



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, 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/15-37/OA/2017

आदेश की तारीख/Date of Order: - 31.03.2019

जारी करने की तारीख/Date of Issue :- 31.03.2019

द्वारा पारित/Passed by:-

ऍम.एस. चौहान / M.S.Chauhan

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 14/ADC/2019/MSC

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

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

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 हैं।

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।

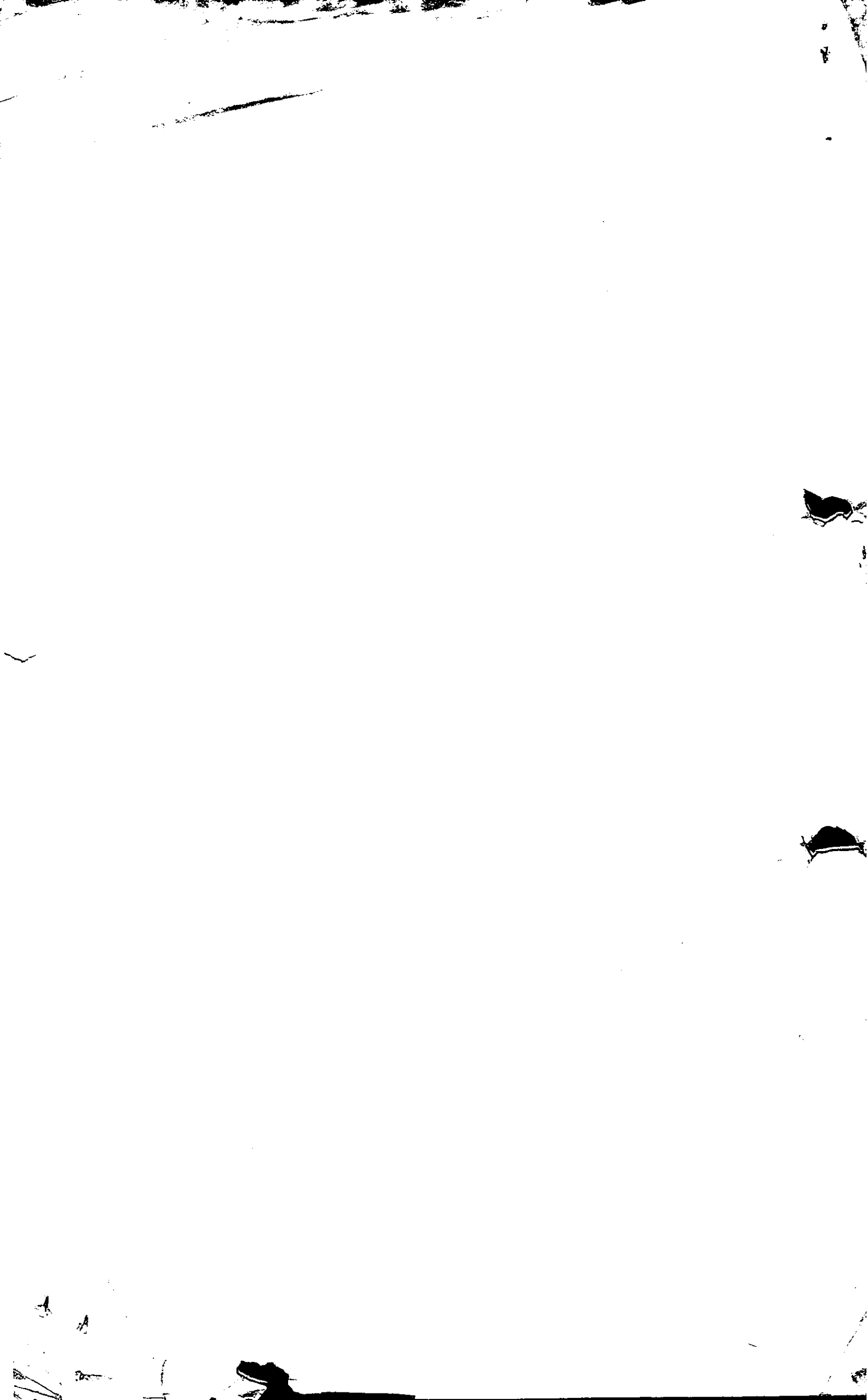
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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/15-37/OA/2017 dated 08.11.2017 issued to M/s MBT Security Services Private Limited, registered at 1, Keshavbaug Society, Meghaninagar, Ahmedabad-380016 now shifted at 30, 3<sup>rd</sup> Floor, Shree Krishna Complex, Mithakali, Ahmedabad.



