



<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 & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/4-105/O&A/15-16

आदेश की तारीख/Date of Order:- 31.01.2018

जारी करने की तारीख/Date of Issue :- 06.02.2018

द्वारा पारित/Passed by:-

जी. सी. जैन *IG. C. Jain*

अपर आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 04/JC/2018/GCJ

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 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।

(3) उक्त अपील की प्रति।

(4) 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:

(3) Copy of accompanied Appeal.

(4) 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/4-105/O&A/2015-16 dated 30.03.2017 issued to M/s Aahana Air Services Pvt. Ltd., 1, Chitrakoot Bunglow, Nr. Surdhara Society, Dehgam-Naroda Road, Ahmedabad- 382330 and others.

Brief Facts of the case:

During the course of verification of the data in respect of the service tax payment by the assessee, generated through HQ (Systems), it was noticed by the preventive officers of erstwhile Service Tax Commissionerate, Ahmedabad that M/s Aahana Air Services Pvt. Ltd., holder of Service Tax registration No. AAICA8858KSD001 for providing services falling under the category of "Rent-a-Cab Scheme Operator Services, having registered office at 1, Chitrakoot Bunglow, Nr. Surdhara Society, Dehgam-Naroda Road, Ahmedabad- 382330, was not paying Service Tax.

2. M/s. Aahana Air Services Pvt. Ltd. (here-in-after referred to as 'the service provider') was having STC No. AAICA8858KSD001 and was engaged in providing services falling under the category of "Rent-a-Cab Scheme Operator Services" defined under Section 65 (105) (o) of the Finance Act, 1994 and w.e.f. 1-7-2012, engaged in providing taxable services as defined under Section 65B(44) of the Finance Act, 1994 which are not falling under Negative list of services as defined under Section 66D of the Finance Act, 1994.

3. It was noticed that even though the service provider was registered with the Service Tax Department, they had not discharged their Service Tax liability. As per the provisions of the Finance Act, 1994 and Rules made there under, the Service provider was required to assess correct value of the services provided and received by them as well as to pay service tax on the actual amount received/paid by them for rendering/receiving services from their clients within the stipulated time as prescribed and to follow all the procedures laid down in the Finance Act and Service Tax Rules. Even though the correct taxable value was in the knowledge of the said service provider, they had not disclosed the details/data in their ST-3 Returns. Thus, it was noticed that they had deliberately suppressed the correct taxable value and thus not paid the correct service tax leviable on the taxable value towards providing/receiving taxable services with a view to evade payment of service tax. Their main clients were Income Tax Department and Passport Department.

4. Therefore, the registered address of the service provider viz., M/s. Aahana Air Services Pvt. Ltd., at 1, Chitrakoot Bunglow, Nr. Surdhara Society, Dehgam-Naroda Road, Ahmedabad- 382330, was visited by the officers of Preventive section of erstwhile Service Tax Commissionerate, under Rule 5(A) of Service Tax Rules, 1994, as authorized vide letter F No. STC/04-21 /Prev./Verf./Payable paid/2013-14 dated 16.09.2014, issued by Joint Commissioner of Service Tax (Prev), HQ, A'bad. The Director of the company submitted that he would produce the relevant documents on or before 18.10.2014 but he failed to do so.

5. The service provider was therefore issued summons vide letter F. No. STC/04-111/Prev/Gr-III/Aahana/14-15 dated 01.10.2014 but they failed to produce the relevant documents.

5.1. As the service provider was providing their services mainly to Income Tax Department, a letter F. No. STC/04-111/Prev/Gr-III/Aahana/14-15 dated 13.10.2014 was written to Income Tax Officer (Welfare) for recovery of government dues under Section 87(b) of the Finance Act, 1994.

5.2. The service provider was again issued summons vide letter F. No. STC/04-111/Prev/Gr-III/Aahana/14-15 dated 29.10.2014 but they failed to produce the relevant documents.

5.3. Again letters F. No. STC/04-111/Prev/Gr-III/Aahana/14-15 dated 29.10.2014, 28.11.2014 were written to Income Tax Officer (Welfare) for recovery of Govt. Dues under Section 87(b) of the Finance Act, 1994.

5.4. A letter F. No. Pr. CC/ABD/HQ/ADMN/Service-Tax/2014-15/5090 dated 26.12.2014 received from the Office of the Principal Chief Commissioner of Income Tax, Ahmedabad by Income Tax Officer(HQ)(ADMN) with a cheque bearing no. 791728 dated 19.12.2014 for Rs. 14,74,121/- drawn on State Bank of India, Ashram Road branch, in favour of SBI A/c Service Tax. The same was then credited to Service Tax A/c.

5.5. The service provider had also filed a declaration under VCES but failed to pay second installment upto 31.12.2014. However, first installment of VCES is already adjusted against total paid amount, i.e. Rs. 44,78,102/-.

5.6. The service provider was again issued summons vide letter F. No. STC/04-111/Prev/Gr-III/Aahana/14-15 dated 19.01.2015 to submit the documents for the period 2011-12 to 30.09.2014 but they failed to give statement and produce the relevant documents once again.

5.7. Therefore, a search was conducted at the registered premises of the service provider on 06.02.2015 under Search Warrant No. 47/2014-15. During the search, the department withdrawn relevant documents for the period Apr 13 to Sept 14 which includes ITR, Balance Sheet, Audit Report etc.

5.8. After search, number of summons issued, but the service provider failed to appear before the competent authority for giving statements and evidences.

5.9. On the line of earlier recovery under Section 87(b) of Finance Act, 1994, another cheque of Rs. 15,46,062/- was sent by Income Tax department and the same was credited to SBI A/c Service Tax. After that two more cheques of Rs. 11,52,772/- and Rs. 3,05,147/- were received from IT department and the amount covered under that cheques was credited to SBI A/c Service Tax.

