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(1st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599	फैक्स/ FAX : 079-2754 4463	E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15- 199/OA/21-22 DIN : 20230364WT0000666CD3

आदेश की तारीख़ / Date of Order : 27.03.2023

जारी करने की तारीख़ / Date of Issue : 28.03.2023

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR– 50 /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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर

किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए(। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

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

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलगन की जाएंगीम एक प्रमाणित प्रति होगी।

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

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

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

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

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

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notices No. STC/15-199/OA/21-22 dated 23.04.2021 against M/s. Bharat Gordhanbhai Kathrotia, Opp. Govt. Tubewell, B-3, Tirth Apartment, Bopal, Ahmedabad -380058

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR– 50 /2022-23

M/s. Bharat Gordhanbhai Kathrotia, Opp. Govt. Tubewell, B-3, Tirth Apartment, Bopal, Ahmedabad -380058 were issued SCN F. No. STC/15-199/OA/21-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. BHARAT GORDHANBHAI KATHROTIA, ARE AS FOLLOWS:

M/s. Bharat Gordhanbhai Kathrotia, Opp. Govt. Tubewell, B-3, Tirth Apartment, Bopal, Ahmedabad -380058 (hereinafter referred to as the 'assessee' for the sake of brevity) were engaged in providing taxable services. It also appeared that the assessee having PAN No. AFSPP8410N, was not registered with Service tax department.

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. Bharat Gordhanbhai Kathrotia, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and details of the said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the information received from the Income Tax Department, the said assessee had earned substantial amount of service income, however, they had not obtained service tax registration and had not paid service tax thereon.

4. Since the service provider had failed to submit the required details of services provided during the FY 2015-16 & 2016-17, the service tax liability of the assessee was required to be ascertained on the basis of income mentioned in the ITR Returns and Form 26AS filed by the assessee with the Income Tax Department. The figures /data provided by the Income Tax Department was considered as the taxable value in order to ascertain the service tax liability under Section 67A of the Finance Act, 1994 as the assessee appeared to have failed to determine the correct taxable value.

5. The service tax payable was worked out on the basis of value of "sales of services under Sales/Gross Receipts from services (Value from ITR)" as provided by the Income Tax Department for the FY 2015-16 and 2016-17. By considering the same amount, the service tax appeared payable as under:

Sr. No.	Financial Year	Sales / Gross Receipt from services (ITR) (in Rs.)	Service Tax (Rs.)
01	2015-15	12239533	1707652
02	2016-17	178754074	26663741
		190993607	28371394

Therefore, it appeared that the said assessee had not discharged service tax liability to the extent of Rs. 2,83,71,394/- (including Cess) on differential value of Rs. 19,09,93,607/-.

6. 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.'*

7. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the FY 2015-16 and 2016-17 had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to the 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 FY 2015-16 and 2016-17 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 FY 2015-16 and 2016-17 covered under subject Show Cause Notice, was to be recovered from the assessee.

8. With effect from 01.07.2012, the negative list regime came into existence under which all services were taxable and only those services that were mentioned in the negative list were exempted. The nature of activities carried out by the said assessee appeared to be covered under the definition of service and appeared to be not covered under the Negative list as given in the Section 66D of the Finance Act, 1994. The said services appeared to be not covered under Mega exemption Notification No. 25/2012-ST dated 20.06.2012 as amended. Thus, the service provided by the assessee appeared to be subjected to service tax under the provisions of Section 66B of the Finance Act, 1994.

9. As per Section 69(1) of the Act, *every person liable to pay the service tax under this Chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*

10. As per Section 69(2) of the Act, any service provider, whose aggregate value of taxable service in a financial year exceeds Rs. 9 lakh is required to take registration. Further, according to Notification No. 33/2012-(Service Tax) dated 20.06.2012, Central Government had exempted taxable services of aggregate value not exceeding ten lakh rupees in preceding year from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act, 1994. Therefore, it appeared that the assessee was required to obtain Service Tax Registration and comply with the Service Tax law accordingly.