### Brief facts of the case:-

1. **M/s. MBT SECURITY SERVICES PVT LTD**, registered at 1, Keshavbaug Society, Meghaninagar, Ahmedabad-380016 now shifted at 30, 3<sup>rd</sup> Floor, Shree Krishna Complex, Mithakali, Ahmedabad (hereinafter referred to as "the said assessee") is providing taxable service falling under the taxable category of "Security/ detective agency service". The said assessee is registered with Service Tax Commissionerate, Ahmedabad, Division-VI, Range-III and having Service Tax Registration No AAHCM3268LSD001 taken on 19/10/2011.

2. On the basis of information, inquiry was initiated by issuing summons to the said assessee on 20.02.2017 calling for financial documents, by preventive wings of erstwhile Central Excise Ahmedabad-II Commissionerate. On reaching the registered premises to serve the summons and collect the documents, it was noticed that the premises was closed since long time and the said assessee was operating the business from 30, 3<sup>rd</sup> Floor, Shree Krishna Complex, Mithakali, Ahmedabad. On reaching the new address, it was noticed that the company was doing the business from this address but there was no one except a receptionist named Shri Suresh Bhai, who told that the directors of the company were out of station and would return within a week. The summons was served to him on behalf of Shri Santosh Bhaiya, Director of the Company. The said assessee vide its letter dated 27.02.2017 stated that they would submit the documents after compiling the required details. But the said assessee has failed to comply as per his say and did not submit any document.

2.1. Subsequently, summons/letter dated 01.03.2017 and 28.03.2017 were issued to the said assessee asking for the financial documents and details including reconciliation statements along with documentary evidences, Balance Sheets, P&L account, relevant Ledgers and 26 AS, CENVAT credit details and Cenvatable invoices for each years, Exemption details etc. but the assessee vide letter dated 10.03.2017 has informed that Shri Mansingh Babubhai Tomar, Director has resigned from the post of director as on 01.12.2015 and they requested one month time to manage to pay pending service tax amount. But the assessee did not submit the details as required.

2.2 Thereafter, a letter dated 01.03.2017 in the Form No.46 was written to the Income Tax department asking for the copy of Financial statement along with P&L account and Copy of 26AS, Copy of ITR filed for the financial year- 2012-13 to 2016-17(up to Dec.2016). But there was no reply received from the I.T department then after a personal visit made to the Income Tax office on 04.04.2017 asking for the financial documents and they provided the details like Balance sheet for the F.Y 2012-13, 2013-14, 2014-15 , ITR returns for the period 2012-13 to 2015-16, 26AS for the period 2012-13 to 2016-17(up to Dec. 2016) in the soft copy on 06.04.2017. After that, a letter dated 18.04.2017 was issued to the said assessee calling for the financial documents and recording of the statement. But they failed to appear and did not submit any documents till date. Further, a summons dated 15.05.2017 served to the assessee 'On Spot' at their premises. In response to the summons the assessee asked for one month time vide their letter dated 17.05.2017. After that the assessee has not submitted any documents and did not regard the summons dated 02.06.2017.