5.10. On scrutiny of the Balance Sheets and P&L Statements of the said service provider for the period 2011-12 to 2014-15, a statement of the Director of the company, Shri Umang Trivedi, after issuance of "Summons to witness" letter bearing F.No. STC/04-111/Prev/Gr-III/Aahana/14-15 dated 16.03.2016, was recorded on 01.04.2016 under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

6. The contents of the said statement are reproduced below in Question-Answer format:-

"Que1. What is the nature of activities being undertaken by M/S AAHANA AIR SERVICES PVT. LTD., Ahmedabad and which is the main Taxable Services being engaged in by M/S AAHANA AIR SERVICES PVT. LTD., Ahmedabad?"

Ans. M/S AAHANA AIR SERVICES PVT. LTD. is engaged in providing Rent-a-Cab Services.

Que2. Under which Service category, it is registered in the Service Tax Department?

Ans. M/S AAHANA AIR SERVICES PVT. LTD., is registered under Rent-a-Cab Services only."

Que 3. What are the details of value of service provided by M/s AAHANA AIR SERVICES PVT. LTD., Ahmedabad during the period from 2011-12 to 2014-15 ?

Ans. The service tax calculation for the period 2011-12 to 2014-15 is as under-

Period	Gross Value	Basic Exemption	Value after Exemption	Abateme at @ 60%	Net taxable value	ST payable
2011-12	334250	334250	0	0	0	0
2012-13	22206949	1000000	21206949	12724169	8482780	1048472
2013-14	35712583	0	35712583	21427550	14285033	1765630
2014-15	57490024	0	57490024	34494014	22996010	2842307
Total					45763823	5656408

Further, I want to state that we opted for VCES Scheme for the period Apr, 12 to Dec, 12 and declared our liability amounting to Rs. 7,56,584/- but we failed to make payment which was declared under VCES. We have also paid Rs. 44,78,102/- against the liabilities for the period 2012-13 to 2014-15 till date.

Que 4. What are the details of the amount paid and Service Tax paid thereon with regard to services received by M/S AAHANA AIR SERVICES PVT. LTD., Ahmedabad from outside India or where the liability to discharge Service Tax rests with the Service Recipient under Reverse Charge Mechanism?

Ans. We are not receiving any services on which we are liable to pay under Reverse Charge Mechanism.

Que5. Whether all the amounts of service provided was shown in the total assessable value in the ST-3 Return filed for the respective period ?

Ans. No

Que 6. Have the Company ever intimated the Service Tax Department about the failure of timely payment of Service Tax ?

Ans. No.

Que 7. What is the reason for non payment of Service Tax liability?

Ans. There is one major reason for non payment is that Income Tax Department is our main client and they release payment late generally and due to that reason we face paucity of fund and are unable to pay Service Tax in time.

Que 8. Whether M/S AAHANA AIR SERVICES PVT. LTD. has provided/do provides any other category of services apart from "Rent-a-Cab services " ? If so, the details thereof.

Ans. No.

Que 9 Whether M/S AAHANA AIR SERVICES PVT. LTD., has made any agreement with clients?

Ans. Yes, mainly with Income Tax Department and Passport Department.

Qus. 10. Please explain the billing process of your company.

Ans. We raise bills on monthly basis after completion of month.

Qus. 11 Please explain the way your firm get the contracts/work from the clients/customers.

Ans. By tendering process.

Que12. Whether any Services provided which is mentioned under Negative List of Services ?

Ans, No

Que 13. Whether any Exemption under Notification claimed while providing services ?

Ans. No

Que 14. Whether any Abatement as per Finance Act, 1994 claimed while providing services ?

Ans. Yes we have availed benefit of abatement @ 60% under Rent-a-Cab Services vide Notification No. 26/2016-Service Tax.

Que15. Mention the Current & Saving Bank details of all the Owners/Directors/Directors of M/S AAHANA AIR SERVICES PVT. LTD., Ahmedabad.

Ans.

Union Bank of India	359301010035332	Current A/c
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Que 16. Whether ever any financial transactions in the guise of non-monetary consideration took place with any person to whom services were provided or being provided ?

Ans. There is no such case.

Que 17. Whether ever any Demand Notice/Assessed Order issued by the Income Tax authorities under Section 143(3) of Income Tax Act, 1961, were received. If so, the outcomes thereof ?

Ans. No"

7. Section 65(105)(o) of the Finance Act, 1994 defines the term taxable service for "Rent-a-Cab Scheme Operator Services" as under

"Rent-a-cab scheme operator" means any person engaged in the business of renting of cabs.

"Taxable service" means any service provided or to be provided to any person by a rent-a-cab scheme operator in relation to the renting of a cab.

8. 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."

9. 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 sale or purchase of foreign currency
- (o) Transportation of Passenger with or without accompanied belongings
- (p) Transportation of goods.
- (q) Mortuary/Funeral services

10. Section 67 of Finance Act, 1994 as amended by the Finance Act, 2006 (w.e.f. 18-4-2006) reads as :

(1) where service tax is chargeable on any taxable service with reference to its value, then such value shall, -

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such services provided or to be provided by him";

(i) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration ;

(ii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive e of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

11. Rule 3 of Service Tax (Determination of Value) Rules, 2006 provides that subject to the provisions of section 67, the value of taxable service, where such value is not ascertainable, shall be determined by the service provider in the following manner :

(a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;

(b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

12. As per the Provision of Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, every person providing taxable service to any person, liable to pay service tax at the rate prescribed in Section 66 (substituted to "66B" w.e.f. 1-7-2012) to Central Government by the 5th of the month / quarter immediately following the calendar month / quarter in which the payments are received towards the value of taxable services (except for the month of March which is required to be paid on 31st March).

