


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p><b>GST</b> ONE NATION, ONE TAX, ONE MARKET</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

DIN 20210164WT000000D484

फ़ा.सं./F.No. STC/15-35/OA/2017

आदेश की तारीख/Date of Order :- 11.01.2021

जारी करने की तारीख/Date of Issue :- 12.01.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / *Marut Tripathi*

संयुक्त आयुक्त / *Joint Commissioner*

**मूल आदेश संख्या / Order-In-Original No. 33/JC/ MT /2020-21**

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

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

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

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क या निजी विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

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

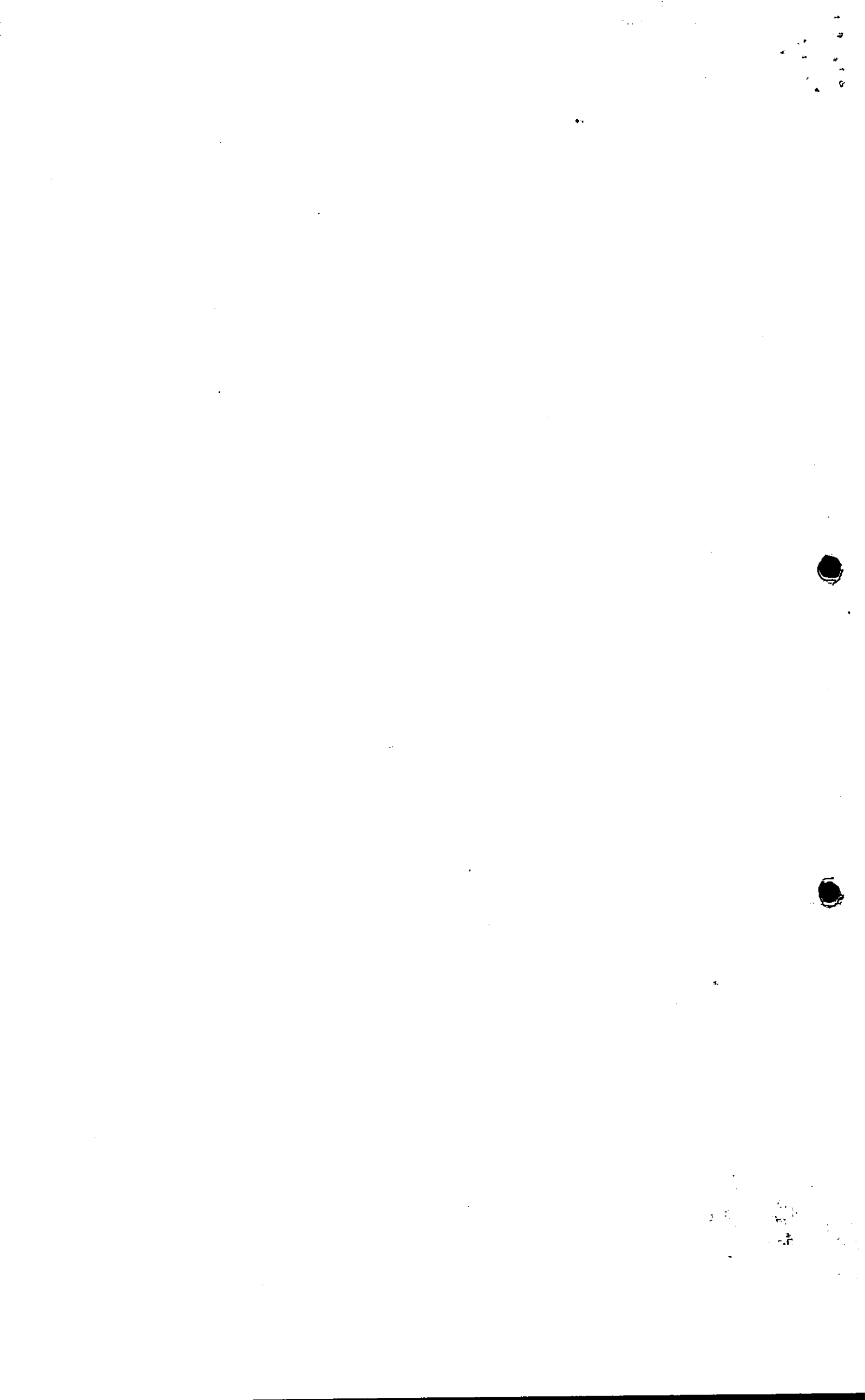
The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

Copy of accompanied Appeal.

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.

कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. STC/15-35/OA/2017 dated 07.11.2017 issued to Abhik Advertising Pvt. Ltd., 29, Aditya Bunglows, Near Goyal Intercity, Opp. T.V. Tower, Thaltej, Ahmedabad-380054.





**BRIEF FACTS OF THE CASE:**

M/s. Abhik Advertising Pvt. Ltd., 29, Aditya Bunglows, Near Goyal Intercity, Opp. T.V. Tower, Thaltej, Ahmedabad – 380 054 (presently operating from C-3-405/ 4<sup>th</sup> Floor, Anushruti Flats, Near Muktidham Jain Derasar, Near Thaltej Cross Road, S.G. Highway, Thaltej, Ahmedabad – 380 059) (herein after referred to as the "said assessee" or "M/s. Abhik") has been engaged in providing taxable services viz. 'Advertising Agency Service' and has been holding Service Tax Code (Registration Number) AAGCA 7384N ST001.

2. It was gathered that the said assessee was neither regularly paying Service Tax nor filing Service Tax returns in time. It was also observed that the assessee filed ST-3 returns for the period from October, 2013 to March, 2016 on 21/22.07.2016 but neither paid any interest for late payment nor paid late fee for late filing of Service Tax returns for the said period. It was also observed that several Challans mentioned in the Service Tax Returns for April, 2015 to September, 2015 and for the period October, 2015 to March, 2016 were not in existence. It was also observed that there was huge difference between income shown in the Balance Sheets and income shown in ST-3 Returns. In view thereof, an investigation was initiated against the said assessee.

3. A statement dated 18.10.2016 of Shri Mukesh Bhailalbhai Patel, Director of M/s. Abhik was recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, wherein he *inter-alia* stated that he was looking after all the works, including Service Tax, of their company since its inception and he was well versed with the activities carried out by their company. He further stated as follows :-

**Question-1:** Please specify the activities of the company namely M/s. Abhik Advertising Private Limited? Give the details of other Directors in the company?

**Answer-1:** Our company is engaged mainly in providing Advertising agency services. We provide services of Outdoor Media to State Government and others for hoarding services, print media, electronic media i.e. TV and radio. The Government gives us release order for giving advertisements in electronic media for their various schemes of public awareness. We are the agency for releasing the advertisements in different media like print, electronic media. We also pay rent for hoardings as well as earn rent on hoardings. We also earn Commission income. We are also engaged in trading of shares and securities.

**Question-2:** On going through the Service Tax records, it appears that you are not discharging Service Tax liability in time as well as delayed in filing ST-3 returns?

**Answer-2:** We have not discharged our Service Tax regularly as well as delayed in filing ST-3 returns. I state that our company is mainly engaged in business with Government and due to outstanding dues and payments yet to be received, we are facing financial crunch. Due to this reason we are not in a position to pay Service Tax on time. We have yet to pay late fees on late filed ST-3 returns and interest on delayed payment of Service tax liabilities from 2013-14 to till date. I assure you to pay all pending dues at earliest.

**Question-3:** Do you avail any exemption of Service Tax for the services provided to your clients?

**Answer-3:** Yes sir, we availed exemption of service tax on income from hoardings during the period 01.07.2012 to 03.09.2014. We are also availing exemption of 85% of the total value on print media income. We discharge service at applicable rate on only 15% of the print media income.

**Question-4:** Give the details of your subsidiary/sister companies?

**Answer-4:** Yes. We have a proprietary firm in the name of Abhik Advertising Agency, a proprietorship concern and I am the proprietor of the said firm. Sir, we do not have any sister companies.

**Question-5:** On going through all your ST-3 Return from F.Y. 2012-13 it is noticed that the challan mentioned in ST-3 Returns does not match with the challan available in your ACES record. Please submit the copies of challans mentioned in the ST-3 return from F.Y. 2012-13 onwards.

**Answer-5:** I assure that almost all the service tax liabilities from 2012-13 to till date have been discharged by us. I assure to submit a summary of service tax



payable and paid along with details of respective GAR-7 challans, their dates and amounts within 3 days from F.Y. 2012-13 to onwards.

**Question-6:** You have mentioned challan no. 02926682207201600001 for Rs. 4,64,616, Rs. 29,21,155 and Rs. 27,89,822 (Total Rs. 61,75,593) in ST-3 Returns for the period Oct 15 to March 16 and challan no 02926682107201600001 for Rs 5,63,417 and challan no 02926682107201600002 for Rs 10,00,000/- (Total Rs 15,63,417) in ST-3 Returns for the period April 15 to Sept 15, which does not found in your record. Please submit the copies of above mentioned challans.

**Answer-6:** I state that due to technical error by our accountant during the filing of ST-3 return the aforesaid challans were wrongly mentioned in the ST-3 return. The challan number 02926682107201600001 for Rs 5,63,417 and challan no. 02926682107201600002 for Rs. 10,00,000/- were actually of dated 04.01.2016 and dated 06.02.2016 respectively. The challan number 02926682207201600001 for Rs. 4,64,616, Rs. 29,21,155 and Rs. 27,89,822 was not paid at the time of filing of the ST-3 return. However an amount of Rs. 47 lakhs have been paid vide two Challans dated 21.09.2016 of Rs 30 lakhs and dated 07.10.2016 of Rs 17 lakhs from the above said amount which were wrongly mentioned in the ST-3 return as stated above.

**Question-7:** What is the outstanding Service tax liability from the financial year 2012-13 to 30.09.2016 of your company?

**Answer-7:** After debiting the CENVAT credit and some payments by challans, there is an amount of approximately 16 lakhs outstanding for the year 2015-16 as per Balance Sheet. After debiting the Cenvat credit of Rs. 13.12 lakh approximately Service tax of Rs 15.54 lakhs is payable for the period April 2016 to September 2016 as per service tax payable ledger and calculation.

**Question-8:** You have shown exempted service income from F.Y. 2012-13 to 2014-15. Did you maintain separate account for Cenvat credit of exempted and taxable services?

**Answer-8:** No, we did not maintain any separate account as we have not availed any CENVAT credit on hoarding income during the period of exemption from 1.7.2012 to 30.9.2016.