3. On primary scrutiny of the financial records, documents received from the income tax department and data available on the ACES, it was noticed that:

- I. The said assessee is a private limited company engaged in providing Security/detective agency Service, registered with Service tax department, Ahmedabad having registration number AAHCM3268LSD001 taken on 19.10.2011.
- II. The said assessee has changed its premise, but has not made necessary amendments in its ST-2 certificate.
- III. The said assessee has neither filed the returns except the "NIL" returns for the period 2015-16 nor made any payment towards the service tax for their output service in

spite of having a turnover exceeding the threshold limit in the balance sheet/26AS for the period 2012-13 to 2016-17(Up to Dec'2016).

IV. The said assessee has not submitted any documents called for by this office through various letters and summons. Further, it seemed that they have also not submitted the financial records/Balance sheet for the period 2015-16 onwards in the income tax department since the income tax department has only provided the 26AS for the period 2015-16 to 2016-17(up to Dec.2016) in soft copies.

4. In spite of summons dated 20.02.2017 the said assessee did not appear for recording of the statement. Further, a letter dated 18.04.2017 was issued to M/s. MBT Security Service Pvt. Ltd along with the figures of the balance sheet /26 AS for the period 2012-13 & 2016-17(up to Dec.2016) received from the income tax department to give statement under Section 14 of the Central Excise Act, 1944 as applicable to service tax matter under Section 83 of the Finance Act, 1994. However, the assessee did not honor the summons and did not appear for recording of statement. It seems that they have nothing to submit in their support and agree with the contents/figures of the balance sheet for the period 2012-13 & 2016-17(up to Dec.2016). This office has provided sufficient chances and time to the said assessee to defend himself

5. Prior to the introduction of Negative list w.e.f. 1.7.2012, the various services were classified according to the different category of services. It appeared that the said service provider was engaged in providing Security Services. "Security agency" means any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel under (Section 65(94) of Finance Act, 1994 as amended)

*"Taxable service" means any service provided or to be provided to any person, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity as per (Section 65(105)(w) of Finance Act, 1994 as amended)*

*Section 66 of the Finance Act, 1994 provides that there shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent of the value of taxable services referred to in sub-clauses (a), (d) ..... (zzza) ..... and (zzzzw) of clause (105) of Section 65 and collected in such manner as may be prescribed.*

*Section 66B, inserted by the Finance Act, 2012, w.e.f. 1-7-2012 states that "There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve 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.*

*Section 66D After introduction of negative list with effect from 01.07.2012 "service" means any activity carried out by a person for another for consideration, and includes a declared service. Services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,*

- (a) Service by the Government/Local Authority
- (b) Service by RBI
- (c) Service by Foreign Diplomatic Mission located in India
- (d) Service in relation to agriculture
- (e) Trading of goods

- (f) *Manufacture of goods*
- (g) *Selling of space/time for advertisement*
- (h) *Services by access to road or bridge on a payment of Toll charges*
- (i) *Betting, gambling or lottery*
- (j) *Admission to Entertainment Events & Amusement Facilities*
- (k) *Transmission or distribution of electricity*
- (l) *Educational Services*
- (m) *Renting of Residential dwelling for use as residence*
- (n) *Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency*
- (o) *Transportation of Passenger with or without accompanied belongings*
- (p) *Transportation of goods.*
- (q) *Mortuary/Funeral services*

The security service provided by the assessee does not fall under negative list of services under Section 66D of the Finance Act. Therefore, the said service provider was liable to pay Service Tax on income earned from provision of security services for the period 2012-13 to 2016-17(Dec).

6. From the documents received from the income tax department, available records with ACES, after giving ample opportunity for submission of the documents along with their reply and in view of discussions in the foregoing Para's and the evidences brought on records during the investigation it appeared that:-

i. The said assessee is a private limited company engaged in providing Security/Detective agency Service registered with Service Tax department, Ahmedabad having registration number AAHCM3268LSD001 taken on 19/10/2011. The said assessee is registered at 1, Keshavbaug Society, Meghaninagar, Ahmedabad-380016 now shifted at 30, 3rd Floor, Krishna Complex, Mithakali, Ahmedabad but they have not made necessary amendments in ST-2 certificate.

