

<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No.STC/04-49/O&A/15-16

आदेश की तारीख/Date of Order:- 29.01.2018

जारी करने की तारीख/Date of Issue :- 29.01.2018

द्वारा पारित/Passed by:-

आर. एम. गौतम / R.M.Gautam

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 01/ADC/2018/RMG**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 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 Commissioner (Appeal) 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, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

**विषय:** -कारण बताओ सूचना/Show Cause Notice F.No. STC/04-49/O&A/2015-16 dated 19.10.2015 issued to M/s. Akshar Travels Pvt. Ltd., 21, 2<sup>nd</sup> Floor, City Centre, Nr. Swastik Cross Roads, Navrangpura, Ahmedabad.

**Brief facts of the case:**

During the course of audit of records for the years 2010-11 to 2013- 14 of M/s. Akshar Travels Pvt. Ltd., 21, 2<sup>nd</sup> Floor, City Centre, Nr. Swastik Cross Roads, Navrangpura, Ahmedabad [here-in-after referred to as 'M/s. Akshar'], holding Service Tax Registration No. AAFC4359JSD001 under 'Tour Operator' & 'Accommodation in hotels, inn, guest house, club or camp site etc' services, it was noticed that they failed to obtain registration for the services of Air Travel Agent, Hotel Booking, Train Booking, Rent-a-Cab, Mandap Keeper and other Business Auxiliary Services like Visa Services, TAC Services, Commission Agent etc' rendered during the F.Y. 2010-11 to 2013-14. They were also found to have evaded the service tax on 'Tour Operator Services' & 'Legal Consultancy Service'. The Audit officers also noticed that M/s. Akshar had not paid Service Tax on Domestic as well as International Tour Package, though the service rendered to their clients were situated within the taxable territory of India. They provided International & Domestic Tour package along with allied taxable services viz. Bus Ticket Booking, Air ticket, Train Booking, Booking for accommodation in Hotel, Rent-a-Cab service, Mandap Keeper service and other Business Auxiliary Services like Visa Services, TAC Services, Commission Agent etc.

2. The above case, as approved in the MCM held on 06.08.2015, was referred to the Service Tax Commissionerate, Ahmedabad. The premises of M/s. Akshar was visited by the officers of Preventive Section of Service Tax Commissionerate, Ahmedabad on 10.09.2015 for further investigation in the matter. Records for further period 2014-15 & 2015-16 [up to August, 2015] were obtained under summons proceedings.

3. Detailed investigation and scrutiny of documents submitted by M/s. Akshar revealed that they were availing abatement from gross amount charged for determination of value of taxable service provided by them and were discharging their Service Tax liabilities without availing the CENVAT credit available on their input services. Further, it was also revealed that M/s. Akshar were not paying Service Tax under Reverse Charge Mechanism (RCM) on "Legal Consultancy Services" on charges paid to their overseas Legal Consultants. M/s. Akshar even after charging and collecting amount of Service Tax, have failed to properly deposit the amount of service tax leviable on gross amount charged during the F.Y. 2010-11 to 2014-15. Summon was therefore issued to Shri Manish Sharma, Managing Director of M/s. Akshar and in the statement recorded on 14/10/2015, he admitted the aforesaid facts found during the investigation.



4. On the basis of above facts, evidences and scrutiny of the various records submitted by M/s. Akshar it appeared that;

- M/s. Akshar provided 'Tour Operator Services' & 'Accommodation in hotels, inn, guest house, club or camp site etc' services since Financial Year 2010-11 to 2012-13, without obtaining Service Tax registration and without payment of Service Tax on regular basis. After taking ST-2 registration on 07.02.2013 they started filing ST-3 returns.
- M/s. Akshar has availed Legal Services during the F.Y. 2010-11 to 2014-15 and paid legal charges of ₹2,05,060/-. In terms of Reverse Charge Mechanism under the provisions of Rule 2(1)(D) of Service Tax Rules, 1994, they were required to discharge Service Tax liability of ₹25,345/-. M/s. Akshar has neither amended their Service Tax registration incorporating the above service nor had paid their Service Tax dues.
- M/s. Akshar during the period 2012-2013 to 2013-14 even after charging and collecting amount of Service Tax from their customers, failed to deposit the correct amount of Service Tax charged & leviable on gross amount charged and had short paid Service Tax thereon;
- Further, M/s. Akshar have also not filed periodical ST-3 Returns for the F.Y. 2010-11 to 2012-13 on due dates, however, subsequently after initiation of inquiry by Service Tax Department, they have filed half yearly ST-3 Returns;
- They failed to disclose the value of said taxable services by non-filing periodical ST-3 returns for said period and also failed to deposit amount of Service Tax leviable on aforesaid taxable services into Govt. Account on due dates;
- Shri Manish Sharma, Managing Director of M/s. Akshar, in his statement dated 14.09.2015 has categorically admitted the aforesaid facts.