11. As per Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, every person providing taxable service to any person is liable to pay Service Tax at the rate prescribed in Section 66B to Central Government by the 5th of the month/quarter immediately following the calendar month/quarter in which the taxable service is deemed to be provided (except for the month of March which is required to be paid on 31st March).

12. According to Section 70 of the Finance Act, 1994, every person liable to pay Service Tax shall himself assess the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in ST-3 Returns.

13. It appeared that the assessee had not obtained Service Tax Registration for the service provided by them for the period of FY 2015-16 and 2016-17, had concealed the value of the services provided from the department, which was declared to the Income Tax department. Therefore, it appeared that the assessee had not paid correct service tax by way of willfully suppressing the

facts from the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made thereunder, with intent to evade payment of service tax. Therefore, the service tax amounting to Rs. 28371394/- appeared to be recoverable from them by invoking extended period of five years under first proviso to sub section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and the assessee appeared to have rendered themselves liable for penal action under Section 78 of the Finance Act, 1994.

14. As per the provisions of Section 72 of the Finance Act, 1994, if any person, liable to pay service tax having made return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

15. As per the provisions of Section 73(1) of the Finance Act, 1994, where any service tax has not been levied or paid or has been short levied or short paid by reasons of willful misstatement or suppression of facts with intent to evade the payment of service tax, the central excise officer may within five years from the relevant date, serve notice on the person chargeable with service tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay amount specified in the notice.

16. As per Rule 6 of the service tax Rule 1994, the service tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit their service tax returns in the form of ST-3 within the prescribed time.

17. In view of the above, it appeared that the assessee had contravened the provisions of:

(a) Section 66 of the Finance Act, 1944 in as much as they had failed to collect and pay the service tax as detailed above, to the credit of Central Government.

(b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service tax Rules , 1994 as amended, in as much as they had not paid the service tax as mentioned above to the credit of the Government of India within stipulated time limit.

(c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to assess their service tax liability under Rule 2(1)(d) of Service Tax Rules 1994, and failed to declare the correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

18. It further appeared that on account of all the above narrated acts of commission and omission on the part of the said service provider, they appeared to have rendered themselves liable for penal action under the following provisions of the Finance Act, 1994 and Rules made there under:

- Section 70 and Section 77 of the Finance Act, 1994, in as much as they had failed to self assessee the tax due on the services provided and had not filed the correct ST-3 Return and contravened the provisions of Service Tax Laws.
- Section 78 of the Finance Act, 1994, in as much as they had suppressed the material facts from the department about services provided and value realized by them with intent to evade payment of service tax.

19. As per Section 70 of Finance Act, 1994, the fees for late filing of return are prescribed . When the nature of default for late filing of fees is less than 15 days & less than 30 days, the amount of penalty is Rs. 1000; and where the nature of default is more than 30 days, the amount of penalty is Rs. 1000 + Rs. 100 for each day subject to maximum penalty of Rs. 20000/-. Hence, they appeared liable for payment of late fees for non filing of ST-3 Returns for the aforesaid period in stipulated time.

20. Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the service tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the Service Tax on the Service Provider. The definition of "assessment" available in Rule 2(b) of Service Tax Rules 1994 is reproduces as under:

"assessment" includes self assessment of service tax by the assessee, reassessment, provisional assessment, best judgement assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed;"

21. In the instant case, the said service provider had failed to properly assess the service tax liability. Thus they had resorted to suppression of material facts by not reflecting the correct taxable income earned in respect of the service liable to service tax in their ST-3 Returns. Accordingly, it appeared that the service tax as quantified herein above was liable to be recovered by invoking the extended period of limitation as provided under section 73 of the Finance Act, 1994 along with Interest in terms of the provisions of Section 75 of the Finance Act, 1994. The assessee had not disclosed full, true and correct information about the value of the service provided by them, and thus, it appeared that there was deliberate withholding of essential and material information from the department about service provided and value realised by them. It appeared that all these material information had been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. Therefore, all essential ingredients appeared to be existing to invoke the extended period in terms of proviso to Section 73(1) of Finance Act, 1994 to demand the service tax not paid.

