 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 by them. Therefore, I hold that the assessee is required to pay service tax of Rs. 3,47,02,674.7/- and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

29. 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. 3,47,02,674.7/-.



30. 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 not paid service tax to the extent of Rs. 3,47,02,674.7/- by not declaring the value of service in their ST-3 Returns vis-à-vis their ITR, 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 and also had failed to file ST-3 Returns.

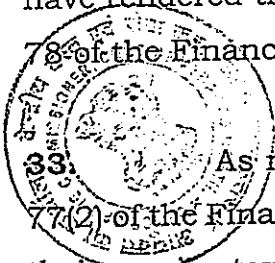
31. From the facts and discussion aforementioned, I find that in the instant case the assessee had failed to assess their service tax liability correctly, accordingly there was a non payment of service tax amounting to Rs. 3,47,02,674.7/- for FY 2015-16 on taxable services rendered by them. Thus, the assessee had failed to pay legitimate service tax due to the government. They had not filed ST-3 Returns thereby non declaring the value of services rendered by them in ST-3 Returns, as discussed hereinabove. Thus, the assessee had suppressed the material facts from the Department by not filing the ST-3 Returns, 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 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. 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 assessee are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes



are accepted for purpose of excise & Service tax laws. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any 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 non payment of service tax by not declaring the 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 5 years, service tax totally amounting to Rs. 3,47,02,674.7/- is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee.

32. 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 has 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.

As regards, the proposal for imposition of penalty under Section 77(2) of the Finance Act, 1994, I find that the assessee has also failed to assess their service tax liability correctly and has failed to file 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.

34. As regards the levy of service tax for FY 2016-17 & 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 2016-17 and 2017-18 (upto June 2017) in charging para 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.

35. In view of the above discussion and findings, I pass the following orders:

ORDER

(SCN No.STC/15-251/OA/2021-22 dated 23.04.2021)

- (i) I hereby confirm the demand of service tax of Rs. 3,47,02,674.7/-, 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.
- (ii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 3,47,02,674.7/- and to recover the same from the assessee under Section 75 of the Finance Act,1994;
- (iii) I impose penalty of Rs. 3,47,02,674.7/- 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

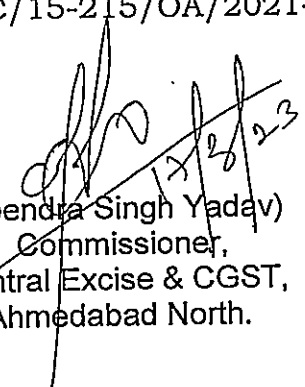
thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

ORDER

(SCN No. STC/15-215/OA/2021-22 dated 23.04.2021)

I hereby drop the proceedings initiated against M/s. Manishbharthi Natvarbharthi Bava, C-32, Madhuvan Society, Kathwada Road, Nava Naroda, Ahmedabad -382345, vide Show Cause Notice F. No. STC/15-215/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/15-251/OA/2021-22

Date: .03.2023.

To
M/s. Manishbharthi Natvarbharthi Bava,
C-32, Madhuvan Society,
Kathwada Road
Nava Naroda, Ahmedabad -382345

Copy to:

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