5. The Service Tax liability of M/s. Akshar worked out in respect of various taxable services is as under:

- (i) M/s. Akshar had collected gross amount to the tune of ₹18,12,08,338/- (inclusive of Service Tax) from their customers under 'Tour Operator Service' (Domestic 'Tour Package). After allowing abatement of ₹13,20,69,798/- under notification no. 13/2012-ST dt 17.03.12 superseded vide notifi no. 26/2012-ST dt 20.06.12, the taxable value thereof works out to ₹4,40,23,266/- on which they are liable to pay



- Service Tax @ 10.30% & 12.36 % to the tune of ₹51,15,274/- under "Tour Operator Services" during the period from 2010-11 to 2014-15,
- (ii) M/s. Akshar had collected gross amount of ₹4,16,26,165/- (inclusive of Service Tax) from their customers under 'Hotel Booking Service' and the taxable value thereof works out to ₹ 41,12,124/- (after allowing abatement of ₹3,70,09,119/-) on which they are liable to pay Service Tax to the tune of ₹5,04,922/- under the taxable service of "Tour Operator Services (Arranging, booking, Accommodation)" during the period from 2010-11 to 2014-15.
- (iii) M/s. Akshar had collected gross amount of ₹15,42,17,733/- (inclusive of Service Tax) from their customers under 'International Tour Package' taxable value thereof comes to ₹3,73,98,810/- (after allowing abatement of Rs,11,21,96,430/-), on which they are liable to pay Service Tax to the tune of ₹46,22,493/- under the taxable service of "Tour Operator Services" during the period from 01.07.2012 to 2014-15.
- (iv) M/s. Akshar had collected gross amount of ₹27,04,480/- (inclusive of Service Tax) from their customers under 'Air Travel Agent Service', taxable value thereof comes to ₹26,81,024/-, on which they are liable to pay Service Tax to the tune of ₹22,410/- during the period from 2010-11 to 2014-15.
- (v) M/s. Akshar, had collected gross amount to the tune of ₹2,16,56,274/- (inclusive of Service Tax) from their customers under Transport of Passengers by Air' (Visa charges) taxable value thereof comes to ₹5,66,745/-, on which they are liable to pay Service Tax to the tune of ₹1,18,068/- during the period from 2010-11 to 2014-15.
- (vi) M/s Akshar, had collected gross amount of ₹19,61,526/- (inclusive of Service Tax) from their customers under 'Business Auxiliary Service', the taxable value thereof comes to ₹17,72,852/- on which they are liable to pay Service Tax to the tune of ₹1,88,674/- during the period from 2010-11 to 2014-15.
- (vii) M/s. Akshar, had collected gross amount of ₹8,99,08,181/- (inclusive of Service Tax) from their customers under 'Accommodation in Hotels, Inn, Guest House, Club or campsite etc.' taxable value thereof comes to ₹5,39,44,909/- (after allowing abatement of ₹3,59,63,272/-) on which they are liable to pay Service Tax to the tune of ₹66,67,591/- during the period from 2010-11 to 2014-15.



- (viii) Further, M/s Akshar, had also paid legal charges during the period 2010-11 to 2014-15 to the tune of ₹2,05,060/-, on which they, as a recipient, are liable to pay Service Tax to the tune of ₹25,345/-, under the category of "Legal Consultancy Services" under reverse charge mechanism.
- (ix) M/s. Akshar had filed ST3 returns for the period 2012-13 (October, 2012 to March, 2013) onwards, however, they were not paying correct amount of Service Tax. As per ST-3 returns during the period 2012-13 to 2014-15, they had made payment of ₹69,95,739/- out of their total Service Tax liability of ₹1,72,39,432/-, thus, they had short paid Service Tax to the tune of ₹1,02,43,693/-.
- (x) M/s. Akshar had, thus, evaded Service Tax to the tune of ₹1,02,69,038/- in respect taxable services viz. (1) "Tour Operator Services" and (2) "Legal Consultancy Services" during the period from 01/04/2010 to 31/03/2015.
- (xi) M/s. Akshar had also not properly discharged their Service Tax liability in respect of the aforesaid taxable services during said period, by suppressing the taxable value thereof by not disclosing the taxable value of Tour Operator Services" in ST-3 returns filed till March, 2014 as well as by not filing periodical ST-3 Returns for the previous period also;

6. It appeared that Shri Manish Sharma, Managing Director of M/s. Akshar Travels Pvt. Ltd., Ahmedabad is the person responsible for business activities of the company relating to services provided and liability to pay service tax. In his statements dated 14-10-2015 he admitted about the non-payment / short payment of Service Tax liability for the period 2010-11 to 2014-15. For the above acts of contravention of various provisions of the Finance Act, 1994 and rules made there under, Shri Manish Sharma, Managing Director of M/s. Akshar is liable for penalty under Section 78A of the Finance Act, 1994.

7. In view of above, M/s. Akshar Travels Pvt. Ltd., 21, 2<sup>nd</sup> floor. City Centre, Nr. Swastik Cross Roads, Navrangpura, Ahmedabad were issued a show cause notice dt 19.10.2015 making it answerable to the Principal Commissioner, Service Tax, Ahmedabad, having office at 1<sup>st</sup> Floor, Central Excise Bhavan, Panjrapole, Ambawadi Ahmedabad, as to why;-