22. In view of discussion in the foregoing para, it appeared that all the above acts of suppression of facts, misstatement and contravention, omission and commissions are on the part of the assessee that they had wilfully suppressed the facts, nature and value of service provided by them not assessing and paying due service tax liability, therefore, the above said amounts of service tax of Rs. 2,83,71,394/- (non payment of Service tax for the period 2015-16 to 2016-17 on income from taxable service provided by them), and Late fees (non filing of service tax returns) for the above period is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking the extended period of five years for the reasons stated herein foregoing para. In view of the facts discussed in foregoing paras and material evidence available on record, it appeared that the assessee had contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as that they had failed to determine; collect and pay service tax amounting to Rs. 2,83,71,394/- (including Cess) for the period FY 2015-16 & 2016-17 as detailed above and they had failed to declared value of taxable service to the department and thus suppressed the amount of charges received by them for providing services.

23. Further, it appeared that the assessee had failed (a) to take Service Tax Registration in accordance with the provisions of Section 69 ibid; (b) to keep,

maintain or retain books of account and other documents as required in accordance with the provisions of Finance Act, 1994; and (c) to pay the tax, accordingly the said assessee appeared liable to penalty under the provisions of Section 77(1) of Finance Act, 1994.

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

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

26. The said assessee was given opportunity for pre-show cause notice consultation on 23.0.2021, but they did not appear for the same.

27. Therefore, the show cause notice no. STC/15-199/OA/2021-22 dated 23.04.2021 was issued to the assessee, asking them as to why:

(i) The Services rendered by them should not be considered as "taxable service" under Section 65 of the Finance Act, 1994 as amended and the total/gross amount of Rs. 19,09,93,607/- received towards rendering such services should not be considered as taxable value of the said services charged by them for FY 2015-16 & 2016-17;

(ii) Service Tax of Rs. 2,83,71,394/- (Rupees two Crore Eighty Three Lakh Seventy One Thousand Three Hundred Ninety Four Only) which was not paid for the FY 2015-16 to 2016-17 as per Table above, should not be demanded and recovered from them under proviso to sub-section (1) of Section 73 of Finance Act, 1994 ; read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (no.2 of 2020) promulgated on 30.03.2020, by invoking the extended period of time limit.

(iii) Interest at the prescribed rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;

(iv) Prescribed late fees, should not be recovered from them for each ST-3 returns filed late for the relevant period under Rule 7C of the Servicer Tax Rules 1994 read with Section 70 of the Finance Act, 1994;

(v) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for failure to make payment of service tax payable by them within prescribed time limit;

(vi) Penalty should not be imposed upon them under Section 77(1) of the Finance Act, 1994 for failure to take registration as per the provisions of Section 69 of the Finance Act, 1994;

(vii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for non payment of Service Tax by wilfully supressing the facts from the department with intent to evade the payment of service tax as explained herein above.

DEFENCE REPLY:

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

PERSONAL HEARING:

29. Personal Hearings were granted to the assessee on 12.05.2022, 24.06.2022, 29.07.2022, 13.09.2022, 20.10.2022 and 18.11.2022. The assessee has not responded to any of communication sent for personal hearing. All these communication were sent through the Speed Post. The PH letter intimating the date of PH granted on 20.10.2020 was also sent on their Registered Email-id: kiran2006patel @yahoo.co.in , but they did not take care to attend the personal hearings. 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.

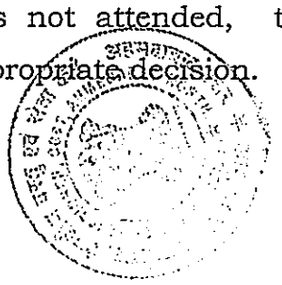


Image of Letter dated 27.02.2023 written to the assessee:

DIN : 20230264WT000031363B

आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क ,अहमदाबाद –उत्तर.
कस्टम हाउस, प्रथम तल,
नवरंगपुरा ,अहमदाबाद- 380009

GST

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

फोन नंबर/ PHONE No.: 079-27544557 फैक्स/ FAX : 079-27544463 E-mail:- cexahmedabad2@gmail.com