**Question-9:** Please furnish the bank account details of your company.

**Answer-9:** We are having accounts in different banks. Details of the same are as follows :-

1. Union Bank of India A/c No 557901010050156, 557904010000061, 557901010050081
2. Deutsche Bank A/c No 000023451810019
3. United Co Op Bank A/c No. 1254
4. Corporation Bank A/c No. CBCA/478

**Question-10:** How much Service tax liability is being paid by you today?

**Answer-10:** I pay an amount of Rs. 5 lakhs vide Challan dated 18.10.2016 towards outstanding liabilities as mentioned above. I assure to pay the remaining amount of service tax and any differential amount arising at the time of reconciliation of income as per Balance Sheet vis-à-vis ST-3 return along with applicable interest and penalty

**Question-11:** As per the given table ratio of Cenvat Credit utilised in F.Y. 2015-16 is increased to double as compared to F.Y. 2014-15. What is the reason of increasing so much Cenvat credit?

Sr. No.	Year	Income in ST-3 Return	ST payable	Paid by PLA	Paid by Cenvat	% of Cenvat
1	2014-15	7,42,86,829	91,81,852	70,46,124	21,33,675	23.24
2	2015-16	22,46,41,653	3,22,04,261	1,66,91,185	1,55,13,075	48.17

**Answer-11:** As compare to F.Y. 2014-15 our turnover is increased more than three times in the F.Y. 2015-16. We have paid more service tax on the input services and specifically in the financial year 2015-16 we have received orders of more than rupees 14 crores from Gujarat Government. We have paid a huge amount as Commission to get the above said orders and have taken and utilised Cenvat Credit on the above said Commission paid.



4.1 The term "Advertisement" and "Advertising Agency" were defined under clauses (2) and (3) of Section 65 of the Finance Act, 1994 as follows:

"advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas;

[Section 65(2)]

"advertising agency" means any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

[Section 65(3)]

4.2 The taxable service was defined under clause (105) of Section 65 of the Finance Act, 1994 as follows :-

(105) "taxable service" means any service provided or to be provided; -

- (a) .....  
 (e) to any person, by an advertising agency in relation to advertisement, in any manner;

4.3 The Service Tax regime shifted from the concept of service wise classification and levy of service tax on specified services (selective taxation) to comprehensive taxation on services (excluding services in negative list or exempted services) with effect from 01.07.2012. The term "advertisement" and "service" were defined under clause (2) and (44) of Section 65B of the Finance Act, 1994 as follows :-

(2) "advertisement" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person; members of office;

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—  
 (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or  
 (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or  
 (iii) a transaction in money or actionable claim;  
 (b) a provision of service by an employee to the employer in the course of or in relation to his employment;  
 (c) fees taken in any Court or tribunal established under any law for the time being in force.

**Explanation 1.** — For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or  
 (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or  
 (C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

**Explanation 2.** - For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include —

- (i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another



form, currency or denomination for which a separate consideration is charged;

- (ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out —
- (a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998;
- (b) by a foreman of chit fund for conducting or organising a chit in any manner.;

**Explanation 3.** — For the purposes of this Chapter,—

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- (b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

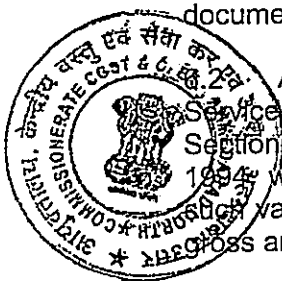
**Explanation 4.** — A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

5.1 It appeared from the foregoing legal provisions that the said assessee was engaged in providing taxable service. "Advertising Agency Service" which was leviable to Service Tax at applicable rate for the period from 01.07.2012 as well as for the period prior to 01.07.2012 and "selling of space for advertisement" (hoarding) which was leviable to Service Tax at applicable rate for the period upto 30.06.2012 and from 01.10.2014) . The assessee has also not disputed this fact.

5.2 The details of Gross Income of the said assessee shown in Balance Sheet / Books of Account had been verified. The amount of Service Tax not paid as on 18.10.2016 (i.e. the date of commencement of investigation against the said assessee) for the F.Y. 2015-16 and 2016-17 (April – September) by the said assessee had been worked out on the basis of the details of Gross Income, Income not liable to Service Tax (Sale of goods not linked with provision of service, interest income, intra-day profit, Shares sales and other income), Exemption of 85% claimed by the assessee on Advertisement given in Print Media, Net Taxable Income, Service Tax payable, Service Tax paid through CENVAT Credit and Service Tax paid in cash through Challan. Thus, on verification of Gross Income of the said assessee shown in Balance Sheet/ Books of Account and other details, it appears that the said assessee had suppressed the value of taxable services in the ST-3 returns filed by them and thereby evaded payment of applicable Service Tax on such value of taxable service during the F.Y. 2015-16. (The ST-3 return for the period April to September, 2016 was not filed at the time of commencement of investigation). The details of Service Tax so evaded and not paid / short paid by the said assessee are as shown in Annexure – A1 to this show cause notice.

6.1 It appeared that in case of "Advertising in Print Media (Advertising Agency Service), the said assessee had calculated the amount of Service Tax payable on the only 15% of the amount of invoice value. It was informed to the said assessee vide letter dated 06.04.2017 that in case of "Advertising in Print Media", they were availing exemption of 85% regularly on the value of services provided and were paying Service Tax on only 15% of the value, without mentioning the Notification No. of the same, and the assessee was requested to clarify the same along with all the supporting documents. The assessee was also requested to submit copies of sample invoices raised to their clients and of those which had been raised to them by the Broadcasting agency. As no reply was received from the said assessee, they were again requested vide letters dated 05.05.2017, 20.06.2017, 28.07.2017, 22.08.2017 and 28.09.2017 to submit the required clarification and documents. However, the assessee had neither submitted any clarification and documents nor replied to these letters.

As per Section 66 and 66B of the Finance Act, 1994, applicable during relevant period, the Service Tax was levied at the prescribed rate on the value of taxable service. Further, as per Section 67 of the Finance Act, 1994, subject to the provisions of Chapter V of the Finance Act, 1994 where Service Tax is chargeable on any taxable service with reference to its value, then such value shall, in a case where the provision of service is for a consideration in money, be the Gross amount charged by the assessee for such service provided or to be provided by him.



6.3 As the Service Tax is chargeable on "Advertising Agency Service" with reference to its value, and the assessee had not submitted any clarification and documents requested from them through various letters, it appeared that the said assessee was liable to pay Service Tax at appropriate rate on the gross amount charged by them for such service provided or to be provided by them. The details of amount charged by the said assessee for "Advertising Agency Service" on which Service Tax has not been paid, the amount of Service Tax, Education Cess, SHE Cess, Swachh Bharat Cess and Krishi Kalyan Cess payable on such amount but not paid by the said assessee are shown in Annexure - B to this show cause notice.

7.1 It was also observed that the said assessee did not file their ST-3 Returns within stipulated time. There was delay in filing of ST-3 Returns, as shown below, but the said assessee did not pay the late fee, as required under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

Year	Period	Due Date of filing Return	Date of filing of Return	Delay (number of Days)
2011-12	October-March	25.04.2012	09.11.2012	198
2012-13	April-June	25.11.2012	10.11.2012	0
	July-September	30.04.2013	23.04.2013	0
	October-March	10.09.2013	10.07.2015	668
2013-14	April-September	25.10.2013	22.04.2014	179
	October-March	25.04.2014	22.07.2016	819
2014-15	April-September	14.11.2014	22.07.2016	616
	October-March	25.04.2015	22.07.2016	454
2015-16	April-September	25.10.2015	21.07.2016	270
	October-March	29.04.2016	22.07.2016	84
2016-17	April-September	25.10.2016	02.01.2017	69

7.2 The details of late fee required to be paid by the said assessee is shown in Annexure-C to this show cause notice.

8.1 It was observed that the said assessee either did not make full payment or made delayed payment of Service Tax, Education Cess, Secondary & Higher Education Cess, Swachh Bharat Cess. However, at the time of filing of ST-3 returns, they have shown the details of Challan against respective months, so as to indicate that they had made full payment of Service Tax and other Cesses, within time, and there was neither short payment of taxes nor there was delayed payment of taxes requiring payment of interest. Many of such Challan numbers shown in ST-3 Returns filed by the said assessee did not exist, as no such payment was made by the said assessee.

8.2 In the Service Tax Return (ST-3 Return) for the period April - September, 2015, the said assessee has shown following details relating to Service Tax paid in cash and details of Challan :-

Month (2015-16)	Service Tax	Edu. Cess	SHE Cess	Total	Challan No.	Amount
April	22359	0	1075	23434	02926680401201600001	23434
May	327309	6145	5646	339100	02926680401201600001	339100
June	455845	0	0	455845	02926680401201600001	455845
July	123987	0	0	123987	02926680401201600001	123987
August	966217	0	0	966217	02926680401201600001	966217
Sept.	1563417	0	0	1563417	02926682107201600001	563417
					02926682107201600002	1000000
<b>Total</b>	<b>3459134</b>	<b>6145</b>	<b>6721</b>	<b>3472000</b>		<b>3472000</b>

Thus, from the details submitted by the said assessee in their ST-3 Return for the period April-September, 2015, it appeared that the said assessee had paid the total Service Tax payable for each month through specific challan(s) as shown in the said ST-3 Return. However, none of the aforesaid Challans shown in the ST-3 return existed, as the said assessee did not pay the Service Tax amount through such challan as shown in the ST-3 Return.



8.3 Similarly, in the Service Tax Return (ST-3 Return) for the period October, 2015 – March, 2016, the said assessee has shown following details relating to Service Tax paid in cash and details of Challan :-

Month (2015-16)	Service Tax	Swachh Bharat Cess	Total	Challan No.	Amount
Oct.	526616	0	526616	02926680902201600001	526616
Nov.	1004559	6573	1011132	02926680902201600001	1011132
Dec.	5267532	240688	5508220	02926680902201600001	3462252
				02926681902201600001	2045968
Jan.	2621725	168097	2789822	02926682207201600001	2789822
Feb	400697	63919	464616	02926682207201600001	464616
Mar.	2554156	366999	2921155	02926682207201600001	2921155
<b>Total</b>	<b>12375285</b>	<b>846276</b>	<b>13221561</b>		<b>13221561</b>

Thus, from the details submitted by the said assessee in their ST-3 Return for the period October, 2015 – March, 2016, it appeared that the said assessee had paid the total Service Tax payable for a month through specific challan(s) as shown in the said ST-3 Return. However, none of the aforesaid Challans shown in the ST-3 return existed, as the said assessee did not pay the Service Tax amount through such the challans as shown in the ST-3 Return.