- (i) The amount of evaded/short paid Service Tax to the tune of totally ₹1,02,69,038/- (Rupees One Crore, Two Lac, Sixty Nine Thousand, Six Hundred & Thirty Eight only) (₹1,02,43,693/- + ₹25,345/-) leviable on taxable services viz. (i) "Tour Operator Services" and (ii) "Legal Consultancy Services" received by them, during the period from 01/04/2010 to 31/03/2015, as summarized and detailed in Annexure-C hereto, prepared on the basis of Annexure-A & B hereto, should not be demanded and recovered from them under sub-section (1) of Section 73 of the Finance Act, 1994, by invoking extended period of five years as provided under 1<sup>st</sup> proviso to **sub-section (1) of the Section 73** *ibid*;
- (ii) The interest at appropriate rate for delayed payment of Service Tax liability as mentioned at (i) above, should not be demanded and recovered from them, under the provisions of **Section 75** of the Finance Act, 1994;
- (iii) The penalty should not be imposed upon them for failure to obtain registration under "Tour Operator Services" and to make an application for including taxable services, "Legal Consultancy Services" received by them, even though these taxable services are being received by them, in their said existing Service Tax Registration Certificate, under the provisions of the **Section 77** of the Finance Act, 1994;
- (iv) The penalty should not be imposed upon them for failure to furnish prescribed periodical ST-3 returns for the F.Y. 2010-11 to F.Y. 2014-15 within stipulated period and also for failure to furnish taxable value of the aforesaid taxable services provided by them to various clients, under the provisions of the **Section 77** of the Finance Act, 1994;
- (v) The penalty should not be imposed upon them for suppressing the taxable value of the aforesaid taxable services provided by them during the period 2010-11 to 2014-15 resulting into evasion of Service Tax (including Education Cess and S.H.E. Cess) and also for suppression of facts and contravention of the provisions of Chapter V of the Finance Act, 1994 and Rules made there under with intent to evade payment of Service Tax, as mentioned herein above, under the provisions of the **Section 78** of the Finance Act, 1994.



- (vi) Personal penalty should not be imposed upon Shri Manish Sharma, Managing Director of M/s. Akshar under **Section 78A** of the Finance Act, 1994.

8. Before this case could be taken up for a decision, the Board vide Notif. No.44/2016-S.T dated 28.09.2016 & Cir.No.1049/37/2016-CX dated 29.09.2016, revised the monetary limit of adjudication. Thus this case got transferred within the competency of Additional Commissioner/Joint Commissioner, Service Tax, Ahmedabad. A corrigendum dated 31.10.2016 to this effect was also issued to M/s. Akshar. Accordingly, a personal hearing was granted to M/s. Akshar on 16.12.2016, 21.12.2016. However on both the occasions M/s. Akshar could not attend the said hearing. M/s Akshar vide letter dated 16.1.2017 sought adjournment. Therefore personal hearing was granted on 14.02.2017. Again M/s. Akshar sought adjournment till last week of March, 2017 hence another date was granted on 16.3.2017. Shri Rashmin Vaja, C.A. appeared before Additional Commissioner, Service Tax, Ahmedabad to defend the case and submitted a written reply dated 14.3.2017.

#### 9 Defense Reply:-

- The levy of Service Tax has been governed by Chapter V of the Finance Act, 1994. Positive list regime of service tax under which 119 services that was defined was till 30<sup>th</sup> June, 2012. It has been replaced with the Negative list approach with effect from 1st July, 2012.
- As per Rule 3(1) of CENVAT credit Rules, provider of output service shall be allowed to take CENVAT credit of specified duties and taxes. Thus, only a person who is providing taxable output service will be eligible to take CENVAT credit. CENVAT credit is available on input goods, input services and capital goods. Manufacturer as well as service provider will be eligible to get CENVAT credit of 'input services'.
- As per entry no.6 of Notification 26/2012-ST, dated 20.06.2012, the abatement is permitted to the extent of 40% of the gross amount charged and the service tax is payable on 60% of the gross amount charged from the customer. The service provider is not entitled to the CENVAT credit on inputs and capital goods. But the condition says that he is entitled to the credit of service tax paid on input services.



- Assessee is engaged in providing short term accommodation service i.e. tent to its customers at White Rann of Kutch Utsav. For providing the said service, assessee avails the input services of renting of tent from M/s. Lallooji & Sons, who charges Service Tax in their invoices to an assessee. Invoice has been attached herewith marked as Exhibit 2.
- As per entry no 6 of Notification 26/2012-ST, dated 20.06.2012 the restriction for CENVAT credit is for capital goods and inputs. No where there is a restriction for availing CENVAT for input services. Thus, assessee is entitled for taking CENVAT credit on input services received by them even if they have taken the benefit of abatement. Following is the brief of CENVAT credit taken for the period under dispute:-

Period	Service Tax Amount	Education cess	Secondary & Higher Education Cess	Total
Oct'13- Dec'13	17,18,417	34,326	17,430	17,70,173
Jan'14 to Mar'14	6,05,579	12,164	6,223	6,23,966
Sept'14 to Dec'14	14,24,076	28,482	14,241	14,66,798
Jan'15 to Mar'15	4,60,457	9,221	4,606	4,74,285
Total	42,08,529	84,193	42,500	43,35,222

- As the assessee has provided taxable output service short term accommodation service and for proving such service he has availed credit of renting of tent from Lallooji & Sons of ₹43,35,222/-.
- Further as per para no 3.3 of the SCN, it is finding of the department that scrutiny of the records revealed that M/s. Akshar were availing abatement from gross amount charged for determination of value of taxable services provided by them and were discharging their service tax liabilities without availing CENVAT credit available on their input services. It is very much clear from the above finding in the SCN that the noticee has never availed eligible CENVAT Credit and hence, it would be duplication of service tax on the same service that has borne the burden of service tax. Hence, it is submitted that while demanding service tax in the impugned show cause notice, adjustment of the available and eligible CENVAT Credit of ₹43,35,222/- is required to be done and then only net of CENVAT service tax is required to be demanded.
- SCN has invoked larger period of limitation only on the ground that assessee has suppressed / concealed the value of taxable service with an intent to evade payment of service tax. Mr. Manish Sharma, Managing Director of noticee in his statement recorded by the department has accepted that the non-payment of service tax on the services provided was due to unawareness of the provision of service tax law and hence, service tax registration was also not





obtained till 07.02.2013. Hence, finding in para no 6 of SCN that service tax was collected by the noticee is wrong and misleading. Noticee has never collected service tax before 07.02.2013 and after such date noticee has deposited the collected service tax and disclosed in service tax returns filed. Hence, during entire investigation it is nowhere coming out that non-payment of service tax was on account of intended for evasion of service tax.