13. According to Section 70 of the Finance Act, 1994 every person liable to pay service tax is required to assess the tax himself due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service tax by disclosing

wholly & truly all materials facts in ST-3 returns.

14. As per the provisions of Section 73(1) of the Act where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded, the Central Excise Officer may within one year from the relevant date, serve notice on the person chargeable with service tax which has not been levied or paid of 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 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 the reasons of

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression offsets; 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 service tax or his agent, the provisions of this sub section shall have effect, as for the words "one year", the words "five years" had been substituted.

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

16. During the investigation, it has been further noticed that the service provider has paid Service Tax amounting Rs. 4,77,543/- during the year 2012-13 before the initiation of inquiry.

17. In view of the facts discussed in foregoing paras and material evidence available on record, it appeared that the service provider have contravened the provisions of Section 66 of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to determine; collect and pay the service tax amounting to Rs. 51,78,866/- (including Education cess and S & H Edu. Cess) for the period from 2011-12 to 2014-15 as detailed above within the stipulated time limit; they have failed to declare value of taxable service in their service tax returns, to the department in the prescribed return in form ST-3 and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

18. It further appeared that the service provider have failed to pay service tax Rs. 51,78,866/- (including Education cess and S & H Edu. Cess) for the period from 2011-12 to 2014-15 on the taxable value of the services provided to their customers during the period from 2011-12 to 2014-15 with intent to evade payment of service tax. Thus, it was appeared that the service provider have failed to discharge the service tax liability of Rs. 51,78,866/- (including Education cess and S & H Edu. Cess) for the period from 2011-12 to 2014-15 and therefore, service tax is required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

19. As per Section 75 *ibid* every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government,

by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. The service provider has not discharged their Service Tax liability and hence is liable to pay interest under Section 75 as amended of the Finance Act, 1994.

20. The service provider had failed to file ST-3 returns since F.Y. 2011-12, the details of which is as under-

Financial year	period	Due date of filing return	Extended date of filing return
2012-13	April to June	25.10.2012	25.11.2012
	July to September	25.10.2012	30.4.2013
	October to March	25.4.2013	10.09.2013

Thus, the service provider has made themselves liable for late fees under Section 70 of the Finance Act, 1994.

21 As per the provisions of Section 87 of the Act where any amount payable by a person to the credit of the Central Government under any of the provisions of Chapter or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below :-

- (a) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs ;
- (b)
 - (i) the Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
 - (ii) every person to whom a notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary ;
 - (iii) in a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow ;

22 It thus appeared that the service provider has contravened the provisions of:

(a) **Section 66** of the Finance Act, 1994 in as much as they have failed to pay the service tax as detailed above, to the credit of Central Government.

(b) **Section 67** of the Finance Act, 1994 in as much as they failed to pay appropriate service tax on the gross value amount charged by them in respect of the taxable service of "Rent-a-Cab Scheme Operator Services" provided by them.

(c) **Section 68** of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules,

1994, in as much as they have failed to determine and make payment of proper Service Tax in full as Rs. 51,78,866/- (including Education cess and S & H Edu. Cess) for the period from 2011-12 to 2014-15 under the category of "Rent-a-Cab Scheme Operator Services" and w.e.f. 1-7-2012, engaged in providing taxable services as defined under Section 65B(44) Finance Act, 1994 which are not falling under Negative list of services as defined under Section 66D of the Finance Act, 2012, to the credit of the Government within the statutory time-limit prescribed at the relevant time-period.

(d) **Section 70** of the Finance Act, 1994 with Rule 7 of the Service Tax Rules, 1994, in as much as they have failed to self-assess the Service Tax on the Taxable value for the period from 2011-12 to 2014-15 within the stipulated time limit, resulting into non-payment of Service tax. As per the provision of Section 70, every person liable to pay the service tax shall himself assess the tax due on the services provided by him.

23 The service provider has not disclosed full, true and correct information about the value of the services provided by them. Thus, it appeared that there is a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appears that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of **Section 73(1)** of the Finance Act, 1994 to demand the Service Tax not paid.

24 It further appeared that the service provider have contravened the provisions of Section 70 of the Finance Act, 1994 and Rule 7 of the Service tax Rules, 1994 in as much as they failed to assess and pay correct amount of their Service Tax liability and failed to disclose the amount of taxable value and nature of the service provided by them in their ST-3 Returns. Therefore, it appears that the service provider is liable for penalty under **Section 77** of the Finance Act, 1994 for all the contraventions and violations made by them.

25 It also appeared that the service provider was liable to pay Service tax of Rs. **51,78,866/-** (including Education cess and S & H Edu. Cess) for the period from 2011-12 to 2014-15 on the taxable value of the services provided for the period from 2011-12 to 2014-15 in accordance with the provisions of Section 68 read with Rule 6 of Service Tax Rules, 1994 but failed to pay the same. Therefore, it appeared that the service provider is liable to penal action under **Section 78** of the Finance Act, 1994.