ii. The assessee being a private ltd. Company should have been filing ST-3 returns once every 6 months from 2011 onwards, however they have not filed any return except one Nil return for FY 2015-16. They have not made any payment towards their service tax liability till date.

iii. While the said assessee has not filed the ST-3 returns and neither made any payment towards service tax and also not submitted any financial documents. This office contacted Income tax department under Form No. 46 and received financial information for the Financial Year 2012-13 to 2016-17 (up to December 2016) The service tax due on the taxable services provided by them is Rs. 85,55,834/- during the period 2012-13 to 2016-17 (up to Dec.2016). Detailed calculation sheet for service tax liability is attached as per Annexure A to the SCN.

6.1 The entire income shown in the financial documents has been taken, to arrive at the assessable value as the assessee failed to establish whether they have provided any exempted services like providing services to SEZ etc. Therefore, the entire amount has been taken for calculation. Vide notification no. 46/2012-ST dated 07.08.2012, services provided by security agencies have also been subjected to the levy of service tax under reverse charge mechanism. Reverse charge mechanism will apply only if the service recipient is a business entity registered as a body corporate. In this case, M/s MBT Securities p. Ltd. being a private limited company is a body corporate, hence being the service provider, entire liability of service tax has to be paid by the security agency and no reverse charge will apply. The entire income earned becomes liable to service tax.

6.2 Thus, it is observed that in the instant case, the said assessee has failed to pay service tax amounting to Rs. 85,55,834/- at the rate specified in Section 66 of the Finance Act, 1994.

7. In view of discussion in the fore going Para's, it appeared that all the above acts of contravention, omissions and commissions on the part of the said assessee, it further appeared that, they have willfully suppressed the facts, nature and value of service provided by them by not filing ST-3 returns for the period 2012-13 to 2014-15 & 2016-17(1<sup>st</sup> Half) and by declaring wrong taxable values while filing ST- returns for the period from 2015-16, with an intent to evade the payment of Service Tax for the services provided by them, rendering themselves liable for penalty under provisions of Section 78 of the Finance Act, 1994. By not submitting documents like Balance Sheets, invoices, ledgers, assessee has indicated their malafide intention to evade payment of taxes. In the self assessment era when assessee was asked to provide documents it is their duty to submit documents called for. In spite of various letters and summons assessee had not complied to enable to verify documents. The intention for suppression has been established. Therefore, the said service tax not paid is required to be demanded and recovered along with interest and penalty from them under the proviso to Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

8. From the evidence, it appeared that the said Service Provider had not taken into account all the income received by them for rendering taxable services for the purpose of payment of Service Tax and thereby minimize their service tax liabilities. The deliberate efforts to suppress the value of taxable service and not paying the correct amount of Service Tax is utter disregard to the requirements of law and breach of trust deposed on them. Such outright act in defiance of law appeared to have rendered them liable for penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression, concealment of taxable income/value of taxable service with intent to evade payment of service tax.

8.1. In view of the foregoing Para's, it appeared that the said assessee has contravened the provisions of the Act and Rules made there under as below:

8.2. contravened the provisions of Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable services provided, by filing incorrect ST-3 returns for F.Y. 2015-16 by declaring wrong taxable income in the returns filed and by not filing ST 3 returns for F.Y. 2012-13 to 2014-15 & 2016-17(1<sup>st</sup> Half)

8.3. It is provided under Section 68(1) of the act that 'every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee has not paid service tax total amounting to Rs. 85,55,834/- for the period F.Y. 2012-13 to F.Y. 2016-17(up to Dec.2016) and thereby violated the provisions of Section 68(1) read with Rule 6 of the Service Tax Rules, 1994.