- As per section 78 of the Act, larger period of limitation can be invoked only in case where there is fraud, collusion, willful misstatement, suppression of facts or contravention of provision of any Excise law with 'an intent to evade payment of duty. Only in such circumstances demand can be raised beyond the normal period of limitation. The onus to prove that 'there is intent to evade payment of duty' is upon the department.
- Only in unusual circumstances, demands for extended period are to be invoked, with a very serious allegation of suppression of facts and intention to evade payment of service tax. Such serious allegations of suppression can be invoked only if assessee has deliberately done an action with an intention to hide certain facts from the department and department has confirmed it beyond doubt with aid of corroborative evidence that there was a deliberate act on part of assessee to evade tax. There is no finding in impugned SCN which can allege that assessee has intended to evade payment of tax. In the absence of any finding of "intend to evade" demand cannot be sustained. Reliance is placed on the following decisions:

- (i) *Continental Foundation v. CCE [2007 (216) E.L.T. 177 (S.C.)]*
- (ii) *CCE v. Pioneer Scientific Glass Works [2006 (197) E.L.T. 308 (S.C.)]*
- (iii) *Pahwa Chemicals Pvt. Ltd. v. CCE [2005 (189) E.L.T. 257 (S.C.)]*
- (iv) *Anand Nishikawa Co Ltd. v. CCE [2005 (188) E.L.T. 149]*

- No penalty under section 78 can be imposed if assessee proves that there was a 'reasonable cause' for default or failure under these conditions. They have relied on following case laws:-

- a) CST Bangalore Vs. Motor World and other 2012-TIOL'418-HC-KAR-ST
- b) CCE, Meerut-II v. On Dot Couriers & Cargo Ltd. (2006) 6 STJ 337 (CESTAT, New Delhi)
- c) In Municipal Corporation of Delhi v. Jagannath Ashok Kumar, (1987) AIR 2316 (Supreme Court),
- d) In Commissioner of Wealth Tax v. Jagdish Prasad Choudhary, (1996) AIR 58 (Patna)
- e) In Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) Pvt. Ltd. (1989) AIR 973 (Supreme Court),
- f) In Ram Krishna Travels Pvt. Ltd. v. CCE, Vadodara, [2007 -TMI - 977



CESTAT, MUMBAI]

- Further the arguments as put forwarded by Assessee substantiates that no service tax is required to be paid on visa services and CENVAT credit on availing the input services of tent is admissible. Thus, as assessee *bona fide* believed that no service tax is required to be paid, it is sufficient ground of 'reasonable cause'. Thus, no penalty can be levied u/s. 78 of the Act.
- Based on the above submission, as extended period cannot be invoked in case of assessee, penalty under section 78 of the Act also cannot be levied and hence, penalty needs to be set aside.
- Assessee has also requested for personal hearing.

10. However, before the said case could be taken up by the adjudicating authority of Service Tax, Ahmedabad, Service Tax Commissionerate was abolished and GST Regime came in to existence w.e.f 01.07.2017. The CBEC vide Notification No.12/2017-CE(NT) dated 9.6.2017, appointed officers of Central Excise Department as Central Excise Officers and vested them with the power under the Central Excise Act, 1944 (1 of 1944) and the rules made there under, with respect to the jurisdiction specified in the notification issued under Rule 3 of the Central Excise Rules 2002. The said notification was made effective from 22.6.2017 vide Notification No.16/2017-CE (NT) dated 19.06.2017. With the Amendment of Act 32 of Finance Act, 1944, Chapter V (Service Tax) of the Finance Act, 1994 has been omitted hence all the service tax cases have been transferred to concerned jurisdictional Central Excise & Central GST Commissionerate. The present case thus got transferred to Central Excise & Central GST Commissionerate, Ahmedabad North. Consequent to this, a corrigendum dated 28.07.2017 vide F.No:STC/4-49/Q&A/15-16 intimating M/s. Akshar regarding transfer of this case to Additional Commissioner, Central Excise & Central GST Commissionerate Ahmedabad (North) was issued.

11. In consequent to above, again a date for personal hearing was granted on 04.09.2017, however no one turned up. Since enough time has already been lapsed, I am left with no other option but to take up the matter for adjudication. In terms of Section 33A of the Central Excise Act, 1944, an adjudicating authority shall give an opportunity of being heard to the party in the proceeding, if the party so desires. The personal hearing shall be granted time to time and no such hearing shall be granted more than three times to a party during the proceeding. Section 33A is reproduced below:-



**Section 33A. Adjudication procedure. -**

(1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

**Provided that no such adjournment shall be granted more than three times to a party during the proceeding.**

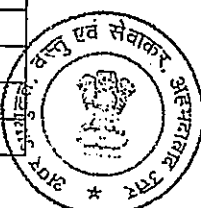
12. In the instant case, department has granted personal hearing in terms of Section 33A of the Central Excise Act, 1944 on 16.12.2016, 21.12.2016, 14.02.2017, 16.3.2017 & 04.09.2017. Since the M/s. Akshar has already attended a hearing before Additional Commissioner, Service Tax and considering the fact that three adjournments were granted, the case finally came up for hearing for the 5th time. As sufficient opportunities were granted by the department and three adjournments have already been granted as per law, I am not inclined to consider any further adjournment in the matter and proceed to adjudicate the SCN on the basis of the submissions already made in this regard.