26 It further appeared that Shri Umang Trivedi, Director of M/s Aahana Air Service Pvt. Ltd., is the person who handles all the activity of the said company. Thus, he is the overall in-charge of all the affairs of M/s Aahana Air Service Pvt. Ltd. Further, he is the person who appears to have conceived the entire plan regarding the evasion and not depositing the Service tax to the tune of Rs. **51, 78,866/-** (including Education cess and S & H Edu. Cess) even after charging and collecting the same from customers, in respect of taxable services provided/received by them during the period from 2011-12 to 2014-15 as mentioned in foregoing paras. He has collected the amount as Service Tax but failed to pay the amount so collected to the credit of the Central Government thereby; he knowingly evaded the payment of Service Tax, as discussed in length in foregoing paras. Further, he has also failed to assess/declare the correct taxable value by not filing periodical ST-3 Returns for the period 2011-12 to 2014-15 for the taxable services provided/received by them. Thus, he appeared to have deliberately suppressed the correct value of the taxable services provided/received by them from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made there under, as discussed herein above in length. Thus, he, being Director of the Company, appeared to have masterminded/abated in the evasion of Service Tax on the taxable services as discussed hereinabove. He has, thus, violated the provisions of the Finance Act, 1994 and rules framed there under with intent

to evade payment of huge amount of Service Tax. In view of the above, Shri Umang Trivedi, Director of M/s Aahana Air Service Pvt. Ltd., appeared to be liable to penal action under **Section 78A of the Finance Act, 1994**, for the omissions & Commissions committed by him.

27 The Government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider.

28 Therefore, the service provider were called upon to show cause to the Additional Commissioner of erstwhile Service Tax, having office at 1st Floor, Central Excise Bhavan, Near Panjrapole, Ambawadi, Ahmedabad - 380015, as to why:-

(i) Service Tax not paid against the services rendered by them which are classified and considered as taxable services falling under the category of "Rent-a-Cab Scheme Operator Services", as defined under Section 65 of the Finance Act, 1994, as amended and w.e.f. 1-7-2012, engaged in providing taxable services as defined under Section 65B(44) Finance Act, 1994 which are not falling under Negative list of services as defined under Section 66D of the Finance Act, 2012, worked out as Rs. 4,57,63,823/- should not be considered as Net taxable value and Rs. 51,78,866/- (including Cess) (Rupees Fifty one Lakhs Seventy Eight Thousand Eight Hundred Sixty Six only) should not be considered as Service Tax amount thereon for the period from 2011-12 to 2014-15 demanded and recovered from them under **proviso to Section 73(1)** of the Finance Act, 1994. An amount of Rs.44,78,102/- already paid by them should not be appropriated against said Service Tax liabilities ;

ii. Interest as applicable on the entire Service Tax liability of Rs. 51,78,866/- for the period from 2011-12 to 2014-15 as mentioned & discussed here-in-aboveshould not be recovered from them for the delay in making the payment, under **Section 75** as amended of the Finance Act, 1994;

iii. Penalty should not be imposed upon them under **Section 77 (2)** of the Finance Act, 1994, as amended, as they have failed to assess and pay appropriate Service Tax and did not file Service Tax Returns as required under the provisions of Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 ;

iv. Penalty should not be imposed upon them under the provision of **Section 78(1)** *ibid* for contravening of the provisions and not disclosing the amount of Service Tax for taxable service provided by them with an intent to evade the payment of Service Tax ;

28.1. Shri. Umang Trivedi, Director of M/s. Aahana Air Services Pvt.Ltd was also called upon to show cause to the Additional Commissioner of erstwhile Service Tax Commissionerate, Ahmedabad as to why penalty should not be imposed on him under **Section 78A** for contravening of the provisions and for evasion of service tax and 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.

29. However, in pursuance of Notification No. 12/2017 C.Ex (NT) to Notification No. 14/2017-C.Ex (NT) all dated 09.06.2017 issued by the CBEC, the said show cause notice is to be adjudicated by an Officer in the rank of Additional/Joint Commissioner of Central

Goods and Service Tax & C.Excise of Ahmedabad-North Commissionerate and accordingly a corrigendum dated 1.8.2017 is issued to that effect.

30. The service provider and Shri. Umang Trivedi had not filed any reply to the show cause notice. Therefore vide letter dated 22/8/2017 they were requested to file reply to the notice. But neither reply to the show cause notice nor any letter requesting for extension of time for filing the reply is received from both the noticees.

31. Personal hearing was offered to the service provider and Shri. Umang Trivedi, Director of Aahana Air Services Pvt.Ltd on 22/09/2017 which was not attended by them. Hence, another date for hearing was fixed and accordingly vide letter dated 11.10.2017, they were requested to attend hearing on 02.11.2017 which was also not attended by them. Hearing date was re-fixed to 11.12.2017 which was communicated to them vide letter dated 01.12.2017; but the hearing was not attended by them.

Findings:

32. I have carefully gone through the case records. The present show cause notice provided that reply to the charges leveled against the noticees in the notice was to be filed within 30 days from the date of receipt of the notice, but no reply to the show cause notice dated 30.3.2017 is filed by both the noticees i.e. M/s. Aahana Air services Pvt.Ltd and it's director, Shri. Umang Trivedi. As per records it is seen that notice addressed to M/s. Aahana Air Services Pvt.Ltd and for Shri. Umang Trivedi, Director were received by Shri. Umang Trivedi on 5.4.2017. Following the introduction of the Central Goods and Service Tax (CGST) the change made in the adjudicating officer in their case is also informed to them through the corrigendum dated 1.8.2017. Further, both are found to have been reminded and requested by the department to file their reply to the notice. But both noticees opted to remain silent by way of not responding to the reminder/request.

32.1 Similarly, personal hearing was offered to them on three different dates; i.e. on 22.9.2017, 2.11.2017 & 11.12.2017, which was communicated to them well in advance. But, the noticees or their representatives did not attend the same on these dates. No request for postponement of the hearing was also received from them.

32.2. I find that sufficient opportunity is given to the noticees to make representation and adduce evidence against the charges or allegations made out against them and hence principles of natural justice are properly followed in this case. Under this circumstance, it can be inferred that they do not want to submit any written submissions and do not desire to be heard in person. Thus, I proceed to dispose of the case on the basis of available records.