8.4 Thus, the said assessee, at the time of filing of ST-3 returns, had camouflaged the details of Challans against respective months, so as to mislead the department to believe that they had made full payment of Service Tax and other Cesses within time and there was neither short payment of taxes nor there was delayed payment of taxes requiring payment of interest. As shown above, many of such Challan numbers shown in ST-3 Returns filed by the said assessee did not exist as no such payment was made by the said assessee. It was only after detection and pointing out by the department of this mal-practice adopted by the said assessee that the said assessee accepted it, and Service Tax not paid by them (but shown to have been paid through various non-existing Challans in the ST-3 Returns) has been paid. As a result of the investigation carried out by the department, the amount of interest on delayed payment of Service Tax has also been paid by the said assessee. The details of Service Tax and Interest paid by the assessee are shown in Annexure – E to this show cause notice.

9.1 During the investigation, the said assessee paid an amount of Rs. 5,00,000/- through challan dated 18.10.2016.

9.2 The said assessee, vide letter dated 24.10.2016 informed that apart from Rs. 5,00,000/- paid by them on 18.10.2016, following 6 more challans worth Rs. 41,36,585/- have already been paid by them.

Sr. No.	Date of Payment	Amount	Period
1	24.10.2016	14,39,666/-	Service Tax plus interest for the month of June-2016
2	24.10.2016	3,27,222/-	Service Tax plus interest for the month of August-2016
3	24.10.2016	6,54,805/-	Service Tax for the year 2015-16
4	20.10.2016	5,00,000/-	Service Tax for the year 2015-16
5	24.10.2016	3,04,812/-	Interest paid for the year 2015-16
6	24.10.2016	9,10,080/-	Interest paid for the year 2015-16
	<b>Total paid</b>	<b>41,36,585/-</b>	

9.3 The said assessee, vide letter dated 08.11.2016 further informed that following more challans worth Rs. 21,10,691/- have been paid by them on 29.10.2016.



Date of Payment	Amount	Period
29.10.2016	7,21,998/-	Interest for F.Y. 2014-15
29.10.2016	7,55,995/-	Interest for F.Y. 2014-15
29.10.2016	4,31,374/-	Interest for F.Y. 2013-14
29.10.2016	2,01,324/-	Interest for F.Y. 2013-14
<b>Total paid</b>	<b>21,10,691/-</b>	



9.4 The said assessee, vide letter dated 07.03.2017 further informed that following more challans worth Rs. 6,56,454/- have been paid by them on 27.02.2017.

Sr. No.	Date of Payment	Amount	Period
1	27.02.2017	3,07,320/-	For F.Y. 2012-13
2	27.02.2017	2,16,182/-	For F.Y. 2013-14
3	27.02.2017	1,32,952/-	For F.Y. 2015-16
<b>Total paid</b>		<b>6,56,454/-</b>	

9.5 The said assessee, vide letter dated 06.11.2017 further informed that they had utilized following Challans to adjust the liability of first half of 2016-17.

Sr. No.	Date of Payment	Amount	Period
1	11.01.2017	14,433/-	For F.Y. 2016-17 (1 <sup>st</sup> Half)
2	06.04.2017	14,729/-	For F.Y. 2016-17 (1 <sup>st</sup> Half)

10.1 From the foregoing, it appeared that the said assessee has suppressed the value of taxable services in the ST-3 returns filed by them as compared to the details shown in their Balance Sheets and Books of Accounts and thereby evaded payment of applicable Service Tax on such value of taxable service during the F.Y. 2015-16 and 2016-17 (April to September). The amount of Service Tax of Rs. 36,57,694/-, thus not paid / short paid appears to be recoverable from the said assessee under the provisions of Section 73(1) of the Finance Act, 1994. The details of the said Service Tax not paid / short paid by the said assessee are shown in Annexure – A1 to this show cause notice. As the aforesaid amount of Service Tax not paid / short paid by the said assessee has already been paid by them, as shown in Annexure – D to this show cause notice, the same needs to be appropriated against the aforesaid demand.

10.2 It also appeared that the said assessee was liable to pay Service Tax at appropriate rate on the gross amount charged by them for 'Advertising Agency service' provided or to be provided by them, but they have calculated the amount of Service Tax payable on only the 15% of the amount of invoice value. The said assessee had failed to submit any clarification or document in support of their claim, in spite of repeated requests being made by the department. It, therefore appeared that the said assessee was liable to pay the Service Tax at appropriate rate on the gross amount charged by them for 'Advertising Agency service' provided or to be provided by them and the amount of Service Tax of Rs. 33,35,077/- thus not paid / short paid by the said assessee appeared to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994. The details of the said Service Tax not paid / short paid by the said assessee are shown in Annexure – B to this show cause notice.

10.3 It also appeared that the said assessee did not file their ST-3 Returns within stipulated time for which they are liable to pay the late fee of Rs. 1,45,000/-, as required under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994. The details of delay in filing of ST-3 Returns by the said assessee and late fee payable thereon is shown in Annexure – C to this show cause notice.

11.1 The said assessee also appeared to be liable to pay interest at applicable rate under Section 75 of the Finance Act, 1994 on the aforesaid amount of Service Tax not paid / short paid as shown in Annexure – A1 and Annexure - B. The amount of interest of Rs. 3,90,418/- as shown in Annexure A2, payable on the amount of Service Tax not paid / short paid as shown in Annexure – A1, has already been paid by the said assessee, which requires to be appropriated against the aforesaid demand of interest.

11.2 The assessee is also liable to pay interest at applicable rate under Section 75 of the Finance Act, 1994 on the amount of Service Tax which was not paid by them within prescribed period. The assessee has already paid the interest on delayed payment of Service Tax, as shown in Annexure – D to this show cause notice.

It also appears that the said assessee has contravened the following provisions :-

Section 67 of the Finance Act, 1994 inasmuch as they have failed to assess and determine the correct value of taxable service provided by them;

Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 (herein after referred to as the 'STR, 1994') inasmuch as they have failed to



pay the Service Tax to the credit of the Central Government within the stipulated time period;

- (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the STR, 1994 inasmuch as they failed to properly assess the tax due on the services provided by them and also failed to furnish the ST-3 Returns within the stipulated time period;
- (iv) Section 77 of the Finance Act, 1994 in as much as they failed to furnish the information and documents called for from them and other acts of omission and commission discussed herein above.

12.2 All these acts of contravention on the part of the said assessee appeared to have been committed with an intent to evade payment of appropriate Service Tax.

12.3 The said assessee had suppressed the actual value of supply of taxable services and willfully mis-stated the value of supply of taxable services in the ST-3 Returns filed by them and thereby evaded payment of appropriate Service Tax on the amount of taxable services, which had been detected by the department during investigation by comparing the value of taxable services shown in the ST-3 returns filed by them with the details shown in their Balance Sheets and Books of Accounts.

12.4 The said assessee did not show the gross amount charged by them for 'Advertising Agency Service' provided or to be provided by them in the ST-3 Returns filed by them but calculated the amount of Service Tax payable on only 15% of the amount of invoice value in respect of such service, though this fact had not been disclosed in the ST-3 Return. Thus, the assessee had suppressed the actual value of supply of taxable services and willfully mis-stated the value of supply of tax able services in the ST-3 Returns filed by them and thereby evaded payment of appropriate Service Tax on the amount of taxable services for 'Advertising Agency Service'.

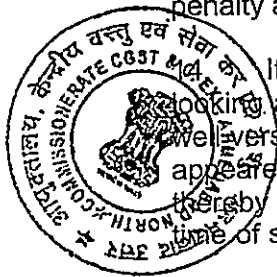
12.5 It, thus appeared that the said assessee had not paid / short paid Service Tax by reason of suppression of facts and willful mis-statement in as much as they had not fully shown the details of taxable services in ST-3 Returns filed by them. Even in respect of the transactions recorded in their books of account, the said assessee did not show the correct details in the ST-3 Returns filed by them and has not fully discharged the Service Tax liability. It was only after detection of Service Tax evasion during the course of investigation by the department that the said assessee paid the amount of Service Tax so evaded.

12.6 Even in respect of details of transactions shown in the ST-3 returns filed by the said assessee, they either did not make full payment or made delayed payment of Service Tax. However, at the time of filing of ST-3 returns, they had camouflaged the details of Challan against respective months, so as to mislead the department to believe that they had made full payment of Service Tax and other Cesses within time and neither there was short payment of taxes nor there was delayed payment of taxes requiring payment of interest. Many of such Challan numbers shown in ST-3 Returns filed by the said assessee did not exist as no such payment was made by the assessee. It was only during the scrupulous investigation that such mal-practice adopted by the said assessee was pointed out, which was accepted by the said assessee, and Service Tax not paid by them (but shown to have been paid through various non-existing Challans in the ST-3 Returns) has been paid along with interest by the said assessee.

12.7 All the aforesaid acts of omission and commission on the part of the said assessee appear to have been committed with an intent to evade payment of Service Tax, or by suppressing the facts or by willfully mis-declaring the facts. Therefore, the amount of Service Tax not paid or short paid requires to be demanded and recovered from the said assessee by invoking extended period of five years, as per proviso to sub-section (1) of Section 73 of the Finance Act, 1994.

13. As the said assessee appeared to have evaded the payment of Service Tax by suppressing the facts or by willful mis-declaration or by contravention of the provisions of the Finance Act, 1994 or the rules made there under with an intent to evade payment of Service Tax, on the grounds and evidences as discussed herein above, they appeared to have rendered themselves liable to penalty as provided under Section 78 of the Finance Act, 1994.

It also appeared that Shri Mukesh Bhailalbai Patel, Director of M/s. Abhik had been looking after all the work, including Service Tax, of their company since its inception and he was well versed with the activities carried out by their company. As discussed herein above, M/s. Abhik appeared to have committed the contravention of the provisions of the Finance Act, 1994 and thereby evaded the Service Tax. As Shri Mukesh Bhailalbai Patel, Director of M/s. Abhik, at the time of such contravention was in charge of, and was responsible to, the company (M/s. Abhik) for



the conduct of business of M/s. Abhik and was knowingly concerned with such contravention, he appeared to be liable to penalty as provided under the provisions of Section 78A of the Finance Act, 1994.