BY SPEED POST/HAND DELIVERY

फा. सं. STC/15-199/OA/21-22 दिनांक: 27.02.2023

To,

M/s. BHARAT GORDHANBHAI KATHROTIA
B-3, Opp. Govt Tubwell, Parth Appartment,
Bopal, Bopal, Ahmedabad- 380058

Gentleman,

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

Please refer to the SCN No. STC/15-199/OA/21-22 dated 23.04.2021 issued to you by the Commissioner, Central Excise & CGST, Ahmedabad North. Please also refer to letters of even no. dated 20.04.2022, 07.06.2022, 13.07.2022, 24.08.2022, 04.10.2022 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,

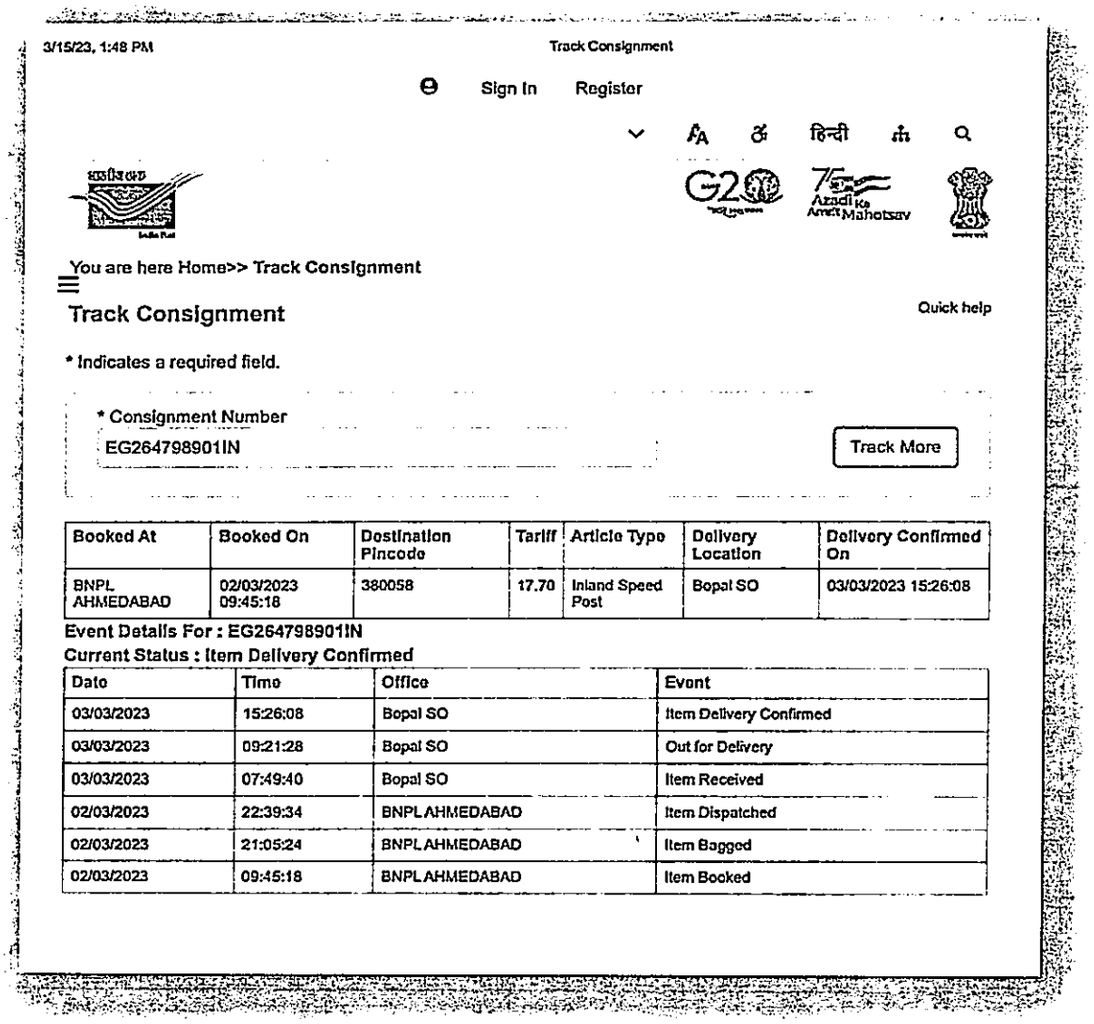
(Upender Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

Received
Jaivin son of Shri Bharat Gordhan Bhai Kathrotia.