33. Briefly the facts of the case before me are that the service provider was registered with the erstwhile Service Tax department under the category of service of 'rent-a-cab scheme operator service'. During the course of verification of data in respect of the service tax payable and service tax paid by various assesseees it was observed by the Preventive officers of the erstwhile Service Tax Commissionerate, Ahmedabad that the service provider viz. M/s. Aahana Air Services Pvt. Ltd, Ahmedabad, was not paying service tax. Further investigation made on the matter revealed that the service provider had not paid service tax amounting to Rs. 56,56,408/ on the taxable service of 'rent-a-cab scheme operator service' provided by them during 2011-12 to 2014-15. The investigation culminated in issuance of the present show cause notice which proposes the recovery of service tax amount along with interest under Section 73(1) & 75 of the Finance Act, 1994. and also proposes to penalize the service provider under the provisions of Section 77(2) & 78(1) of the Finance Act, 1994. Penalty under Section 78A of the Finance Act is also proposed on Shri. Umang Trivedi, Director of the service provider.

34. Thus, the issue to be decided in the case before me is as to whether the services rendered by the service provider during the period 2011-12 to 2014-15 were taxable and accordingly service tax was to be paid on the value of such services and the service provider and its director, Shri. Umang Trivedi are liable to be punished under the provisions of the Finance Act, 1994 or otherwise.

35 Allegation made in the notice is that the service provider had failed to pay the service tax in respect of the taxable service of 'rent-a-cab scheme operator service' provided by them during 2011-12 to 2014-15. The service provider was registered under the erstwhile Service Tax Rules/Finance Act, 1994 for providing the services falling under the category of 'rent-a-cab scheme operator services' defined under Section 65(105)(o) of Finance Act, 1994 and with effect from 1.7.2012 defined under Section 65B (44) of the Finance Act, 1994. Since the service provider was registered with the service tax department, they were required to work under the provisions and procedures laid down in the Chapter V of the Finance Act, 1994, Service Tax Rules, 1994 etc. Their basic obligation is that assessing the correct taxable value of services rendered by them in a given period and to discharge the service tax on such value at the prescribed rate within the specified time limit and to disclose the same through by filing periodical returns in specified form and manner before the department within the prescribed time limit. The service provider is alleged to have failed to follow these mandatory requirements.

36 Service tax on the services of 'rent-a-cab scheme operators' service was levied with effect from 1 April 2000. Erstwhile Section 65(91) of the Finance Act, 1994, defines rent-a-cab scheme operator as 'any person who is engaged in the business of renting of cabs'. Section 65 of the Act has ceased to apply with effect from 1.7.2012 vide Notification No. 20/2012-ST dated 5.6.2012. Prior to 1.7.2012, rent a cab service provided by rent a cab operator was a taxable service. Clauses (a) to (q) of Section 66D of the Finance Act, 1994, which come into effect from 1.7.2012, specified certain services which are not taxable. None of these clauses relate to renting of motor vehicle service. Therefore, services of renting of motor vehicle are taxable even after 1.7.2012.

37 It would be seen from above that service of 'rent-a-cab scheme operator service' is a taxable service. This fact is accepted by Shri. Umang Trivedi, Director of M/s. Aahana Air Services Pvt.Ltd in his statement recorded on 01.04.2016 before the erstwhile Service Tax (Preventive) Officer under Section 14 of the Central Excise Act, 1944.

38 Period involved in the notice during which the service tax is not paid by the service provider is 2011-12 to 2014-15. The service tax liability out on the part of them for the period from 2011-12 to 2014-15 after granting the benefit of exemption of aggregate value of taxable services not exceeding ten lakhs rupees during 2011-12 & 2012-13 is worked out as Rs. 56,56,408/ out of which an amount of Rs. 4,77,543/ was paid by the service provider before commencing the investigation. Accordingly, the notice proposes to recover the remaining amount of service tax payable, Rs. 51,78,866/ with interest from the service provider.

39 It is seen from the notice and the facts of the case that during the course of investigation, Income Tax department, to whom the maximum part of the services was provided by the service provider, was requested under the provisions of Section 87(b) of the Finance Act, 1994 to pay the money kept with them on account of M/s. Aahana Air Services Pvt.Ltd to the credit of the Service Tax department. Accordingly, following amount was received from Income Tax department at Ahmedabad through cheques, which was credited to Service Tax account in State Bank of India.

Sl No	Amount (Rs.)
1	14,74,121/
2	15,46,062/
3	11,52,772/
4	3,05,147/
Total	44,78,102/

The above said recovered amount through Income Tax department is proposed to be appropriated against their service tax liability of Rs.51,78,866/.

40 On going through the statement dated 1/4/2016 of Shri. Umang Trivedi, it is seen that their above said tax liability is accepted by him. He was also found to have ensured that the pending tax amount would be paid by them by the end of May, 2016. But no such payment was found to have been made by them.

41 It is thus proved that the service provider had failed to pay service tax leviable on their taxable services provided during the period from 2011-12 to 2014-15. The service provider was required to determine the assessable value for the purpose of payment of service tax on the taxable services they rendered and self-assess the amount of service tax leviable on the taxable income and deposit the service tax charged at the applicable rate, under the provisions of Sections 66, 67 and 68 of the Finance Act, 1994. Section 68 of the Finance Act, 1994 provides that every person providing taxable service to any person shall pay Service Tax at the rates specified in Section 66B in such manner and within such period as may be prescribed. Rule 6 (1) of Service Tax Rules, 1994 provided that service tax shall be paid to the credit of the central government by 6th day of the month for the previous month if deposited electronically using internet banking or by 5th day of the month for the previous month in any other case. The obligations cast on the service provider in terms of Section 66, 67 & 68 of the Act and Rule 6(1) of the Rules are not fulfilled by them. Whatever the service tax due from them is recovered by the department through other government department i.e. Income Tax department, was under the provisions contained under Section 87(b) of the Finance Act, 1994. After investigation started, the service provider is not found to have paid any amount at their own towards their service tax liability. It is evident from the statement of the Director of the company that even though they accepted their legal dues which was promised to be paid by them within a specified time limit, no such payment is made from their part.