8.4. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax due, properly, on the services provided by him, as discussed above, declared wrong taxable value in the ST-3 returns for F.Y. 2015-16 and not filed ST-3 returns for the period F.Y. 2012-13 to 2014-15 & 2016-17(1<sup>st</sup> Half), thereby violated the proviso of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

8.5. It is provided under section 73(1) of the Act that "*Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the*<sup>4</sup>*[Central Excise Officer] may, within*<sup>5</sup>*'eighteen months' from the relevant date, serve notice on the person*

*chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice”*

*Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of -*

*(a) fraud; or*

*(b) collusion; or*

*(c) willful mis-statement; or*

*(d) suppression of facts; or*

*(e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words<sup>1</sup> "eighteen months", the words "five years" had been substituted.*

In the instant case, the said assessee has suppressed the facts by declaring different taxable values in the ST-3 returns than that of actual value shown in the balance sheet and has not filed the returns for period for F.Y- 2012-13 to 2014-15 & 2016-17(1<sup>st</sup> Half). Further, the said assessee has not pay a single amount for the service tax liability since its inception.

9. It further appeared that on account of all the above narrated acts of commission and omissions on the part of the said assessee, they have rendered themselves liable to penalty under the following proviso of the Finance Act, 1994, Service Tax Rules, as amended:

- I. Section 77(1)(b) of the Finance Act, 1994, in as much as they failed to keep, maintain or retain the books of account and other documents.
- II. Section 77(1)(c)(ii) of the Finance Act, 1994, in as much as they failed to produce the documents called for by the superintendent of Service tax.
- III. Section 77(1)(c)(iii) of the Finance Act, 1994, in as much as they failed to appear before the superintendent of Service Tax, when issued with a summon for appearance to give evidence to make statement and to produce documents.
- IV. Section 77(2) of the Finance Act, 1994, in as much as they failed to self assess the tax due properly on the services provided/received and failed to file the ST-3 return.
- V. Section 70(1) of the Finance Act, 1994, read with Rule 7C of the Service Tax Rules, 1994, in as much as they failed to file the ST-3 return after self assessment the tax due on the services provided by them and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency for delayed furnishing of return, as may be prescribed.
- VI. Section 78 of the Finance Act, 1944, for nonpayment of Service tax by willfully supersession of facts / taxable value from the department, for contravention of Section 73(1) of the Finance Act, 1994 as amended, in as much as they failed to pay the Service Tax amount.

10. Further, as per Section 75 of the Finance Act 1994, every person liable to pay the tax in accordance with the proviso of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the said assessee has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the said assessee along with interest under Section 75 of the Finance Act, 1994.

11. Therefore, **M/s. MBT Security Services Private Limited**, registered at **1, Keshavbaug Society, Meghaninagar, Ahmedabad-380016** now shifted at **30, 3<sup>rd</sup> Floor, Krishna Complex, Mithakali, Ahmedabad** is hereby called upon to show cause Notice bearing No. **STC/15-37/OA/2017** dated **28.11.2017** issued by the Joint Commissioner CGST, Ahmedabad South having office situated at **1<sup>st</sup> Floor, Central Excise Bhavan, Panjra Pole, Opp. Govt. Polytechnic, Ambawadi, Ahmedabad -380 015** as to why;

- I. the non-payment/Short payment Service Tax amount of **Rs. 85,55,384/- (Rupees Eighty Five Lakh Fifty Five Thousand Three Hundred Eighty Four only)** for providing the taxable service "Security/Detective Agency Service" for the F.Y. 2012-13 to 2016-17 (up to Dec.2016) for the services provided, not be demanded and recovered from them under the proviso to section 73(1) read with section 68 of the Finance Act, 1994, as amended, by invoking larger period of five year.
- II. interest, at appropriate rate, should not be charged on the tax amount of **Rs. 85,55,384/-** not paid as mentioned in Para I, under section 75 of the Finance Act 1994;
- III. the penalty should not be imposed upon them under section 77(1)(b) of the Finance Act, 1994, for failure to keep, maintain or retain the books of account and other documents;
- IV. the penalty should not be imposed upon them under Section 77(1)(c)(ii) of the Finance Act, 1994, for failure to produce the documents called for by the superintendent of Service tax;
- V. the penalty should not be imposed upon them under Section 77(1)(c)(iii) of the Finance Act, 1994, for failure to appear before the superintendent of service tax, when issued with a summon for appearance to give evidence to make statement;
- VI. the penalty should not be imposed upon them under section 77(2) of the Finance Act, 1994, for late filing/non filing of ST-3 returns for the period for the period 2013-14 and for failure to self assess the taxable value and service tax liability;
- VII. the penalty should not be imposed upon them for suppressing the taxable value of the aforesaid taxable services provided & received by them during 2012-13 to 2016-17 (up to Dec.2016), resulting into evasion of Service Tax (inclusive of cesses) amounting to **Rs. 85,55,384/-** 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;