15. Therefore, M/s. Abhik Advertising Pvt. Ltd. Was called upon to show cause as to why :-

- (i) The Service Tax amounting to Rs. 36,57,694/- (Rupees Thirty Six Lakh Fifty Seven Thousand Six Hundred Ninety Four Only) as shown in Annexure – A1 to this show cause notice, should not be demanded from them under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 and as they have paid the said amount, the same should not be appropriated against the said demand;
- (ii) The interest amounting to Rs. 3,90,418/- (Rs. Three Lakh Ninety Thousand Four Hundred Eighteen Only) on the amount of Service Tax not paid / short paid mentioned at (i) above, as shown in Annexure-A2 to this show cause notice, should not be demanded from them under Section 75 of the Finance Act, 1994 and as they have paid the said amount of interest, the same should not be appropriated against the said demand;
- (iii) The Service Tax amounting to Rs. 33,35,077/- (Rupees Thirty Three Lakh Thirty Five Thousand Seventy Seven Only) as shown in Annexure – B to this show cause notice, should not be demanded and recovered from them under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994;
- (iv) The amount of interest calculated at appropriated rate, on the aforesaid amount of Service Tax not paid (mentioned at (iii) above), should not be charged and recovered from them under Section 75 of the Finance Act, 1994;
- (v) Penalty under Section 78 of the Finance Act, 1994 should not be imposed upon them;
- (vi) Penalty under Section 77 of the Finance Act, 1994 should not be imposed upon them;
- (vii) Late Fee of Rs. 1,45,000/- (Rupees One Lakh Forty Five Thousand Only), for delayed filing of ST-3 Returns as shown in Annexure – C to this show cause notice, should not be demanded and recovered from them under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

16. Shri Mukesh Bhailalbhai Patel, Director of M/s. Abhik Advertising Pvt. Ltd. is hereby called upon to show cause as to why penalty under the provisions of Section 78A of the Finance Act, 1994 should not be imposed on him.

Para 8.2 of SCN is the subject of this Defence Reply dated 24.12.2020.

16. **DEFENCE REPLY:**

The assessee has filed their defence reply to the above Show Cause Notice, vide their email dated 24.12.2020, received on email id oahmedabad2@gmail.com, wherein they have interalia stated as under:

(A) **Misquoting of Service Tax challan Numbers while filing ST-3 Returns.**

1.1 With reference to the payment of service tax for the period April 2015 to Sep-2015 and Oct 2015 to March 2016 ie. FY 2015-16, it has been mentioned that they have intentionally misquoted the challan details in ST-3 with an intent to evade payment of service tax, they humbly submit before your good office that factually that is not correct. To substantiate the fact that quoting of challan serial number which were not as per actual physical challan available with service provider was a clerical mistake not any specific act to evade payment of tax or suppress tax liability.

They requested to take note of following observations mentioned at Show Cause Notice at Para 8.2 of SCN for the period April 2015 to September 2015

"In the service tax return ( ST-3) return for the period April-September 2015 the said service provider has shown following details relating to service tax paid in cash and details of challan ;



Month (2015-16)	Service Tax	Edu Cess	SHE Cess	Total	Challan No	Amount
April	22359	0	1075	23434	0292668040120160000 1	23434
May	327309	6145	5646	339100	0292668040120160000 1	339100
June	455845	0	0	455845	0292668040120160000 1	455845
July	123987	0	0	123987	0292668040120160000 1	123987
Aug	966217	0	0	966217	0292668040120160000 1	966217
Sep	1563417	0	0	1563417	0292668040120160000 1	563417
					0292668040120160000 2	1000000
<b>Total</b>	<b>3459134</b>	<b>6145</b>	<b>6721</b>	<b>3472000</b>	-	<b>3472000</b>

"Thus, from the details submitted by the said service provider in the ther ST-3 return for the period April-September 2015, it appeared that the sais service provider had paid the total service tax payable for a month through specific challans as shown in the said ST-3 Return. However, non of the aforesaid challans shown in the ST-3 return existed, as the said service provider did not pay the service tax amount through such challan as shown in the ST-3 Returns. "

- 1.2.2 Here it is highlighted that ST-3 return for the period April 2015 to September 2015 was filed on 21.07.2016, where in this incorrect challan numbers were mentioned. They requested to take note of the fact that actual tax payment for this period was made by following two challans;

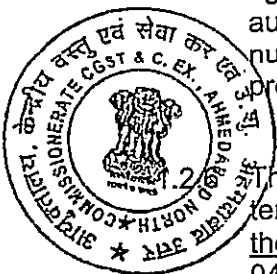
Challan No	Date of payment	Amount	Service Tax Paid	Interest Paid	Total
91961	04.01.2016	24,72,000	24,72,000	-	24,72,000
91476	06.02.2016	10,00,000	10,00,000	-	10,00,000

(The said fact has already been covered by Annexure- D of SCN)

- 1.2.3 It is clearly evident from the sequence of events that as on the date of filing of ST-3 for the period April-2015 to Sep-2015, those two challans were duly paid and correct challan numbers were very much available with us.

- 1.2.4 The fact is, on account of lack of liquidity, they were not able to make payment of service tax on monthly basis however, necessary data and return preparation was executed on timely basis. While preparing the return based on which tax liability was decided was prepared and challans were also prepared. Accountant was waiting for payment of tax to file the returns. Here they wish to humbly submit that while preparing ST-3, basic serial number was entered in the system against which payment was required, primarily, to validate the return. Your good self can observe the fact that while preparing the draft return monthly serial number was mentioned assuming monthly challans will be paid however, as soon as funds were managed, large challans in round figure were paid. Only two challans of Rs. 24.72 lacs and 10.00 lacs were paid for entire 6 months together.

- 1.2.5 Attention was drawn to table mentioned at para 8.1 which contained same serial number against each challan. It is very much evident that had the intention been to provide revenue authorities with camouflaged challan numbers, they would not have mention same serial number against all the 6 challans which in any case not going serve the purpose of providing authorities with camouflaged serial numbers of challans.



The challan number mentioned in the system were only for the purpose of preparing the tentative ST-3 which can be filed in due course as and when tax is being paid. Had it been the intention to evade service tax liability, they would not have paid these 34,74,000/- on 04.01.2016 and 06.02.2016 respectively.

- 1.2.7 The primary clerical mistake done at their end was they filed our ST-3 for the said period without updating changes in the draft ST-3 with correct Challan serial number after making payment on 04.01.2016 and 06.02.2016.
- 1.2.8 It was requested to take note of the sequence of events and kindly understand the bonafide intent with which those serial numbers were mentioned in ST-3 and there was not malicious intention behind entering those incorrect challan numbers which will eventually result into evasion of tax liability and results into loss of revenue.
- 1.3.1 Attention was drawn to the following observations mentioned at Show Cause Notice at Para 8.3 of SCN for the period October 2015 to March 2016.

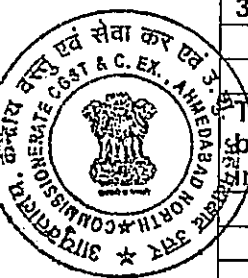
"Similarly in the service tax return (ST-3) for the period October, 2015 – March 2016, the said service provider has shown following details relating to service tax paid in cash and details of challan :-

Month (2015-16)	Service Tax	SBC	Total	Challan No	Amount
Oct	526616	0	526616	0292668090220160000	526616
Nov	1004559	6273	1011132	0292668090220160000 1	1011132
Dec	5267532	240688	5508220	0292668090220160000	3462252
				0292668090220160000 1	2045968
Jan	2621725	168097	2789822	0292668090220160000 1	2789822
Feb	400697	63919	464616	0292668090220160000 1	464616
Mar	2554156	366999	2921155	0292668090220160000 1	2921155
<b>Total</b>	<b>1237528</b> 5	<b>846276</b>	<b>13221861</b>		<b>13221561</b>

"Thus from the details submitted by the said service provider in their ST-3 Return for the period October, 2015- March 2016, it appeared that the said service provider has paid the total service tax payable for a month through specific challans as shown in the said ST-3 Returns. However, none of the aforesaid challans shown in the ST-3 return existed, as the said service provider did not pay the service tax amount through such challans shown in ST-3 Return.

- 1.3.2 They wished to highlight that ST-3 return for the period Oct-2015 to March -2016 was filed on 22.07.2016, where in this incorrect challan numbers were mentioned and that actual tax payment for this period was made by following challans;

Challan No	Date of payment	Amount	Service Tax Paid	Interest Paid	Total
90187	12.02.2016	50,00,000	50,00,000	-	50,00,000
90191	19.02.2016	25,00,000	25,00,000		25,00,000
Total Payment prior year ending on 31.03.2016			75,00,000		
20059	21.09.2016	30,00,000	30,00,000		30,00,000
21113	07.10.2016	17,00,000	17,00,000		17,00,000
Total Payment made after 31.03.2016 but prior Department inquiry was initiated.			47,00,000		
20601	18.10.2016	5,00,000	5,00,000		5,00,000
20713	20.10.2016	5,00,000	5,00,000		5,00,000
21379	24.10.2016	6,54,805	6,54,805		6,54,805
20166	19.12.2016	538600	472000	66600	538600



20185	27.02.2017	132952	132056	896	132952
21472	05.08.2016	450	450	0	450
Total Payment after inquiry was initiated. [ Includes Rs. 16,54,805/- towards amount disclosed at audited financial statement as payable as on 31.03.2016 and Rs. 6,04,952/- paid on account of reconciliation and credit reversal by Departmental Authority. ]			22,59,311		
Grand Total		14526807	14459311	67496	14526807

(only interest challans paid separately for the said period are not covered here in this table)

(The said fact has already been covered by Annexure- D of SCN)

1.3.3 It is clearly evident from the sequence of events that as on the date of filing of ST-3 for the period Oct-2015 to Mar-2016, those two challans amounting to Rs. 50,00,000/- and 25,00,000/- were duly paid on 12.02.2016 and 19.02.2016 respectively prior financial year ended on 31.03.2016 and correct challan numbers were very much available with them as on the date of filing of ST-3 on 22.07.2016.

1.3.4 Your good self would appreciate the fact that despite of the fact that ST-3 was filed on 22.07.2016 and tax was being declared paid as alleged by para 8.3, they had made the payment of two challans of Rs. 30,00,000/- and Rs. 17,00,000/- on 21.09.2016 and 07.10.2016 respectively, at the intimation of their tax auditor that if this amount is being further delayed the said amount will have to be added back to their income under income tax provisions and hence it is advisable to pay the entire pending dues towards service tax liability prior last due date of filing of income tax return. Here they wish to inform that the due date for filing of return which is generally 30.09.2016 was extended till 17.10.2016 for AY 2016-17 and accordingly based on the funds availability they managed to pay only 47,00,000/- prior their income tax return was being filed.

1.3.5 Here they wished to submit that departmental investigation was initiated on 18<sup>th</sup> Oct 2016, however prior to that, actual service tax liability was duly declared at service tax return as well audited books of accounts. Further to that necessary service tax pending to be paid as on the date of Income Tax Audit u/s. 44AB of the Income Tax Act was also duly declared by the Tax Auditor in 3CD Report and further to that the said amount being unpaid as on the date of Audit report was duly disallowed at computation of income and Income Tax Return.