42 Further, the service provider was required to furnish return in Form ST-3, in respect of the taxable service provided by them for which they are registered, under the provisions of Section 70 of the Finance Act, 1994, read with Rule 7 of the Service Tax Rules, 1994, with the jurisdictional Range office, within the stipulated period. It is an undisputed fact that the service provider had neither paid the service tax leviable on the 'Rent a Cab Scheme Operator Services', nor disclosed/intimated/filed returns to the department regarding the said services provided by them. The service provider has also not cared to fulfill the mandatory requirements provided under the Section 70 of the Finance Act and Rule 7 of the Service Tax Rules.

43 It is obvious from above that the service tax amount leviable on the taxable service rendered by the service provider during the period 2011-12 to 2014-15 is liable to be paid to the government account with interest. Show cause notice invoked the proviso to Section 73(1) of the Finance Act, 1994 to demand and recover the said dues from the assessee. I have perused the provisions of Section 73 (1) of the Finance Act, 1944 and the reasons given in the notice to defend the demand for longer period. Section 73(1) of the Act enables the Central Excise Officer to serve notice on the person chargeable with the service tax within eighteen months from the relevant date, where any service tax has not been levied or paid or short levied or short paid or erroneously refunded, requiring to

show cause why he should not pay the amount specified in the notice. The proviso to this section provides that the limitation of eighteen months may be extended to five years from the relevant date in the circumstances where any service tax has not been levied or paid or short levied or short paid or erroneously refunded by reason of fraud; or collusion; or willful mis-statement; or suppression of facts; or contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax. Proviso to Section 73(1) can be invoked only, where the Service Tax has not been paid or levied or short-paid or short levied, by reason of fraud; or collusion; or wilful misstatement; or suppression of facts; or contravention of any of the provisions of Chapter V of Finance Act, 1994 or rules made there under with intent to evade payment of Service Tax by the person chargeable with Service Tax. If any one of the ingredients is present, then the demand for not paid or short paid Service Tax can be made invoking extended period of limitation of 5 years, from the relevant date. In the case on hands it is undisputed that the service provider had not filed the statutory periodical returns, viz. ST-3 returns. Thus, the information in respect of the taxable services rendered by them and the value of such services provided was not available with the jurisdictional range officer. Purpose behind the non filing of such mandatory returns as per the provisions contained under Section 70 of the Finance Act, 1994, read with Rule 7 of the Service Tax Rules, 1994 by the service provider was to suppress the facts of their activities of providing of taxable services from the department with intention to evade the payment of service tax. It is worthwhile to note here that the tax evasion on the part of the service provider was uncovered during the course of verification of data in respect of registered assesseees. Thus, the elements which are essential to invoke the extended period of 5 years for raising demand under the proviso to Section 73(1) of the Finance Act, 1994 are in existence in the present case.

44 In view of the aforesaid discussion, I find that the service provider failed to declare and determine their correct tax liability and failed to pay service tax demanded under the present show cause notice. I also find that the service provider had suppressed the material facts from the department and contravened the provisions of Section 66, 67 & 68 and Section 70 of the Finance Act, 1994 and provisions of Rule 6 and Rule 7 of the Service Tax Rules, 1994 with intent to evade payment of service tax. Therefore, I find that the show cause notice is correctly issued to them by invoking extended period of five years under the proviso of Section 73(1) of the Finance Act, 1994 and I also find that the service tax demanded in the notice is recoverable from them under Section 73(2) of the Finance Act, 1994.

45 In view of the foregoing discussion I hold that demand made to recover the service tax amounting to Rs. 51,78,866/ is liable to be confirmed and the said amount of service tax is to be recovered from the service provider under Section 73(2) of the Finance Act, 1994. Notice further proposes to appropriate an amount of Rs. 44,78,102/ already paid by the service provider against the service tax liability of Rs. 51,78,866/. The notice says that during the course of investigation, the department under the provisions of Section 87(b) of the Finance Act, 1994 recovered an amount of Rs. 44,78,102/ from Income Tax department on account of the service provider which was then credited to the service tax account in state bank of India. Under the said circumstances, the recovered amount representing service tax on account of the service provider, i.e. Rs. 44,78,102/, is to be appropriated towards their total tax liability of Rs. 51,78,866/.

46 Coming to the proposal made in the notice to charge and recover interest on the service tax liability of Rs. 51,78,866/, I find that Section 75 of the Finance Act, 1994 provided that every person liable to pay the tax in accordance with the provisions of Section 68 or rules made thereunder who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay interest at the specified rate, as is for the time being fixed by the Central Government for the period by

which such crediting of the tax or any part thereof is delayed. Section 68 provides for payment of service tax to the central government. Section 68 also provides that every person providing taxable service to any person shall pay service tax at the rate specified in section 66B and in the specified manner. In the present case, it is proved beyond doubt that the service provider failed to credit the service tax to the account of the central government within the prescribed time limit. Thus the interest at the appropriate rate on the service tax amount of Rs. 51,78,866/ is chargeable from them in terms of Section 75 of the Finance Act, 1944.