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

29.1 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 Shri Jaivin, son of Shri Bharat Gordhanbhai Karotia (the assessee) and letter sent through Speed Post (ID EG26479890IN) was received by the assessee on 03.03.2023. 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.

Image of Speed Post Tracking:



3/15/23, 1:48 PM Track Consignment

Sign In Register

हिन्दी

You are here Home>> Track Consignment

Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

EG264798901IN

Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
BNPL AHMEDABAD	02/03/2023 09:45:18	380058	17.70	Inland Speed Post	Bopal SO	03/03/2023 15:26:08

Event Details For : EG264798901IN

Current Status : Item Delivery Confirmed

Date	Time	Office	Event
03/03/2023	15:26:08	Bopal SO	Item Delivery Confirmed
03/03/2023	09:21:28	Bopal SO	Out for Delivery
03/03/2023	07:49:40	Bopal SO	Item Received
02/03/2023	22:39:34	BNPLAHMEDABAD	Item Dispatched
02/03/2023	21:05:24	BNPLAHMEDABAD	Item Bagged
02/03/2023	09:45:18	BNPLAHMEDABAD	Item Booked

DISCUSSION AND FINDINGS:

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

31. I find that the assessee has failed to appear for Personal Hearing, inspite of being asked to do so repeatedly as detailed in forgoing para 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.

31.1 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. OLLECTOR 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."

32. 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. 2,83,71,394/-. 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)" were shared by the CBDT with CBIC for FY 2015-16 and 2016-17. The entire value of sale of service/gross receipts from service (as per ITR) was considered to be the taxable value for computing service tax liability of the assessee, as the assessee was not registered with the service tax department and accordingly there was no ST-3 available with the department to work out difference between value of service as per ITR vis-à-vis value of services declared in ST-3 returns. Therefore, considering the amount of Rs. 19,09,93,607/- received against the sale of service/gross receipts from service (as per ITR) to be taxable value, it was

alleged vide SCN dated 23.04.2021, that the assessee had not paid the service tax of Rs. 2,83,71,394/- on such amount received 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. 2,83,71,394/- on the differential taxable value of Rs. 19,09,93,607/- 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.

33. 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.*

34. 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)/66B 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 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".

35. 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 own 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 a 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 as per the data shared by the CBDT, 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 the same is exempt services under mega exemption notification or it is covered under exclusion clauses of "service".

35.1 I find that the SCN mentions that the value of service has been derived from the value of services declared in Income Tax Return and the same was shared by the CBDT with CBIC. 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. Therefore, I am left with no option but to conclude that the amount shown against Sales /Gross Receipts from Services, in income tax return (ITR) filed by the assessee for FY 2015-16 & 2016-17 is the "Taxable value" for providing services by the assessee during 2015-16 & 2016-17.

36. The assessee was given numerous opportunities, in fact as many as 07 opportunities for defending their case in person, but they have chosen not to avail these opportunities & has remained absent. The PH letter intimating the date of PH granted on 20.10.2020 was also sent on their Registered Email-id: kiran2006patel @yahoo.co.in. As a last resort, 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 for taking an appropriate decision. However, in spite of repeated opportunities and reminders, 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. The assessee has received the communication sent by the department, but they have chosen not to respond to any of the communication till date. Therefore, it seems that they do not have anything to defend their case. 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 value of service of Rs. 19,09,93,607/- as shared by the income tax department which incidentally is the nature of service declared by the assessee themselves to the Income Tax department, is the taxable value for rendering the services by the assessee and the assessee is thus liable to service tax amounting to Rs. 2,83,71,394/- 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. 2,83,71,394/- for FY 2015-16 and 2016-17 and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

37. As discussed above, the assessee has not paid legitimate service tax of Rs. 2,83,71,394/- for FY 2015-16 and 2016-17 due to the Central Government, as required under Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994. The assessee has not obtained the service tax registration as required under Section 69 of the Finance Act, 1994, despite they being liable to pay service tax. They have not filed any service tax returns showing the correct value of services rendered by them during FY 2015-16 and 2016-17, though they were required to file ST-3 Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules 1994. Therefore, it is

evident that the assessee had deliberately suppressed the facts of provision of the Taxable Service by not obtaining the Service Tax Registration and by not paying the service tax due to government during the period FY 2015-16 and 2016-17.