The relevant page of tax audit report was enclosed, wherein at Clause 26(i)(B)(b) unpaid service tax amount of Rs. 16,54,805/- has been clearly reflected.

1.3.6 Further, our computation of income and copy of ITR Acknowledge which acknowledges the fact that such amount of unpaid service tax of Rs. 16,54,805/- as per tax audit report has also been disallowed while filing income tax return. ( copy of ITR and computation of income is attached herewith for your easy reference as Annexure - 1 ) This clearly establishes the fact though ST-3 was filed on 22.07.2016, they had considered that amount of Rs 16,54,805/- as payable in the books of accounts as well as our income tax return and tax audit reports. The relevant page no 15 of ITR was reproduced for reference.

As it can be observed from row 25 total amount of 19,48,750/- has ben disallowed at ITR.

Breakup of Rs. 19,48,750/- is as below :

Interest on TDS 56,140/-, Donation 25,000/-, Income Tax 116254, VAT Penalty 1,000/- prior period expense 95,551/-, Unpaid Service Tax 16,54,805/-.



NAME OF ASSESSEE : ABHIK ADVERTISING PRIVATE LIMITED  
 PAN : AAGCA7384N  
 OFFICE ADDRESS : 29, ADITYA BUNGLOWS, OPP. T.V. TOWER, THALTEJ, AHMEDABAD,  
 GUJARAT-380054  
 STATUS : PUB NOT INT ASSESSMENT YEAR : 2016 - 2017  
 WARD NO : CIRCLE 1(1)(1), FINANCIAL YEAR : 2015 - 2016  
 AHMEDABAD  
 D.O.I. : 10/09/2007  
 EMAIL ADDRESS : bakulpankh@yahoo.com  
 NAME OF BANK : UNION BANK OF INDIA  
 IFS CODE : UBIN0555797  
 ADDRESS : DRIVE IN ROAD  
 ACCOUNT NO. : 557904010000061  
 RETURN : ORIGINAL (FILING DATE : 08/10/2016 & NO. : 487036761081016)

COMPUTATION OF TOTAL INCOME

<u>PROFITS AND GAINS FROM BUSINESS AND PROFESSION</u>	0
PROFIT BEFORE TAX AS PER PROFIT AND LOSS	-3453020
ACCOUNT ADD :	
DEPRECIATION DISALLOWED	6387428
INTEREST ON TDS	56140
DONATION	25000
INCOME TAX	116254
VAT PENALTY	1000
PRIOR PERIOD EXP.	95551
UNPAID SERVICE TAX	1654805
	<u>8336178</u>
	4883158
LESS:	
PROFIT FROM KASHISH LLP	297331
ALLOWED DEPRECIATION	5773760
	<u>-6071091</u>
	-1187933
OUT OF LOSS OF RS. 1187933, UNABSORBED DEPRECIATION IS RS. 1187933	
PROFIT FROM FIRM : KASHISH ADMART LLP	
PROFIT	432265
LESS: PROFIT EXEMPT U/S 10(2A)	<u>-432265</u>
<u>CURRENT YEAR LOSSES CARRIED FORWARD</u>	
UNABSORBED DEPRECIATION OF RS. 1187933	
GROSS TOTAL INCOME	<u>NIL</u>
TOTAL INCOME	<u>NIL</u>

It can be observed that Rs. 16,54,805/- has been disallowed being unpaid service tax.

1.3.7 In similar line with previous half yearly return, on account of lack of liquidity, they were not able to make payment of service tax on monthly basis however, necessary data and return preparation was executed on timely basis. While preparing the return based on which tax liability was decided was prepared and challans were also prepared. Accountant was waiting for payment of tax to file the returns. Here they wish to humbly submit that while preparing ST-3, basic serial number was entered in the system against which payment was required, primarily, to validate the return. While preparing the draft return monthly serial number was mentioned assuming monthly challans will be paid however, as soon as funds were managed, large challans in round figure were paid. Out of the total payment certain payments were prior filing ST-3, some after ST-3 was filed however prior our income tax return was filed, certain payment were made after the return was being filed however prior investigation was initiated on 18.10.2016.

1.3.8 Had it been the intent to evade tax they would not have made payment of 17,00,000/- on 07.10.2016 which was after filing of income tax return but prior departmental investigation was initiated. They were very much interested to make sure entire pending dues towards service tax liability is being paid prior our income tax return is being filed, however they could not manage balance Rs. 16,54,805/- prior filing of income tax return on 08.10.2016. As soon as they could manage 17,00,000/- was paid on 07.10.2016 and before they could manage to pay balance of Rs. 16,54,805/-, departmental investigation was initiated on 10.10.2016.

1.3.9 That table mentioned at para 8.3 contains same serial number against each challan. It is very much evident that had the intention was to provide revenue authorities with camouflaged challan numbers, they would not have mentioned same serial number



against all the 6 challans which in any case was not going serve the purpose of providing authorities with camouflaged serial numbers of challans.

1.3.10 The challan number mentioned in the system were only for the purpose of preparing the tentative ST-3 which can be filed in due course as and when tax is being paid. Had it been the intention to evade service tax liability, they would not have paid these 47,00,000/- on 21.09.2016 and 07.10.2016 respectively.

1.3.11 The primary clerical mistake done from their end was they filed our ST-3 for the said period without updating changes in the draft ST-3 with correct Challan serial number after making payment on 12.02.2016 & 19.02.2016. Further under new online filing system, even a single digit mismatch in challan details is immediately identified by the system itself and any mismatch is highlighted in the ST-3 acknowledgement and filed copy, itself in the front face of the ST-3. It is well known fact that any misquoting of challan details is being identified by the system on real time basis and they, as a service provider cannot escape from payment of tax by merely entering some dummy challan serial number.

1.3.12 It was requested to take note of the sequence of events and kindly understand the bonafide intent with which those serial numbers were mentioned in ST-3 and there was not malicious intention behind entering those incorrect challan numbers with an intent of evasion of tax liability or loss of revenue to department.

1.4 Further, following has been observed at para 8.4 of the SCN ;

*" Thus, the said service provider, at the time of filling of ST-3 returns, camouflaged the details of challan against respective months, so as to mislead the department to believe that they had made full payment of service tax and other cesses within time and ad there was neither short payment of taxes nor there was delayed payment of taxes requiring payment of interest. As shown above, many of such challan numbers shown in ST-3 return filed by the said service provider did not exist as no such payment was made by the said service provider. It was only after detection and pointing out by the department of this mal-practice adopted by the said service provider that the said service provider accepted it., and service tax not paid by then ( but shown to have been paid through various non-existing challans in ST-3 returns) has been paid. As a result of the investigation carried out by the department. The amount of interest on delayed payment of service tax has also been paid by the said service provider. The details of service tax and interest paid by the service provider are shown in Annexure-E to his show cause notice.*

1.4.2 Here they wished to humbly submit that as already explained and demonstrated in detail at para 1.3 above, the intent was never to hide service tax liability and evade service tax liability. Had it been the intent they would not have made payment of 47,00,000/- which was paid after filing of return on 21.07.2016 and 22.07.2016 respectively. Further, despite of taxes being paid well before ST-3 returns were being filed taxes of Rs. 1,09,72,000/- were paid through e-payment however, due to clerical mistake temporary serial numbers entered in the ST-3 were not updated as per actual challans already paid.

1.4.3 Here they wished to humbly summaries fowling two facts for FY 2015-16 ;

(1<sup>st</sup>) Only Rs.16,54,805/- was paid towards FY 2015-16 ( ST-3 period Oct-2015 to March 2016 ) after investigation was initiated on 18.10.2016, however the same was duly declared in ST-3 as well as Books of accounts as payable prior investigation was initiated.

(2<sup>nd</sup>) Rs. 4,72,000/- and Rs. 1,32,952/- were further paid on 19.12.2016 and 27.02.2017 on account of reconciliation prepared by departmental authorities and reversal of credit on account of detailed verification of our cervat credit records and invoices.

As rightly pointed out at para 8.4 of SCN, all the due taxes and interest has duly paid by them and no pending liability on account of tax or interest is pending from their end. It has been requested to consider the payment of Rs. 16,54,805/- in due course and do not





consider the same as payment made on account of investigation and do not impose penalty on such tax liability.

1.5 At para 10.1 it has been mentioned that ;

*"from the foregoing it appears that the said service provider has suppressed the value of taxable services in ST-3 returns filed by them as compared to the details shown in their balance sheet and books of accounts and thereby evaded payment of applicable service tax on such value of taxable service during the FY 2015-16 & period 2016-17 ( April to Sep ), amount of Rs. 36,57,694/-, thus not paid/short paid and same appears to be recoverable from the said service provider under the provisions of Section 73(1) of the Finance Act, 1994."*

1.5.1 Here, they wished to humbly submit that necessary explanation for the FY2015-16 has already been given in para 1.2, 1.3 and 1.4 above. As far as FY 2016-17 for month of April - 2016 to Sep -2017 is concerned, the due date for filing of return was 25<sup>th</sup> October and no mis-statement or wrong declaration or suppression of facts has been made from their end till the date of investigation, for the FY 2016-17.

1.5.2 Further, they wished to point out that the statement dated 18.10.2016 of Director of company in response to Question No. 7 (please refer page 3 of SCN), very clearly based on their Service Tax Ledger provided a figure which was payable for the said period. This statement itself demonstrates the fact that necessary revenue records were duly recorded in their books of accounts and service tax payable was also being credit in our books of accounts.

1.5.3 As on the date on which statement was recorded due date for filing of return had not even lapsed, and hence such liability for the ongoing period cannot be considered as service tax short paid / not paid and recoverable u/s. 73(1) and the said amount should not be considered for imposing penalty as such. Necessary interest on account of delayed payment has already been paid by us.

(B) **Service Tax liability on Income earned as commission from Advertising in Print Media.**

2.1 Being advertising Agency they deal into various mediums of advertising. New Paper advertising being one of such medium they deal with various newspaper agencies and directly with newspapers, as well to sale their advertising rights to our client base. Newspaper advertising rights specially are being exempt under service tax provisions however commission earned on such advertising rights are subject to service tax liability.

2.2 It may be appreciated the fact that entire industry across India has been following standard procedure to charge service tax on 15% margin being standard sales commission given by newspapers across board. Since, out of total sales made to his client he is supposed to pay 85% to the newspaper company which is not chargeable to service tax however they are collecting money on their behalf and our actual income is only 15%, entire industry has been following standard procedure of charging service tax on 15% value being commission income earned on such newspaper space advertising rights sold to end client.