47 Notice also proposes to penalize the service provider under the provisions of Section 77(2) and Section 78(1) of the Finance Act, 1944. Period involved in the present case is from 2011-12 to 2014-15. Hence penal provisions which were existence at that period in the Finance Act, 1994 are required to be examined. It is seen that by the introduction of Finance Bill, 2015, with effect from 14.5.2015, Section 78 of Finance Act, 1994 is amended or substituted. Thus, provisions of this section stood prior to 14.5.2015 are relevant here. Prior to Budget 2015, Section 78 was as under-

“(1) 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 (b) collusion (c) willful mis-statement (d) suppression of facts or (e) contravention of any of the provisions of the Act or Rules made thereunder with intent to evade payment of tax, the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to the service tax and interest thereon, if any payable by him, which shall be equal to the service tax so not levied or paid or erroneously refunded.

Provided that where true and complete details of the transactions are available in the specified records, penalty shall be reduced to fifty per cent. of the service tax so not levied or paid or short-levied or short-paid or erroneously refunded :

Provided further that where such service tax and the interest payable thereon is paid within thirty days from the date of communication of order of the Central Excise Officer determining such service tax, the amount of penalty liable to be paid by such person under the first proviso shall be twenty-five per cent. of such service tax :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount penalty so determined has also been paid within the period of thirty days referred to in that proviso:

.....
.....
Provided further that if the penalty is payable under this Section, the provisions of Section 76 shall not apply”

A focused study of Section 78 (1) of the Finance Act, 1994 would show 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 fraud; or collusion; or willful misstatement; or suppression of facts; or contravention of any of the provisions of Chapter V of the Finance Act, 1994 or of the rules made thereunder with the intent to evade payment of service tax, the person, liable to pay such service tax or erroneous refund, as may be determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon. It is already concluded that in the present case that the ingredients required to invoke the larger period for demand of the escaped Service Tax from the assessee, such as fraud, collusion, suppression of facts, contravention of any of the provisions of Chapter V of the Finance Act, 1994 , are visible as the service provider deliberately suppressed the material facts i.e. providing of taxable service, the value of taxable service provided etc, from the department with a willful intention to evade the payment of Service Tax and therefore the service provider is liable to pay such

service tax as per the provisions contained under Section 73(2) of the Finance Act, 1944. In such a situation, consequences under the provisions of Section 78(1) of the Act will definitely follow.

48 In the matter I observe that Hon'ble High Court of Punjab & Haryana in the case of CCE Vs. Haryana Industrial Security Services reported at 2011 (20) STR 210 (P&H) held that penalty under Section 78 equivalent to the amount of Service Tax was the minimum and upheld the penalty equal to service tax imposed under Section 78 of the Finance Act, 1994. Further, Hon'ble High Court of Karnataka at Bangalore in the case of CCE, Mangalore Vs. K. Vijaya C. Rai, reported in 2011 (20) 224 (Kar.) upheld the order of the adjudicating authority for imposition of penalty equal to service tax under Section 78 of the Act by observing that the party had willfully evaded the service tax by suppressing the facts from the department.

49 Since the service provider not filed the statutory returns viz. ST-3 returns, for the period covered in the notice, transactions of the taxable services rendered by the assessee during the period 2011-12 to 2014-15 were not available on any records access to the department. Department obtained the details of taxable services rendered by the assessee during the said period through the statement of the director of the company. Thus, benefit of the first proviso to Section 78; i.e. reduced penalty, is not available to the service provider.

50. Penalty under Section 77 (2) of the Finance Act, 1994 is also found to have been proposed against the service provider for their failure to assess and pay the service tax and to file the ST-3 returns as required under the provisions of Section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994. Section 77(2) of the Finance Act, 1994 read as under-

"Section 77(2) : Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees."

In the present case, it is established that the service provider failed to determine the value of taxable service and service tax payable and not paid the service tax and violated the provisions contained under Section 66, Section 67 and Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. Similarly, Section 70 of the Act read with Rule 7 of the Service Tax Rules provides for assessing the tax due on the services provided by him and for filing of return in prescribed form within the specified time limit. In this case, it is already concluded that the service provider failed to determine and assess their tax liability on the services rendered during the period in question. It is also an undisputed fact that the service provider failed to file the statutory returns i.e. ST-3 returns. Provisions of Section 77(2) of the Act provided that any person, who contravenes any of the provisions of the Chapter V of the Finance Act, 1994 or any rules made thereunder for which no penalty is separately provided in the Chapter, shall be liable to a penalty which may extend to ten thousand rupees. I observe that for the above discussed contraventions of the provisions of the Sections of Finance Act, 1994 and Service Tax Rules, 1994, no separate penalty is prescribed in any Sections of the Chapter V of the Finance Act, 1994 and in such a situation, provisions of Section 77(2) are applicable in the present case.

51 Show cause notice also proposes to penalize Shri. Umang Trivedi, Director of M/s. Aahana Air Services Pvt.Ltd under the provisions of Section 78A of the Finance Act, 1994 for contravening of the provisions and for evasion of service tax and failure to pay the 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. Shri. Umang Trivedi is a co-noticee in the case. It is to recall that Shri. Umang Trivedi also failed to file defense reply and to appear the hearing listed on three various dates. Such a position compel me to take a decision on the penal action against him suggested by the notice on the evidences available on records.