**Discussion & Findings:**

13. I have gone through the Show Cause Notice, written submissions and the case laws relied by the assessee very carefully. The notice is proposing; recovery of ₹1,02,43,693/- in respect of "Tour Operator Services" rendered by M/s. Akshar during the period from 01/04/2010 to 31/03/2015 and recovery of ₹25,345/- under "Legal Consultancy Services" received during 2012-13 to 2014-15 under Reverse Charge Mechanism.

14. The notice alleges that M/s. Akshar during the period 2010-11 to 2014-15 rendered services of arranging Domestic & International Tour Package, Hotel Booking, Air Travel Agent Service, Transport of passenger by Air, Business Auxiliary Service, Accommodation in Hotels, Inn, Guest House, Club or campsite etc under Tour Operator Service. As per the SCN the bifurcation of demand of ₹1,02,69,038/- under 'Tour Operator service' is given below:-

Sr. No.	Service Rendered	Net Value of Service	Abatement	Service Tax
1.	Domestic Tour Package	44,023,266	132,069,798 @75%	5,115,274
2.	Hotel Booking Service	4,112,124	37,009,119 @90%	504,922
3.	International Tour Package	37,398,810	112,196,430 @75%	4,622,493
4.	Air Travel Agent Service	2,681,024	-	22,410



5.	Transport of Passenger by Air	966,745	-	118,068
6.	Business Auxiliary Service	1,772,852	-	188,674
7.	Accommodation of Hotels, Inn, Guest House, Club or campsite etc	53,944,909	35,963,272	6,667,591
			<b>Total demand</b>	<b>1,02,69,038</b>

14.1 To decide the demand under 'Tour Operator', I find that in terms of Section 65(115) of the Finance Act, 1994 'Tour Operator' is defined as;

*"tour operator" means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made there under.*

**Explanation.**— For the purpose of this clause, the expression "tour" does not include a journey organized or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field.

Further, section 65(105)(n) enumerates the taxable service as; "any service provided (or to be provided) to any person, by a tour operator in relation to a tour."

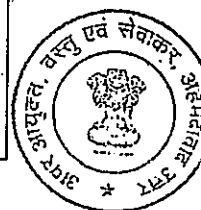
14.2 The above definition of Tour Operator is effective from 16-5-2008 to 30-6-2012. However, after introduction of Negative List regime w.e.f. 01.07.2012, there has been a paradigm shift from the way in which the services have been taxed. Section 65 of the Finance Act, 1994 defining various taxable services has ceased to apply w.e.f. 01.07.2012 vide Notif.No.20/2012-ST dated 5.6.2012. Thus all services would be subject to service tax unless specified in the Negative List or are specifically exempted from the levy of service tax. By virtue of amendment in the Act, service rendered in respect of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles, is a taxable service. After 01.7.2012 also the services of Tour Operator shall be treated as taxable service in terms of clause (51) of Section 65B of the Finance Act, 1994 as not covered under negative list and chargeable to service tax under Section 66B of the Act *ibid*. Shri Mahish Sharma, Managing Director of M/s. Akshar in his statement dated 14.9.2015 deposed that their Company was engaged in planning, scheduling and organizing various Tours and had mostly organized tours as per their planning and scheduling wherein date of starting of tour, duration, airline, hotels



accommodation were decided by their Company; that their company had organized various domestic tours packages for various tourist destination including viz. Andaman-Nicobar, Shimla-Manali-Dalhousie, Nainital-Ranikhet-Corbett. Darjeeling-Gangtok, Darjeeling-Gangtok-Pelting, Darjeeling-Gangtok-Lachung, Leh-Ladakh in Kashmir, Srinagar-Gulmarg-Pahalgam etc. They provided their customers required details viz. duration of tour, details of hotels for accommodation, food menu, places to be visited and details of sightseeing, tour package charges etc. and booking of tour package was made; that they further made arrangement for local pickups & drop, sightseeing, visit to tourist spots, accommodation, meal etc. of tourist. The income shown in Profit & Loss for the period 2010-11 to 2014-15; in respect of Tour Operator Service was inclusive of Service Tax. I find that the services in respect of planning, scheduling, organizing or arranging tours was rendered within the taxable territory, which I find is not disputed by the party hence taxable in terms of section 65(105)(n) of the Finance Act, 1994.

**14.3** I find a number of notifications have been issued for providing abatement and exclusions in Tour Operator service. In terms of Notification No.13/2012-ST dated 17.3.2012, the services provided by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes and the services of a tour operator were granted following abatement under Sr.No.11 of the said notification.