38. 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 Section 66B of the Finance act, 1994 and Rule 6 of Service Tax Rules 1994 in as much as they have not paid the service tax to the extent of Rs. 2,83,71,394/- on the services rendered by them during FY 2015-16 & 2016-17 (ii) Section 69 of the Finance Act, 1994 in much as they have failed to obtain the service tax registration (iii) Section 70 of the Finance Act, 1994 in as much as they have failed to assessee their service tax liability; (iv) Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules 1994 in as much as they have failed to file ST-3 Returns within such period and in such manner & frequency as prescribed with respect to the taxable services provided by them.

39. 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. Accordingly, it is evident that the assessee has not paid service tax of Rs. 2,83,71,394/- , as levied under section 66B read with Rule 2(1)(d)(ii) 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. 2,83,71,394/- , 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. 2,83,71,394/- and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

40. 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. 2,83,71,394/- .

41. From the facts and discussion aforementioned, I find that in the instant case the assessee had failed to assess their service tax liability correctly and thereby failed to pay service tax amounting to Rs. 2,83,71,394/- for FY 2015-16 & 2016-17 on taxable services rendered by them. The assessee had

also failed to obtain the service tax registration and had failed to disclose their taxable value by way of filing service ST-3 Returns in respect of taxable services rendered by them. Thus, the assessee had failed to pay legitimate service tax due to the government. They had not disclosed the value of services rendered by them as discussed hereinabove. Thus, the assessee had suppressed the material facts from the Department by not obtaining service tax registration and 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 appropriate 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 assessees 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 obtaining the service tax registration and by not declaring 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. 2,83,71,394/- is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee.

42. 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 this 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.

43. As regards, the proposal for imposition of penalty under Section 77(1) of the Finance Act, 1994, as discussed at length herein above, I find that the assessee had failed to obtain the service tax registration as required under the provisions of Section 69 of the Finance Act, 1994, despite they being liable to pay service tax on Taxable income from sale of service, as appearing in Income Tax Returns for FY 2015-16 and 2016-17. Thus, they have rendered themselves liable to penal action under Section 77(1)(a) of the Finance Act, 1994. I find that the SCN also alleges that the assessee has failed to maintain the books of accounts and other document, however, there is no charge levelled for imposing penalty under Section 77(1) in charging para of the said SCN. I therefore refrain from imposing penalty under Section 77(1) for not maintaining books of account by the assessee.

44. As far as the imposition of penalty under Section 76 of the Finance Act, 1994 is concerned, I find that Section 78B of the Finance Act, 1994 stipulates that the provisions of the amended Section 76 and 78 will be applicable in cases where the order is passed after the date on which the Finance Bill, 2015 receives the assent of the President. The Finance Bill, 2015 received

the assent of the President on 14.05.2015. Therefore, the amended provisions of Section 76 and 78 are applicable in the present case.

44.1 In view of the above, the penalty under Section 76 is imposable only in cases where the non-payment/ short-payment of service tax is on account of reasons other than fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax. In the instant case, as I have already discussed hereinabove, the non-payment/ short-payment of service tax is on account of suppression of facts and contravention of the provisions of law with an intent to evade payment of service tax and as such the provisions of Sec. 76 of the Finance Act, 1994 will not be applicable to the facts of the present case and no penalty can be imposed under Sec. 76 of the Finance Act, 1994.