12. They were also directed to file their reply to the show cause notice within 30 days of receipt of this notice. They are also directed to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defense. They are also required to state as to whether they wish to be heard in person before the case is adjudicated. If no mention in this regards is made in their written explanation, it would be presumed that, they do not desire a personal hearing.

### **Written Submission and Personal Hearing:-**

13. The assessee failed to submitted any defence submission. The opportunities of personal hearing were given to assessee on 28.12.2018, 22.01.2019 and 08.03.2019 but the assessee or their representative did not appear for personal hearing. As per natural justice sufficient time and opportunities were provided to the assessee for hearing and submission of their defence but they failed to do so. Therefore, I have no option except the ex-parte to decide the present case.

### **Discussion and Findings:-**

14. I have carefully gone through the contents of the show cause notice and records available regarding the instant case.

15. In the instant case I have to decide whether the assessee is required to pay service tax liability or otherwise.

16. In the Show Cause Notice it has been alleged that the assessee is registered with Service Tax Department and holding Service Tax Registration bearing No. AAHCM3268LSD001 since 19.10.2011 under the category of Taxable Service " Security/detective agency service" and has never disclosed their taxable income with the Department. However, in the financial year 2015-16, they have filed their half yearly ST-3 returns covering period from April 2015 to September



2015 and October 2015 to March 2016, wherein they have disclose their taxable income as "Nil.". Further, it has been alleged in the SCN that on being asked the assessee to submit their financial records but they have failed to do so in spite of several communication made by Department. Therefore, the department has no option except to call for financial records/documents from the Income Tax Department and on scrutiny of such documents received from Income Tax Department, it was noticed that the assessee failed to disclose their correct taxable income and resultant has not paid Service Tax amounting to Rs. 85,55,834/- for the period from 2012-13 to 2016-17 (upto December 2016).

17. I have gone through the documents/records available with this office and find as under:-

(i) The said assessee is registered with the department holding Service Tax Registration bearing No. AAHCM3268LSD001 since 19.10.2011 under the category of Taxable Service "Security/detective agency service;

(ii) The said assessee filed their half yearly ST-3 returns for the period of April 2015 to September 2015 and October 2015 to March 2016 wherein they disclosed their taxable income as "Nil";

(iii) Several opportunities, by way of issuing letters and summons, were provided to the assessee to submit their financial records but they failed to do so.

(iv) The Income Tax Officer of Ward-2(1) (4), Ahmedabad vide letter F. No. ITO, wd-2(1) (4)/A'bad/Forwarding/Info/2016-17 dated 06.04.2017 provided the financial records of the said assessee.

18. The legal provisions pertaining to the instant case is reproduced below:-

i. Prior to the introduction of Negative list w.e.f. 1.7.2012, the various services were classified according to the different category of services and find that the said assessee was engaged in providing Security Services. As per Section 65(92) of the Finance Act, 1994 as amended "Security agency" means any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel .

ii. As per Section 65(105)(w) of Finance Act, 1994 as amended, "Taxable service" means any service provided or to be provided to any person, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity

iii. Section 66 of the Finance Act, 1994 provides that there shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent of the value of taxable services referred to in sub-clauses (a), (d) ..... (zzza) ..... and (zzzzw) of clause (105) of Section 65 and collected in such manner as may be prescribed.