2.3 As mentioned at para 10.2, Amount of Rs. 33,35,077/- is being considered as recoverable from us u/s. 73(1) of the Finance Act, 1994 as detailed in Annexure -B of SCN. They humbly wish to submit that, they being advertising agency are primarily involved in the business of merely canvassing advertisement for publishing on a commission basis.

As you are aware, selling of space for advertisement in print media is excluded from levy of service tax and accordingly, out of the total sales invoice of 100/- of which 85 is being directly paid to New Paper is completely exempted from service tax liability. They being their sales agency they are being given 15% commission in the form of discount and they are allowed to charge 100 Rs. For a advertisement of which 85 they are suppose to pay to News Paper company. They have been paying applicable service tax on tis entire 15% since very beginning. It may be appreciated that in majority of the cases their net revenue is not 15% as on account of competition they have to pass on certain percentage discounts



to our customers as well however, they have rigorously followed standard practice of paying service tax on 15% discount received from the News Paper company to avoid litigation and confusion.

- 2.5 In support of their contention that service tax is not applicable on the entire amount rather it should be charged on only 15%, they wish to rely upon judgment of CESTAT, Ahmedabad in the case of Poornima Advertising & Promotion Pvt Ltd vs. Commissioner of Service Tax. Dated 06.11.2009.

The relevant part of the judgment is reproduced here as below;

*" Heard both the sides. We find that the conclusion of the Commissioner (Appeals) that the appellant is eligible for refund on the merits is correct. The master circular issued by the Board has clarified that merely canvassing advertisement for public on commission basis is not classifiable under the taxable service as advertising agency service. Such services are liable to service tax under the business auxiliary service. Poornima is engaged only in booking of space or time. Whenever a request is received, Poornima simply books the space in the newspaper or books the time in the media and thereafter collects the amount paid to the media or newspaper. For this service provided to the client, service charge is collected by them. In fact Poornima gets a discount from the media/newspaper and they pass on a portion of the discount to the clients and retain balance which is their remuneration for the service provided by them. The Revenue is in appeal against the decision of the Commissioner that the service provided by the appellant is not an advertising agency service. According to the Revenue, the scope of the service extends not only to any service connected with advertisement but also any service connected with display or exhibition of advertisement. However, we find that the master circular issued by the Board itself is against the Revenue and the service provided by the appellants is admittedly only in respect of booking the space or time. We agree with the learned Commissioner (Appeals) that the master circular covers the case of the appellants and therefore the Revenue's appeal about classification cannot be accepted. "*

- 2.6 Considering the facts of the matter it was requested to take note of the fact that, service tax at applicable rate on the 15% value of print media business done by them has been duly paid. They do not earn more than 15% out of the total sales invoices generated against print media advertising business conducted and necessary tax on the said value has been duly paid by them following standard industry practices. It was submitted that necessary disclosure with regard to this transactions have been duly made on regular basis and hence this should not be considered as recoverable liability u/s. 73(1) of the Finance Act, 1994.

- 3.1 Regarding imposition of penalty under Section 78A on they submitted that none of the violations have been made with an intent of evasion of tax. As clearly established above they have been paying taxes on regular basis and misstatement of challan number was on account of clerical mistake and had not resulted into any revenue loss as such.

- 3.2 The dispute on account print media is technical in nature and they have followed the industry standard practice, they had not indulged into any practices which has led to contravention or violation of service tax provisions. On account of huge amount cenvat credit available to them there were few nominal issues in terms of cenvat credit were highlighted by revenue authorities on account technical issue or non-availability of original invoices, the same has also been cleared by reversal of credit to avoid litigation and buy mental peace.

- 3.3 They requested not to impose penalty u/s. 78A.

- 4.0 They humbly requested to consider the following ;

- 4.1 In reference to various factual records produced and facts of the case It can be clearly said from above discussion that they have not short paid service tax and hence, provisions of section 73 are not applicable in this case.

Further, necessary tax has already been paid by them and hence it should be appropriated accordingly, Further necessary interest as suggested by the authority have already being paid by them and should be appropriated accordingly.

Since provisions of Section 73 are not applicable in the given case, and hence, question with regard to levy penalty u/s 77 & 78 does not arise

- 4.4 Lastly, no penalty u/s. 78A should be imposed as explained at para 4.0 above.



In view of the above, the assessee requested to vacate the above said show cause notice.

**PERSONAL HEARING:**

17. Personal hearing in the matter was scheduled on held on 3.3.2020, 24.3.2020, 25.6.2020, 20.7.2020 and 28.12.2020. However, the assessee has not appeared for the personal hearing.

**DISCUSSION AND FINDINGS:**

18. I have gone through the records of the case, and the submissions made by the assessee in their reply sent vide email dated 24.12.2020. I find that the issues which are under contention in the Show Cause Notice and that are needed to be decided are as under:

(i) The said assessee has suppressed the value of taxable services in the ST-3 returns filed by them as compared to the details shown in their Balance Sheets and Books of Accounts and thereby evaded payment of applicable Service Tax on such value of taxable service during the F.Y. 2015-16 and 2016-17 (April to September). It was also observed that several Challans mentioned in the Service Tax Returns for April, 2015 to September, 2015 and for the period October, 2015 to March, 2016 were not in existence. From the details submitted by the said assessee in their ST-3 Returns as specified in the above paras above, it was apparent that the Service Tax dues were not paid at the time of filing the ST-3 return and as such no payment was made by the said assessee. The issue to be decided is whether the amount of Service Tax of Rs. 36,57,694/-, not paid / short paid is recoverable from the said assessee under the provisions of Section 73(1) of the Finance Act, 1994 and whether the aforesaid amount of Service Tax not paid / short paid by the said assessee that has already been paid by them needs to be appropriated against the aforesaid demand.

(ii) The said assessee was liable to pay Service Tax at appropriate rate on the gross amount charged by them for Advertising Agency service provided or to be provided by them, but they have calculated the amount of Service Tax payable on only the 15% of the amount of invoice value. The issue to be decided is whether, the said assessee was liable to pay the Service Tax amounting to Rs. 33,35,077/-, on the gross amount charged by them for providing Advertising Agency service under the provisions of Section 73(1) of the Finance Act, 1994.

(iii) The issue to be decided is whether the assessee are liable to pay the late fee of Rs. 1,45,000/-, as required under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994, for delay in filing of ST-3 Returns.

(iv) The said assessee also appeared to be liable to pay interest at applicable rate under Section 75 of the Finance Act, 1994 on the aforesaid amount of Service Tax not paid / short paid. The issue to be decided is whether the amount of interest of Rs. 3,90,418/- on the amount of Service Tax not paid / short paid, already paid by the said assessee, requires to be appropriated against the demand of interest, as detailed in the Show Cause Notice.

(v) The issue to be decided is whether the said assessee is also liable to pay interest at applicable rate under Section 75 of the Finance Act, 1994 on the amount of Service Tax which was not paid by them within prescribed period.

19. I find that the assessee is engaged mainly in providing Advertising agency services. They provided services of Outdoor Media to State Government and others for hoarding services, print media, electronic media i.e. TV and radio. They are an agency engaged in releasing the advertisements in different media like print, electronic media. They also pay rent for hoardings as well as earn rent on hoardings. They earned Commission income on such activities. Apart from the above, the assessee is also engaged in trading of shares and securities.

The term "Advertisement" and "Advertising Agency" were defined under clauses (2) and (3) Section 65 of the Finance Act, 1994 as follows :-

"advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas;

[Section 65(2)]

"advertising agency" means any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

[Section 65(3)]



20.1 The taxable service was defined under clause (105) of Section 65 of the Finance Act, 1994 as follows :-

(105) "taxable service" means any service provided or to be provided, -

(b) .....

(e) to any person, by an advertising agency in relation to advertisement, in any manner;

22. The Service Tax regime shifted from the concept of service wise classification and levy of service tax on specified services (selective taxation) to comprehensive taxation on services (excluding services in negative list or exempted services) with effect from 01.07.2012. The term "advertisement" and "service" were defined under clause (2) and (44) of Section 65B of the Finance Act, 1994 as follows :-

(2) "advertisement" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

**Explanation 1.** — For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

**Explanation 2.** - For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include —

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out —

(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998;

(b) by a foreman of chit fund for conducting or organising a chit in any manner.;



**Explanation 3.** — For the purposes of this Chapter,—

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- (b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

**Explanation 4.** — A person carrying on a business through a branch or agency or a representational office in any territory shall be treated as having an establishment in that territory;

23. It is apparent that the said assessee was engaged in providing taxable service: "Advertising Agency Service" which was leviable to Service Tax at applicable rate for the period from 01.07.2012 as well as for the period prior to 01.07.2012 and "selling of space for advertisement" (hoarding) which was leviable to Service Tax at applicable rate for the period upto 30.06.2012 and from 01.10.2014.

24. As per Section 66 and 66B of the Finance Act, 1994, applicable during relevant period, the Service Tax was levied at the prescribed rate on the value of taxable service. Further, as per Section 67 of the Finance Act, 1994, subject to the provisions of Chapter V of the Finance Act, 1994, where Service Tax is chargeable on any taxable service with reference to its value, then such value shall, in a case where the provision of service is for a consideration in money, be the gross amount charged by the assessee for such service provided or to be provided by him.

25. In view of the above provisions, Service Tax is chargeable on "Advertising Agency Service" with reference to its value, and the assessee was liable to pay Service Tax at appropriate rate on the gross amount charged by them for such service provided or to be provided by them.

26. At the foremost, I find that the said assessee had not filed their ST-3 Returns within the stipulated time. There was delay in filing of ST-3 Returns, as shown in the Show Cause Notice, but the said assessee had not paid late fee, as required under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994. The details of late fee amounting to Rs.1,45,000/- required to be paid by the said assessee is shown in Annexure-C to this show cause notice.

27. Section 70(1) of the Finance Act, 1994 (Act for short) provides that every person liable to pay service tax shall himself assess the tax due on the services provided by him. Besides, this section requires the assessee to furnish return to the Superintendent of Central Excise in the prescribed form and at such frequency. If the return is not filed within the due date, the return may be filed by paying late fee which may not exceed Rs.20,000/-. Section 70(2) of the Act provides that the persons notified by the Central Government under Section 69(2) are also to file returns in such form and in such manner at such frequencies as may be prescribed. Thus the assessee is liable to file the Service Tax Returns on or before the due date, failing which the assessee is liable to pay late fee for late filing of the mandatory Service Tax Returns.