Sl.No.	Description of taxable Service	Percentage	Condition
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
11	(i) Services provided or to be provided to any person, by a tour operator in relation to a package tour	25	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.
	(ii) Services provided or to be provided to any person, by a tour operator in relation to a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	10	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator,



			<i>in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.</i>
	<i>(iii) Services, other than services specified in (i) and (ii) above, provided or to be provided to any person, by a tour operator in relation to a tour</i>	40	<i>(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.</i>

**14.4** The above notification was superseded vide Notif.No.26/2012-ST dated 20.6.2012, however the rate of abatement and the conditions remained the same. The scrutiny of records revealed that M/s. Akshar failed to pay service tax on Domestic as well as International Tour package income for the year 2010-11, 2011-12 and 2012-13 (up to 30.6.2012). However after 1.7.2012 they started paying service tax but did not discharge correct duty liability resulting in short payment. In some cases they even charged and collected service tax but did not deposit the entire amount of service tax collected during 2010-11 to 2014-15 under 'Tour Operator' service. They failed to file periodical ST-3 Returns for the period 2010-11 to 2012-13 on due dates. For the period April, 2010 to Sept,2010, October,2010 to March,2011, April,2011 to September,2011, October, 2011 to March,2012, April, 2012 to September, 2012, no ST-3 returns were filed. Thus I find that by not filing the ST-3 returns, they purposely suppressed the value of taxable service with intent to evade payment of service tax.

**15.** I also find that M/s. Akshar is not contesting the tax liability, however, contended that for providing the Tour operator service, they availed the services of M/s. Lallooji & Sons for renting of tent, who had charged Service Tax in their invoices. Since the said service is an input service, they claim they are eligible for credit to the extent of service tax of ₹43,35,222/- paid under invoice raised by the said service provider. I have gone through the invoices raised by M/s. Lallooji & Sons submitted as Exhibit-2.

**15.1** I find that in terms of Sr.No.11 of the Notification No.26/2012-ST dated 20.6.2012, abatement for Tour Operator Service including package tour or a tour where a tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour is admissible, only if the CENVAT credit on inputs, capital goods and input services, used for providing the taxable



service, has not been taken under the provisions of CENVAT Credit Rules, 2004. Whereas Sr. No. 6 of the notification is for the services of renting of hotels, inn, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes. In the instant case, M/s. Akshar were procuring short term accommodation at **campsites (i.e Tents)** for lodging purposes on rent from M/s. Lallooji & Sons. Such accommodation, I find was in relation to a tour hence the conditions laid down under Sr.No.6 will not come into picture. As M/s. Akshar were providing Tour operator service including booking of accommodation, I find that in terms of Sr.No.11 of the said notification, credit of service tax paid on invoices issued by M/s. Lallooji & Sons shall not be admissible to them for availing abatement. Consequently, I uphold the demand of ₹6,667,591/-.

16. Now coming to the demand of ₹25,345/- raised under Legal Consultancy Service under reverse charge mechanism, I find that M/s. Akshar has not disputed the above demand but claimed that due to lack of knowledge they did not pay the service tax. Service tax on 'Legal Consultancy Service' was first introduced from 01.09.2009 by the Finance (No.2) Act, 2009 by inserting clause (zzzzm) in Section 65 (105) of the Finance Act, 1994. Legal Service has been defined under Rule 2(1)(cca) of Service Tax Rules,1994 as

*(cca)"legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;*

16.1 Taxable Service, which has been defined in term of clause (105) (zzzzm) of Section 65 of the Finance Act, 1994, *means any service provided or to be provided by;*

- (i) to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner;*
- (ii) to any business entity, by any person, in relation to representational services before any court, tribunal or authority;*
- (iii) to any business entity, by an arbitral tribunal, in respect of arbitration.*

*Explanation. — For the purposes of this item, the expressions "arbitration" and "arbitral tribunal" shall have the meanings respectively assigned to them in the Arbitration and Conciliation Act, 1996 (26 of 1996);]*

Thus service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority is a taxable service under Legal Consultancy service.

17. Further, in terms of Notification no. 30/2012 dated 20.06.2012, any legal services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services and arbitral tribunal, the service tax has to be



discharged by the service receiver i.e. business entity on 100% value of service under reverse charge mechanism. The CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient. However, service tax discharged under reverse charge on legal service can be used as CENVAT credit for discharging the service tax liability on output taxable services and Central Excise duty. With the introduction of reverse charge mechanism, the receiver of the service is liable to pay tax and has to comply all the statutory compliances in place of service provider. Thus in terms of aforesaid notification as a recipient of service, M/s. Akshar are liable to pay service tax on the Legal consultancy fees paid towards the legal services received during the period 2012-13 to 2014-15. I therefore find that the service tax recovery of ₹25,345/- in respect of Legal Consultancy service under reverse charge mechanism is also sustainable.

18. Coming to the issue of limitation, M/s. Akshar contended that the demand under Section 73(1) invoking extended time period is not valid as non-payment of service tax was due, to unawareness of the provisions of the Service Tax Law. Such defense may not help M/s. Akshar as the facts, as admitted by Shri Manish Sharma, Managing Director of M/s. Akshar are, that they charged and collected service tax but did not deposit the entire Service tax collected to the exchequer. In some cases they even admitted to have paid service tax to their input service provider M/s. Lallooji & Sons which was subsequently collected from their customer. They claim that non-filing of ST-3 returns were on their consultants advice and non-payment of service on Legal Consultancy service under reverse charge mechanism was also due to lack of knowledge. They never bothered to obtain Service Tax Registration nor did they declare the correct taxable value in the service tax returns filed with the department consequent to registration. Failure to fulfill this legal obligation is thus a case of suppression of facts especially when M/s. Akshar had collected but not deposited the entire tax amount to the department.