iv. Section 66B, inserted by the Finance Act, 2012, w.e.f. 1-7-2012 states that "There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve 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.

v. Section 66D After introduction of negative list with effect from 01.07.2012 "service" means any activity carried out by a person for another for consideration, and includes a declared service. Services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

- (a) *Service by the Government/Local Authority*
- (b) *Service by RBI*
- (c) *Service by Foreign Diplomatic Mission located in India*
- (d) *Service in relation to agriculture*
- (e) *Trading of goods*
- (f) *Manufacture of goods*
- (g) *Selling of space/time for advertisement*
- (h) *Services by access to road or bridge on a payment of Toll charges*
- (i) *Betting, gambling or lottery*
- (j) *Admission to Entertainment Events & Amusement Facilities*
- (k) *Transmission or distribution of electricity*
- (l) *Educational Services*
- (m) *Renting of Residential dwelling for use as residence*
- (n) *Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency*
- (o) *Transportation of Passenger with or without accompanied belongings*
- (p) *Transportation of goods.*
- (q) *Mortuary/Funeral services*

18.1 From the above I find that the activity carried out by the assessee i.e. Security agency service falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List the security service provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act. Therefore, I find that the said service provider is liable to pay Service Tax on income earned from provision of security services for the period 2012-13 to 2016-17 (upto December'17). I also find that the said assessee was required to pay Service tax amounting to Rs. 85,55,834/- for the period 2012-13 to 2016-17 (upto December'2017).

18.2 I find that the said assessee has failed to assess their correct taxable value and their service tax liability and has contravened the provisions of Section 67 and Section 68 of the Finance Act' 1994. I also find that the assessee has failed to file or submit their half yearly ST-3 returns, except for the period 2015-16, in such form and in such manner as prescribed in Section 70 of the Finance Act, 1994 read with Rule 7C of Service Tax Rules, 1994 and has contravened the provisions of Section 70 of the Finance Act read with Rule 7C of the Service Tax Rules, 1994. I also find that the said assessee has failed (i) to maintain or retain books of account and other documents as required in accordance with the provisions of the Finance Act, 1994 or Rules made thereunder, (ii) to provide documents/records called for by the erstwhile officers of Service Tax as required in accordance with the provisions of the Finance Act, 1994 or Rules made thereunder, (iii) to appear before the erstwhile Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry.

18.3 I also find that the said assessee has never disclosed their taxable value or taxable income to the Department except in the financial year 2015-16 in spite of being several opportunities provided to them and such facts came to the knowledge of department only due to the investigation proceedings conducted by the department. I also find that in the financial year 2015-16 the assessee has shown incorrect taxable value in their ST-3 returns. In the era of self assessment it is obligation on the part of the assessee to ensure that correct taxable value should be disclosed to the department. In the instant case, I find that the assessee was aware that the activity of security agency service carried out by them is taxable service under the provisions of Finance Act, 1994. However, inspite of being aware of this fact, they never disclosed the correct taxable value to the department as well as has never paid their service tax liability. Thus, it shows the clear suppression of facts on the part of the assessee and failure to reciprocate the trust reposed in them by the department. Therefore, the necessary ingredients to invoke larger period in this case are clearly present. I also find that there was suppression as failed to assessee the liability of payment of service tax to the knowledge of the department only through investigation

and not through returns. Thus entire factual scenario clearly goes to show that there was suppression of material fact from the Department with intent to evade payment of service tax. Contravention of various provisions of Finance Act, 1994 committed on the part of the assessee was again with intent to evade payment of duty.

18.4 In view of discussion in forgoing paras, I find that the demand of service tax amounting to Rs. 85,55,834/- for the period 2012-13 to 2016-17 (upto December'17) proposed under Section 73(1) of the Finance Act, 1994 by invoking extended period of five years is legal and sustainable.