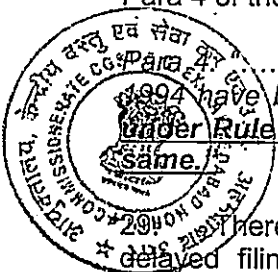
28. I rely on the decision of CESTAT, WZB, Mumbai, in the case of M/s. S.K. ELECTRO ENGINEERS, v/s. CCE, Nagpur, reported in 2015 (39) S.T.R. 686 (Tri. - Mumbai), wherein it has been held as under:

*Penalty - Waiver of - Service Tax paid in full with interest much before show cause notice - Provisions that no SCN to be issued if tax paid with interest, applicable - No reason for issuance of SCN - Penalty imposed under Sections 76, 77 and 78 of Finance Act, 1994 set aside - Late fee under Rule 7C of Service Tax Rules, 1994 upheld as no provision of its waiver - Section 73 of Finance Act, 1994. [para 4]*

Para 4 of the above CESTAT order, reads as under:

.....I make it clear that only penalties under Sections 76, 77 & 78 of the Finance Act, 1994 have been set aside. There is no provision for waiver of late fee required to be paid under Rule 7(c) of the Service Tax Rules, 1994 and the appellant is liable to discharge the same.

Therefore, in view of the above, I confirm the late fee amounting to Rs.1,45,000/- for delayed filing of ST-3 Returns demanded from the assessee and order the same may be recovered from them under Section 70 of the Finance Act, 1994, read with Rule 7C of the Service Tax Rules, 1994.



30. I hereby take up the issues of suppression of value of taxable services in the ST-3 returns filed by them as compared to the details shown in their Balance Sheets and Books of Accounts; and the non payment/short payment of Service Tax in view of the fact that several Challans mentioned in the Service Tax Returns for April, 2015 to September, 2015 and for the period October, 2015 to March, 2016 were not in existence and thereby resulting in the evasion of applicable Service Tax on such value of taxable service, as shown in the Service Tax returns.

31. It was observed that several Challans mentioned in the Service Tax Returns for April, 2015 to September, 2015 and for the period October, 2015 to March, 2016 were not in existence. From the details submitted by the said assessee in their ST-3 Returns as specified in the paras 8.2 and 8.3 of the Show Cause Notice, it was apparent that the Service Tax dues were not paid at the time of filing the ST-3 return and as such no payment was made by the said assessee. The issue to be decided is whether the amount of Service Tax of Rs. 36,57,694/-, not paid / short paid is recoverable from the said assessee under the provisions of Section 73(1) of the Finance Act, 1994 and whether the aforesaid amount of Service Tax not paid / short paid by the said assessee already been paid by them needs to be appropriated against the aforesaid demand.

32. On verification of the details of Gross Income of the said assessee shown in Balance Sheet / Books of Account and the value of taxable services shown in the Service Tax Returns, it was found that the assessee had not paid Service Tax amounting to Rs.36,57,694/- for the period from for the F.Y. 2015-16 to 2016-17 (April – September). the said assessee had suppressed the value of taxable services in the ST-3 returns filed by them and thereby evaded payment of applicable Service Tax on such value of taxable service. The evasion of Service Tax amounting to Rs.36,57,694/- would not have come to light if the Department had not investigated the matter. The details of Service Tax so evaded and not paid / short paid by the said assessee are as shown in Annexure – A1 to the show cause notice.

33. I observe that not only had the said assessee not disclosed the correct taxable value in their Service Tax Returns, but also, at the time of filing of such ST-3 returns, they had shown the details of such Challans, many of which did not exist. Thus, from the details submitted by the said assessee in their ST-3 Returns as specified in the above paras, it is apparent that the Service Tax dues were not paid at the time of filing the ST-3 return and as such no payment was made by the said assessee. I find that that the main intention of the assessee was to mislead the department into believing that they had made full payment of Service Tax dues within time and there was neither short payment of taxes nor there was delayed payment of taxes requiring payment of interest.

34. As shown in paras 8.2 and 8.3 of the SCN, many of such Challan numbers shown in ST-3 Returns filed by the said assessee did not exist implying no such payment was made by the said assessee. It was only after detection and after the mal-practice adopted by the assessee was pointed out by the department, the said assessee had accepted it, and Service Tax not paid by them (but shown to have been paid through various non-existing Challans in the ST-3 Returns) had been paid, along with interest on delayed payment of Service Tax.

35. I find that the assessee in their defence reply had contended that they had made the payment of two challans of Rs. 30,00,000/- and Rs. 17,00,000/- on 21.09.2016 and 07.10.2016 respectively, at the intimation of their tax auditor that if this amount was further delayed the said amount would have to be added back to their income under income tax provisions and hence it is advisable to pay the entire pending dues towards service tax liability prior last due date of filing of income tax return. They informed that based on the funds availability they managed to pay only 47,00,000/- prior to their income tax return was filed. They submitted that they had declared their actual service tax liability in their Service tax return as well audited books of accounts prior to the departmental investigation. The assessee has contended that the challan numbers mentioned in the system were only for the purpose of preparing the tentative ST-3 which was to be filed in due course as and when tax was paid. The primary clerical mistake done at their end was they filed their ST-3 for the said period without updating changes in the draft ST-3 with correct Challan serial number after making payment on 12.02.2016 & 19.02.2016. Had it been the intention to evade service tax liability, they would not have paid Rs.47,00,000/- on 21.09.2016 and 07.10.2016 respectively and correct challan numbers were very much available with them as on the date of filing of ST-3 on 22.07.2016.

I find that the contention put forward by the assessee that they had mentioned wrong challan numbers in their ST-3 returns merely because of clerical error is not at all logical and does not hold water, in as much as they had mentioned 6 fake challan numbers against the Service Tax liability of Rs.3472000/- for the period from April 2015 to September 2015; and again they had mentioned 6 fake challan numbers against the Service Tax liability of Rs.13221561/- for the



period from October 2015 to March 2016. Mentioning fake challan numbers repeatedly cannot be attributed to mere clerical error. Further the assessee cannot seek refuge in their unsubstantiated excuse that they had booked the Service Tax liability in their book of accounts or the Income Tax returns etc., when they had not paid/short paid their Service Tax liability. I find that the assessee had accepted their lapses and ultimately paid the Service Tax liability along with interest, as detailed in Paras 9.1 to 10.1. of the Show Cause Notice.

37. The said assessee had suppressed the actual value of supply of taxable services and willfully mis-stated the value of supply of taxable services in the ST-3 Returns filed by them and thereby indulged in payment of Service Tax on the amount of taxable services, which had been detected by the department during investigation. Not only had the said assessee had not paid / short paid Service Tax by way of suppression of facts and willful mis-statement, but they had also they had not fully shown the details of taxable services in ST-3 Returns filed by them. They had given false details of challans in their ST-3 returns to misguide the department. All these acts of the assessee clearly indicate the malafide intention of evasion of Service Tax on the part of the assessee. Therefore, it is most appropriate to invoke extended period as per proviso to sub-section (1) of Section 73 of the Finance Act, 1994.

38. Therefore, in view of the above, I hereby, confirm the demand of Service Tax amounting to Rs. 36,57,694/- as shown in Annexure - A1 to the show cause notice, demanded from them under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994. I also order the aforesaid amount of Service Tax not paid / short paid by the said assessee, that has been already paid by the assessee, as per Annexure - D to this show cause notice, should be appropriated against the aforesaid demand. I also confirm the interest amounting to Rs. 3,90,418/- on the amount of Service Tax amounting to Rs. 36,57,694/- as shown in Annexure-A2 to the show cause notice, demanded from them under Section 75 of the Finance Act, 1994; and as they have paid the said amount of interest, I order the same be appropriated against the said demand.

39. The last issue to be addressed is whether the said assessee was liable to pay Service Tax at appropriate rate on the gross amount charged by them for 'Advertising Agency service' provided or to be provided by them, or on only the 15% of the amount of invoice value, as contended by the assessee. I find that in that in case of "Advertising in Print Media (Advertising Agency Service), the said assessee had calculated the amount of Service Tax payable on the only 15% of the amount of invoice value.

40. The contention of the assessee is that entire industry across India follows the standard procedure to charge service tax on 15% margin being standard sales commission income earned on newspaper space advertising rights sold to end client. Since, out of total sales made to their clients, the assessee is supposed to pay 85% to the newspaper company which is not chargeable to service tax, however they are collecting money on the latter's behalf and therefore their actual income is only 15%. They have been paying applicable service tax on entire 15% since very beginning. They submitted that in majority of the cases their net revenue is not 15%, as on account of competition they have to pass on certain percentage discounts to their customers as well.

41. In support of their contention that service tax is not applicable on the entire amount rather it should be charged on only 15%, they relied upon judgment of CESTAT, Ahmedabad in the case of M/s. Poornima Advertising & Promotion Pvt Ltd vs. Commissioner of Service Tax. Dated 06.11.2009.

42. I find that the above decision of CESTAT is not relevant to the case of assessee as the issue under contention therein is whether the services of booking of space or time, provided by the said assessee needs to be classified under 'Business Auxiliary Service' or under 'Advertising Agency Service'; and CESTAT, in this matter has held that the service provided by M/s. Poornima Advertising & Promotion Pvt Ltd cannot be classified under Advertising Agency service.

I hereby rely on the judgment passed by the Hon'ble High Court of Kerala, in the case of M/s. ZODIAC ADVERTISERS, reported in 2009 (13) S.T.R. 593 (Ker.), wherein, it has been held

Advertising Agency service - Screen printing of advertisement - Statutory definition of advertisement is inclusive and wide enough to cover anything independently referred therein - Making and sale of advertising materials for customers in the form of banner or hoarding or film-slide is advertisement - Any commercial concern engaged in providing any service connected with





advertisement is an advertising agency - Carrying out all activities referred in definition not necessary for coverage as advertising agency...."

44. I rely on the judgment passed by the Hon'ble High Court of judicature at Madras, in the case of M/s. ADWISE ADVERTISING PVT. LTD., reported in 2001 (131) E.L.T. 529 (Mad.), which has specifically addressed this issue and has held as under:

Service Tax - Advertising agency - Commission earned by the agency from advertising media, if it forms a part of the 'gross amount' charged by such agency from client in relation to the advertisement, includible in the value of taxable service - Board's Circular, dated 31-10-1996 explaining this position neither contrary to nor enlarges the scope of Section 67(d) of Finance Act, 1994, hence not ultra vires the section - Writ Appeal rejected. [paras 9, 14]

44.1 The relevant observations made by the Hon'ble Court while deciding the matter are as under:

3. As per the Finance Act, 1994, Chapter V, levying of service tax was introduced. Initially, it was imposed on telephone services. By amendments made in 1996, the levy of service tax was extended to courier, pager and advertising services. Certain provisions of the Act are reproduced in the Writ petition and the more relevant section is Section 65(16) of the Act which defines taxable service and Clause (d) thereon. It reads as follows :-

"to a client, by an advertising agency in relation to advertisements in any manner."  
Section 67 stipulates the method for arriving at the value of taxable service. As regards advertising agency, Section 67(d) is relevant and it reads as follows :

"In relation to service provided by an advertising agency to a client, shall be the gross amount charged by such agency from the client for services in relation to advertisements."