19. M/s. Akshar has relied on various citations, which I find cannot be made applicable to the instant case as the facts are distinguishable. Hon'ble Apex Court in the case of Continental Foundation 2007(216)E.L.T. 177 (S.C) held that

*"When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty."*





Similarly, Hon'ble Apex Court in the case of Pahwa Chemicals Pvt. Ltd. v. CCE [2005 (189) E.L.T. 257 (S.C.)] held that "when all facts are within knowledge of Department and a party in the belief that affixing of a label makes no difference does not make a declaration, then there would be no wilful misdeclaration or wilful suppression - Section 11A(1) of Central Excise Act, 1944." Further, in the case of CCE v. Pioneer Scientific Glass Works [2006 (197) E.L.T. 308 (S.C.)], Hon'ble apex court held "the assessee had disclosed all the relevant facts and where the facts were already known to both the parties the omission by one to do what he might have done by itself does not render or amount to suppression of facts.". Similar view was also taken by Hon'ble Apex Court in the case of Anand Nishikawa Co Ltd. v. CCE [2005 (188) E.L.T. 149]. Nevertheless, in the instant case, M/s. Akshar had suppressed the material fact regarding receipt of actual amount of income. They had suppressed the value of taxable service from the department in as much as they only disclosed the partial value of taxable service leading to short payment. Had the department not conducted audit and subsequently carried out a search operation, the details of the said taxable value would have escaped assessment and might have resulted in non-payment of service tax. Even after obtaining registration, they failed to declare the service rendered in the ST returns. They were aware regarding payment of service tax on the above services rendered by them but have short paid the tax by not disclosing the exact value before the department. The suppression with intent to evade payment, on part of M/s. Akshar is proved beyond doubt. Therefore proviso to Section 73(1) of the Finance Act, 1994 has rightly been applied in the instant case. Such acts of omission and commission on their part have rendered them liable for penalty. I therefore hold that extended period of five years was correctly invoked in the instant case and the service tax is required to be confirmed / recovered from M/s. Akshar under the proviso to Section 73(1) of the Finance Act, 1944.

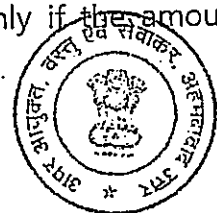
20. Regarding recovery of interest under Section 75 of the Finance Act, 1994, on the aforesaid service tax amounting to ₹1,02,43,693/- and ₹25,345/- short paid/ not paid by M/s. Akshar, same is liable to be recovered under section 73(1) of the Finance Act, 1994. Since the said section itself provides that such recovery has to be made along with interest prescribed under Section 75 of the Finance Act, 1994, accordingly, I hold that M/s. Akshar is also liable to pay interest on the said service tax which they have not paid.

21. I find that they have failed to determine the gross value of said taxable services correctly as required under Section 67 of the FA. 1994; and failed to assess their Service Tax liability in respect of aforesaid taxable services provided to various clients and received by them; they failed to maintain records and furnish returns in S



form for the F.Y. 2010-11 to F.Y. 2012-13, as required under Section 70 of the Finance Act, 1994, read with Rule 7 of the STR, 1994 by showing correct taxable value in the periodical ST-3 Returns with the jurisdictional Superintendent of Central Excise & Service Tax which resulted into evasion of service tax, thereby rendered themselves liable to penal action under Sections 77 & 78 of Finance Act 1994.

22. On penalty proposed under Section 78, I find that the same can be imposed in a situation where service tax is not paid by way of fraud, suppression of fact etc. M/s. Akshar has contended that they were under *bona fide* belief that no service tax is required to be paid which they claim is sufficient ground of 'reasonable cause' for not imposing penalty u/s. 78 of the Act. By not filing ST-3 Returns in time for the F.Y. 2010-11 to 2012-13, they tried to suppress the value of taxable services provided and received by them with the sole intention to evade their tax liability. They collected service tax but did not deposit it to the government account which proves their intention to suppress the fact and a deliberate attempt to evade duty, hence ingredients for imposing penalty under Section 78 are existent. Here, I disagree with M/s. Akshar's contention that they were under the *bona fide* belief that service tax is not payable. Service tax law permits an assessee to assess his duty liability, independent of the department and to pay the tax. In such an indulgent scenario, what is expected is extreme carefulness and caution on the part of assessee. Ignorance of law cannot be an excuse. If at all, there are doubts about any element, the best recourse is to seek a clarification and only in such a case the *bona fides* of an assessee become acceptable. Secondly, if the intention of the party was *bona fides* then they would have declared this income in their ST3 Returns which they have not done. Hence, the ingredient of suppression with intent to evade duty is very much present in the case. I find that fraud, suppression of facts and wilful mis-statement on the part of M/s Akshar has been established beyond doubt as discussed and concluded in the earlier part of this order. Accordingly, I hold that M/s Akshar are also liable to penalty under the provisions of Section 78 of the Finance Act, 1994. In terms of second proviso if the service tax and the interest payable thereon is paid within 30 days from the date of communication of order determining such service tax, the amount of penalty liable to be paid under the first proviso shall be 25% of such service tax. The option to pay penalty at 25% of the tax along with the entire amount of tax and interest, within the specified period is available only if the amount of reduced penalty has also been paid within the period of 30 days.



23. On scrutiny of the catena of judgments quoted by the assessee, I find that these cases are not applicable to the instant case as it is a clear case of non-payment of service tax with intent to evade payment of tax. No liberal view can be taken in such cases. Deposition of tax along with interest cannot be a ground for non-imposition of penalty in cases where there is clear cut mens-rea.