52 Finance Act, 2013 has inserted a new section 78A in the Finance Act, 1994 to provide for penalty for offences by director etc of a company w.e.f. 10.05.2013. Section 78A reads as under –

"78A. Where a company has committed any of the following contraventions, namely:-

- a. evasion of service tax; or*
- b. issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or*
- c. availment and utilisation 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*
- d. 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*
- e. 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."*

It would be evident from above that section 78A provides for imposition of penalty on director, manager, secretary, or other officer of the company, who is in any manner knowingly concerned with specified contraventions. Specified Contraventions are evasion of Service Tax, issuance of bill/Invoice/challan without provision of service in violation of rules, availment and utilization of credit of taxes /duties without actual receipt of services / goods either fully or partially, failure to pay amount collected as service tax to the credit of Central Government beyond 6 months of the due date.

53. The pre-condition to attract penalty under Section 78A of the Act is that the director, manager, secretary or other officer of the company must have been aware of the wrong- doing by a company resulting into evasion of payment of service tax . In the present case, the statement dated 01.04.2016 of Shri. Umang Trivedi, Director, recorded under Section 14 of the Central Excise Act, 1944 is vital in finding out his role in the contravention of some important sections of Finance Act, 1994 and some rules of Service Tax Rules, 1994 by M/s. Aahana Air Services Pvt.Ltd which facilitated to evade the service tax leviable on the taxable service in the category of Rent a Cab operator during the period 2011-12 to 2014-15. Shri. Umang Trivedi in this statement is found to have introduced himself that he is looking after all the affairs relating to service tax matters of the company; that he is responsible for discharging proper service tax and the timely payment of service tax liability and the day to day affairs related to service tax. Thus, it is very clear that Shri Umang Trivedi is responsible for looking after all day to day activities of the company including service tax liability. He also accepted the service tax liability of the company and promised to pay the remaining amount by the end of May, 2016; but he not cared to execute the promise given before the investigative officers. Thus it is clear that Shri. Umang Trivedi, Director of the company has full knowledge on the wrong-doing on the part of the company such as non filing of statutory ST-3 returns, non-payment of service tax on the taxable services provided by the company etc and hence he, being a director, is found to have facilitated the company to evade the payment of service tax to the credit of the central government. Directors are agents or trustees of the Company and

they are obliged to perform various statutory proceedings, including the payment of service tax payable on the taxable services rendered by the company within the stipulated time to the credit of the central government, on behalf of the Company. Directors' liability arises because of their position as agents or trustees of the Company. Any breach of the duties/obligations by any director would visit them with liability. It is proved that Shri Umang Trivedi, Director, responsible for discharging the service tax liability of the Company within the specified time limit and in specified manner, was well aware about the contraventions of Service Tax provisions with intention to evade payment of service tax by his company viz. M/s. Aahana Air Services Pvt.Ltd and hence he is liable to be penalized under the provisions of Section 78A of the Finance Act, 1994.

54 In view of above, I pass the following order.

ORDER

- (i) I confirm the demand of Service Tax amounting to Rs. 51,78,866/ (Rupees Fifty one lakhs seventy eight thousand eight hundred sixty six only), payable by M/s. Aahana Air Services Pvt.Ltd; 1, Chitrakoot Bunglow, Dehgam-Naroda Road, Ahmedabad on the taxable service under the category of "Rent a Cab Scheme Operator services" provided for the period from 2011-12 to 2014-15 under the provisions of Section 73(2) of the Finance Act, 1944 and order to recover the same from M/s. Aahana Air Services Pvt.Ltd, Ahmedabad.
- (ii) The amount of Rs. 44,78,102/ (Rupees Forty four lakhs seventy eight thousand one hundred and two only) already paid by them is appropriated towards the amount of service tax confirmed at sl.No (i) above.
- (iii) I order to recover interest at appropriate rate on the amount of service tax determined at Sl No.(i) above from M/s. Aahana Air Services Pvt.Ltd; 1, Chitrakoot Bunglow, Dehgam-Naroda Road, Ahmedabad under Section 75 of the Finance Act, 1994.
- (iv) I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon M/s. Aahana Air Services Pvt.Ltd; 1, Chitrakoot Bunglow, Dehgam-Naroda Road, Ahmedabad under Section 77 (2) of the Finance Act, 1994.
- (v) I impose a penalty of Rs. 51,78,866/ (Rupees Fifty one lakhs seventy eight thousand eight hundred sixty six only) upon M/s. Aahana Air Services Pvt.Ltd; 1, Chitrakoot Bunglow, Dehgam-Naroda Road, Ahmedabad under Section 78 (1) of the Finance Act, 1994.
- (vi) I impose a penalty of Rs.1,00,000/- (Rupees One Lakh only) upon Shri. Umang Trivedi, Director of Aahana Air Services Pvt.Ltd; 1, Chitrakoot Bunglow, Dehgam-Naroda Road, Ahmedabad under Section 78A of the Finance Act, 1994

Proceedings under the above mentioned provisions are saved by Section 174 of the Central Goods and Service Act, 2017.


(G.C. Jain)

Joint Commissioner
Central Goods & Service Tax and C.Excise,
Ahmedabad-North

FNo. STC/4-105/O&A/15-16

Ahmedabad, dated 06 .02.2018

By Regd Post A.D.

To

- (1) M/s. Aahana Air Services Pvt.Ltd;
1, Chitrakoot Bungalow, Near Surdhara Society,
Dehgam-Naroda Road, Ahmedabad
- (2) Shri. Umang Trivedi,
Director of Aahana Air Services Pvt.Ltd;
1, Chitrakoot Bungalow, Near Surdhara Society,
Dehgam-Naroda Road, Ahmedabad

Copy to:-

- (1) The Commissioner, CGST & C.Excise, Ahmedabad-North (RRA section)
- (2) The Assistant/Deputy Commissioner of CGST & C.Excise, Division-I,
Ahmedabad North
- (3) The Superintendent of CGST & C.Excise, AR-1 /Division-I, Ahmedabad
North
- (4) Guard file.