19. As regards the proposal to impose penalty on the noticee under Section 78 (1) of the Finance Act, 1994, I find that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby failed to discharge their tax liability. The deliberate efforts to suppress the value of taxable service and not paying the correct amount of service tax shows utter disregard to the requirements of law and breach of trust reposed on them. Such outright act in defiance of law rendered them liable for penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression, concealment of taxable income/value of taxable service with intent to evade payment of service tax. I also rely on decision of Hon'ble Supreme Court of India in the case of *Union of India vs Rajasthan Spinning & Weaving Mills reported in 2009 (238) E.L.T. 3 (SC)*, where the ratio given by the Hon'ble Apex Court in the case of *Union of India vs. Dharmendra Textile Processor- 2008 (231) E.L.T. 3 (SC)* has been affirmed. As per the ratio of these decisions, once Section 78(1) of the Finance Act, 1994 is applicable in a case, the concerned authority would have no discretion in quantifying the amount and penalty must be equal to duty determined.

### Order

20. In view of above discussion and findings in the forgoing paras, I pass the following orders:-


- I. I confirm demand and order to recover the non-payment/Short payment of Service Tax amount of **Rs. 85,55,384/- (Rupees Eighty Five Lakh Fifty Five Thousand Three Hundred and Eighty Four only)** for providing the taxable service "Security/Detective Agency Service" for the F.Y. 2012-13 to 2016-17 (up to Dec.2016) for the services provided, in terms of proviso to section 73(1) read with section 68 of the Finance Act, 1994, as amended.
- II. I order to recovery of interest at appropriate rate on the Service tax amount of **Rs. 85,55,384/-** in terms of section 75 of the Finance Act 1994;
- III. I impose penalty of Rs. 10,000/- (Rs. Ten Thousands only) upon them under section 77(1)(b) of the Finance Act, 1994, for failure to keep, maintain or retain the books of account and other documents;
- IV. I impose penalty upon them under Section 77(1)(c)(ii) of the Finance Act, 1994, for failure to produce the documents called for by the superintendent of Service tax;
- V. I impose penalty upon them under Section 77(1)(c)(iii) of the Finance Act, 1994, for failure to appear before the superintendent of service tax, when issued with a summon for appearance to give evidence to make statement;
- VI. I impose penalty of Rs. 10,000/- (Rs. Ten Thousand only) upon them under section 77(2) of the Finance Act, 1994, for non filing of ST-3 returns and for failure to self assess the taxable value and service tax liability;
- VII. I impose penalty of **Rs. Rs. 85,55,384/- (Rupees Eighty Five Lakh Fifty Five Thousand Three Hundred and Eighty Four only)** imposed upon them for suppressing the taxable value of the aforesaid taxable services provided & received by them during 2012-13 to 2016-17 (up to Dec.2016), resulting into evasion of Service Tax (inclusive of cesses)

amounting to Rs. 85,55,384/- 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(1) of the Finance Act, 1994;

Provided further that where service tax and interest is paid within a period of thirty days of the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the service tax so determined

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period

21. In view of above terms SCN F. No. STC/15-37/OA/2017 dated 08.11.2017 is disposed of.

  
(Mahavir Singh Chauhan)  
Additional Commissioner  
CGST, Ahmedabad North

F. No. STC/15-37/OA/2017

Date- 31.03.2019

**BY R.P.A.D./Speed Post/Hand Delivery**

To,

- (1) M/s MBT Security Services Private Limited  
30, 3rd Floor, Krishna Complex,  
Mithakali, Ahmedabad
- (2) M/s MBT Security Services Private Limited  
1, Keshavbaug Society,  
Meghaninagar, Ahmedabad-380016

Copy to :

1. The Principal Commissioner of CGST, Ahmedabad North
2. The Assistant/Deputy Commissioner, CGST & Cx., Division-II, Ahmedabad-North.
3. The Superintendent, CGST & Cx., Range-I, Division-II, Ahmedabad-North
4. ✓ Guard File.