24. Regarding penalty under Section 77, I find that M/s. Akshar failed to obtain Service Tax registration for the services rendered by them under Tour Operator Service (Domestic Tours & International Tours), Air Travel Agent, Hotel Booking, Train Booking, Rent a Cab services, Mandap Keeper services and other Business Auxiliary Services like Visa Services, TAC Services, Commission Agent etc. during F.Y 2010-11 to 2013-14 (up to January, 2013), thereby violating the provisions of Section 69 of Finance Act 1994 rendering them liable to penal action under Section 77(1)(b) of Finance Act, 1994. Further they also failed to make an application with the jurisdictional Superintendent of Central Excise, within the stipulated time of 30 days for amendment of registration, as required under Section 69 of the FA, 1994, read with Rule 4 of the Service Tax Rules (STR), 1994 for including taxable services viz. "Legal Consultancy Services", Air Travel Agent, Hotel Booking, Train Booking, Rent a Cab services, Mandap Keeper services and other Business Auxiliary Services like Visa Services, TAC Services, Commission Agent etc. in their existing Service Tax Registration Certificate and rendering them liable for penal action under Section 77 of the Finance Act, 1994 hence they are liable for penalty under Section 77 for non-payment of service tax for the period in dispute.

25. Coming to penalty under **Section 78A**, I find that said penalty is impossible for offences by Directors, Managers, etc of a Company where a Company has committed offence like evasion of service tax, issuance of invoice, bill or challan without provision of taxable service in violation of rules made under the provisions; availment and utilization of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees. In the instant case, Shri Manish Sharma, Managing



Director of M/s. Akshar in his statement dated 14.9.2015 admitted that he and his wife Smt. Rupal M. Sharma are Directors in the Company. They are also partners in M/s. Shree Akshar International, a sister concern and partnership firm engaged in the Air Travel Agency & Tour Operator Service having registered with the department w.e.f. 23.2.2004 and paying Service Tax on the commission received from Airlines Company. Shri Manish Sharma being a Director of the Company is in-charge and all activities are conducted under his overall supervision. He is the person responsible of business activities of Company relating to services provided and liability to pay service tax. He also admitted about the non-payment and short payment of service tax liability for the period from 2010-11 to 2014-15. Since Shri Sharma has not put forth any argument in his defense, in light of above facts, I find that Shri Sharma has aided and abetted M/s Akshar in contravention of the provisions of Finance Act, 1944 and Rules made there under with intent to evade payment of Service Tax hence have rendered himself liable to penal action under Section 78A of the Finance Act, 1994.

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

**ORDER**

- (i) I confirm the demand of Service Tax to the tune of ₹1,02,69,038/- (Rupees One Crore, Two Lac, Sixty Nine Thousand & Thirty Eight only) (₹1,02,43,693/- + ₹25,345/-) leviable under (i) "Tour Operator Services" rendered and (ii) "Legal Consultancy Services" received by them, during the period from 01/04/2010 to 31/03/2015, under sub-section (1) of **Section 73** of the Finance Act, 1994, by invoking extended period of five years;
- (ii) I order to recover interest at appropriate rate for delayed payment of Service Tax liability mentioned at (i) above under the provisions of **Section 75** of the Finance Act, 1994;
- (iii) I impose penalty of ₹ 10,000/- (Rupees Ten Thousand Only ) upon them under the provisions of Section 77 of the Finance Act, 1994, for failure to obtain registration under "Tour Operator Services" and to make an application for including taxable services, "Legal Consultancy Services" received by them, even though these taxable services are being received by them, in their said existing Service Tax Registration Certificate.



- (iv) I impose penalty of ₹ 10,000/- (Rupees Ten Thousand only ) upon them under the provisions of the **Section 77** of the Finance Act, 1994 for failure to furnish prescribed periodical ST-3 returns for the F.Y. 2010-11 to 2014-15 within stipulated period and also for failure to furnish taxable value of the aforesaid taxable services provided by them to various clients;
- (v) I impose penalty of ₹ 1,02,69,038/- upon them for suppressing the taxable value of the aforesaid taxable services provided by them during the period 2010-11 to 2014-15 resulting into evasion of Service Tax (including Education Cess and S.H.E. Cess) and also for suppression of facts and contravention of the provisions of Chapter V of the Finance Act, 1994 and Rules made there under with intent to evade payment of Service Tax, as mentioned herein above, under the provisions of the **Section 78** of the Finance Act, 1994.
- (vi) The penalty imposed under (v) above stand reduced to 25% only, if the entire amount of service tax confirmed above and interest is paid along with the reduced penalty within one month of the receipt of this order.
- (vii) I impose personal penalty of ₹50,000/- (Rupees Fifty Thousand Only) upon Shri Manish Sharma, Managing Director of M/s. Akshar under **Section 78A** of the Finance Act, 1994.

The SCN No.STC/04-49/O&A/2015-16 dated 19.10.2015 stands disposed off accordingly.

  
[R. M. GAUTAM]  
Additional Commissioner  
C.Ex. & CGST, Ahmedabad-North

F.No: STC/04-49/O&A/15-16

Date: 29.1.2018

**By Regd. Post A. D./Hand Delivery**

To,  
M/s. Akshar Travels Pvt. Ltd.,  
21, 2<sup>nd</sup> Floor, City Centre,  
Nr. Swastik Cross Roads,  
Navrangpura, Ahmedabad



Copy to:

1. The Commissioner, C.Ex.& CGST, Ahmedabad-North.
2. The Deputy Commissioner, C.Ex.& CGST, Division-VII, Ahmedabad- North.
3. The Assistant Commissioner (RRA), C.Ex.& CGST, Ahmedabad-North.
4. The Superintendent, C.Ex.& CGST, AR-\_\_\_, Division-VII, Ahmedabad-North.
- ✓ 5. Guard File.