45. As regards, the proposal for levy of prescribed late fees for not filing the service tax half yearly returns for FY 2015-16 to 2016-17 by the assessee, I find from the records that the noticee had not filed requisite service tax returns within due date as provided under Rule 7 of Service Tax Rules 1994 read with Section 70 of Finance Act, 1994. I find that the Rule 7C of Service Tax Rules 1994, prescribes the late fees for delayed submission of ST-3 Returns. According to Rule 7C, the assessee shall be liable to pay late fees (i) of Rs. 500/- for the period of delay in filing returns, of fifteen days (ii) of Rs. 1000/- for the period of delay in filing returns, beyond fifteen days but not later than thirty days (iii) of Rs. 1000/- Plus Rs. 100/- for every day of delay beyond thirty days to till date of filing the return, subject to maximum limit of late fees of Rs. 20,000/-. Thus, if delay in filing of return is 220 days or more, the maximum late fees of Rs. 20,000/-is required to be paid for such delay. It is evident that the assessee had not filed half yearly service tax returns for the period (i) Apr-15 to Sep-15 (ii) Oct-15 to Mar-16 (iii) Apr-16 to Sep-16 and (iv) Oct-16 to Mar-17. The said returns were to be filed by 25th of the month following the particular half year. As non filing of returns was continued by the assessee, beyond 220 days in respect of above mentioned four half yearly returns, the late fees of Rs. 20,000/- for each case, is leviable on the assessee. Therefore, I find that the assessee is required to pay late fees of Rs. 80,000/- for not filing the service tax returns for FY 2015-16 to 2016-17, under the provisions of Rule 7C of Service Tax Rules 1994 read with Section 70 of the Finance Act, 1994.

46. I find the SCN, at para 7 mentions that the "Total Amount Paid /Credited under Section 194C. 194H, 194I, 194J Or Sales/Gross Receipts from

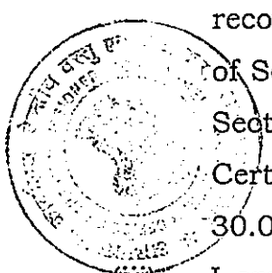
Services (From ITR) for FY 2015-16 & 2016-1717), had not been disclosed by the Income Tax Department, thus the levy of service tax for FY 2015-16 & 2016-17, was not ascertainable at the time of issuance of the SCN dated 23.04.2021, if the same was to be disclosed by the Income Tax department or any other 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 find that the subject SCN has been issued to the assessee, demanding the service tax for FY 2015-16 and 2016-17 on the basis of data shared by the Income Tax Department. Thus the it is clear that the said observation made in the SCN is factually not correct. Accordingly I refrain myself from discussing the same.

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

ORDER

(i) I hold that the services rendered by the assessee to be the "taxable Service" under Section 65B(51) of the Finance Act, 1994, which the assessee had declared in their Income Tax return filed by them during FY 2015-16 and 2016-17, and I also hold that the total/gross amount of Rs. 19,09,93,607/- received towards rendering such services is the taxable value of the said services, charged by them during FY 2015-16 & 2016-17 in terms of Section 67 read with Section 72 of the Finance Act, 1994.

(ii) I hereby confirm the demand of service tax of Rs. 2,83,71,394/- (Rupees two Crore Eighty Three Lakh Seventy One Thousand Three Hundred Ninety Four 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 read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (no.2 of 2020) promulgated on 30.03.2020, by invoking the extended period of time limit;



(iii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 2,83,71,394/- and to recover the same from the assessee under Section 75 of the Finance Act,1994;

(iv) I order to charge late fees of Rs. 80,000/- from the assessee under the provisions of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service tax Rules 1994;

(v) I refrain from imposing penalty on the assessee under the provisions of Section 76 of the Finance Act, 1994 for the reasons discussed herein above.

(vi) I impose penalty of Rs. 10,000/- on the assessee under the provisions of Section 77(1)(a) of the Finance Act, 1994 for their failure to take service registration under Section 69 of the Finance Act, 1994;

(vii) I impose penalty of Rs. 2,83,71,394/- on the assessee under the provision of Section 78 of the Finance Act, 1994, for non payment of Service Tax by the assessee and for supressing the materials facts from the department with intent to evade the payment of service tax as explained herein above.

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- 199/OA/21-22

Date: .03.2023.

To
M/s. Bharat Gordhanbhai Kathrotia,
Opp. Govt. Tubewell,
B-3, Tirth Apartment,
Bopal, Ahmedabad -380058

Copy to:

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