The petitioner analysis the said section and has stated that the service tax is on the service provided by the advertising agency, the value shall be the gross amount charged by the agency, the gross amount is that which is charged by the agency from the client and gross amount is charged for the service in relation to advertisements. The levy of service tax on advertising services came into force on 1-11-1996. Instructions have been issued as to how the same has to be computed. It reads thus :

"It is further to be clarified that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the making or preparation of such advertisement or gets it done through another person. However, the amount paid, excluding their own commission, by the advertising agency for space and time in getting the advertisement published in the print media (i.e. newspapers, periodicals, etc.) or the electronic media (Doordarshan, private T.V. channels, AIR etc.) will not be includible in the value of taxable service for the purpose of levy of service tax. The Commission received by the advertising agency would, however, be includible in the value of taxable service."

4.3. Section 65(1A) defines "Advertising Agency" as under :

"Advertising Agency" means a commercial concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising concern". (emphasis supplied)

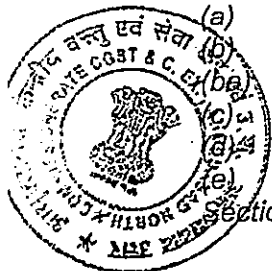
Section 65(16) : (d) defines "Taxable Service" in respect of the Advertising Agency. The provision runs as under :

"65(16) "Taxable Service" means any Service provided, -

- (a) .....
- (b) .....
- (ba) .....
- (c) .....
- (d) .....

to a client, by an advertising agency in relation to advertisement in any manner :  
... .." (emphasis supplied)

Section 67(d) reads as under :





"67. Valuation of taxable services for charging service tax :- For the purpose of this chapter, the value of taxable services, -

- (a) ... ..  
 (b) ... ..  
 (c) ... ..  
 (d) in relation to Service provided by an advertising agency to a client shall be the gross amount charged by such agency from the client for Services in relation to advertisements :  
 (e) ... .." (emphasis supplied)

4.4 The precise portion, which has been challenged from out of the circular (No. 341/43/96-TRU, dated 31-10-1996), issued by the Central Board of Customs and Excise, New Delhi, is as follows :

"4. It is further to be clarified that in relation to advertising agency, the service tax is to be computed on gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the making or preparation of advertisements or gets it done through another person. However, the amount paid, excluding their own commission, by the advertising agency for space and time in getting the advertisement published in the print media (i.e. Newspapers, Periodicals, etc.) or the electronic media (Doordarshan, AIR, Private Channels, etc.) will not be includible in the value of service tax for the purpose of levy of service tax. The Commission received by the advertising agency would however, be includible in the value of the taxable service."

(emphasis supplied)

8. The learned Counsel firstly points out that there is nothing in the language of Section 67(d) of the Act, which require any further explanation. The section itself is self-explanatory. The learned Counsel argues that while providing for the value of taxable services, the section considers that value to be the "gross amount" charged by the appellant advertising agency from its clients for services in relation to the advertisements. The first argument is this that any commission which the advertising agency gets is strictly between the "advertising agency" and the "advertising media" and this contract has got nothing to do with the clients of the advertising agency. The learned Counsel says that Section 67(d) considers only the transaction between the "advertising agency" and "its clients" and; therefore, any transaction in between the advertising agency and the media agency like Newspapers, Doordarshan, AIR etc. would be outside the scope of Section 67(d). The argument is clearly incorrect for the simple reason that the language of the provision clearly provides that the value of the taxable services provided by the advertising agency would be the "gross amount" charged by the advertising agency from its clients in relation to the advertisements published or flashed, as the case may be. Now it is obvious that the so-called 15% commission, which the advertising agency is entitled to get or actually gets by way of practice, is ultimately a part of the gross amount charged from the clients. The learned Counsel was also fair enough to admit this. Once it is clear that the said commission is nothing but a part of the gross amount charged by the advertising agency from its clients in relation to the advertisements, issued by it, it will be clear that such a commission would be part and parcel of that gross amount and cannot be independently reckoned as such.

9. It will be seen in this behalf that selection of, a particular print media or a particular electronic media would also be a part of the services because the advertising agency would be expected to advise its clients as regards the media through which such advertisements should be flashed. Thus, locating or selecting a particular media would be a "Service", by the advertising agency "in relation to the advertisements". Now, it is an admitted position that the total amount, which is described as "Gross Amount" spent by the clients for such services is chargeable except to the extent of the actual charges of the advertisement charged by the media because it is obviously not a service rendered by the advertising agency. The amount, which is spent for flashing an advertisement in a particular print media or electronic media, cannot be said to have been paid towards the services rendered by the advertising agency. It is simply a consideration paid to that print media or electronic media, as the case may be, for flashing that advertisement. However, when an advertising agency gets some "Commission", though out of the consideration received by the media, it is because that advertising agency has selected that particular media for flashing the advertisement, which is nothing but a "Service" by that advertising agency. "In relation to the advertisement given to the client", in whose benefit the said advertisement is flashed. Therefore, we have no hesitation to hold that any commission earned by the agency even from the advertising media, if it forms a part of the gross amount charged by such agency from the clients in relation to that advertisement, could be included in the value of the taxable service. When we see the impugned circular/letter, it explains precisely this position and nothing more. Therefore, it cannot be said that such a circular/letter has the effect of enlarging the scope of Section 67(d) of the Act, as is argued. We are in agreement with the learned single Judge, who has by making a reference

to Section 65(16) of the Act commented upon the "Taxable Service" and has pointed out that the taxable service by an advertising agency is the service provided to its clients in relation to the advertisements in any manner. We have already shown above that even "selecting or locating a particular print media or electronic media" for flashing a particular advertisement would amount to a taxable service" by the advertising agency and any "commission earned" by it on that account even from such print media or electronic media, if it forms a part of the "Gross Amount" charged and spent by the client, would be covered in Section 67(d) of the Act.

16. The gross amount received from the client includes 15% is not disputed. Learned Counsel only submitted that this 15% is the commission which the Agency receives from the publishers. While considering the service tax, the Authorities have only to consider what is the actual amount received by the Agency from the client, and how the Agency appropriates is not their concern. That is a matter between the publisher and the agent. The taxing Authorities are not concerned with the arrangement between the publisher and agency. It is not disputed that if there is no advertising agent, and the client directly deals with the publisher, there will be no deduction in the gross amount that is payable by the client. When the advertising agent receives the gross amount, he receives it as the agent of the publisher. The consideration for that service by the agent with his client is the gross amount actually received. Merely because the publisher permits the agent to retain a portion of that amount, it cannot be said that it is not in respect of the services in relation to the advertisement.

17. The said argument is strengthened in view of the definition of 'taxable service' as defined under Section 65(16) of the Act. As per the said Section, 'taxable service' so far as advertising agency is concerned, is stated as 'any service provided to a client, by an advertising agency in relation to advertisements in any manner'. This also strengthens the argument put forward by respondent.

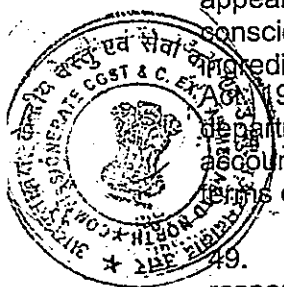
45. Following the ratio laid down vide the judgment passed by the Hon'ble Madras High Court, which clearly addresses the issue at hand, I am convinced that the assessee has grievously erred by considering only 15 % of the invoice value for payment of Service Tax. In view of the above, it is crystal clear that the assessee had to pay Service Tax on the gross value received by them for providing the Advertising Agency Service. Section 67 of the Act, is self-explanatory. For the value of taxable services, the section considers the value to be the "gross amount" charged by the appellant advertising agency from its clients for services in relation to the advertisements. The aspect of Commission is between the "advertising agency" and the "advertising media" and it has nothing to do with the clients of the advertising agency and therefore, any transaction in between the advertising agency and the media agency etc. like Print Media is outside the scope of Section 67(d).

46. Further, the assessee has admitted that in majority of the cases their net revenue is not 15%, as on account of competition they have to pass on certain percentage discounts to their customers as well, which further implies that the figure of "15%" towards Commission also, is not consistent, implying that the same may vary, and that it may also be more than that declared by the assessee.

47. In view of the above, I hold that the assessee is liable to pay Service Tax on 100% of their income i.e. the gross amount received by them towards providing Advertising Agency Service (Advertising in Print media). I hold that the said assessee is liable to pay the Service Tax amounting to Rs. 33,35,077/-, on the gross amount charged by them for providing 'Advertising Agency service' and order the same to be recovered from the assessee.

48. It is apparent that the assessee had not disclosed full, true and correct information about the value of the service provided by them. There has been a deliberate withholding of essential material information from the department about service provided and value realized by them. The assessee has also misled the department into believing that they had paid the Service Tax dues in as much as they mentioned fake challan numbers in their ST-3 returns, which did not exist. It appeared that all these 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 under the provision to Section 73 (1) of Finance Act, 1994 to demand the service tax not paid. It is held that extended period can be invoked when the department came to know of Service charges received by the assessee on verification of their accounts. Therefore, in this case, all essential ingredients exist to invoke the extended period in terms of proviso to Section 73(1) of Finance Act, 1994.

49. Further, I find that the Service Tax statute provides for self assessment and it was the responsibility of the assessee to calculate service tax liability and to discharge it. However, as



discussed above, the assessee had rendered services which are under the category of Advertising Agency Service and failed to assess and discharge their Service Tax liability. Further I find that the assessee had evaded payment of Service Tax on 85% of gross amount of their invoice value, instead they have paid service tax only on 15 % of the invoice value for payment of Service Tax, even though they were liable to pay Service Tax on the entire gross value received by them for providing the Advertising Agency Service. The fact of rendering the taxable services to their various customers and the evasion of payment of Service Tax dues came to the knowledge of the department on scrutiny of their book of accounts and balance sheets. Therefore, I find that the assessee has knowingly suppressed vital facts involved in their case. Thus they have evaded the Service Tax on the consideration charged/received for the service and not paid/short paid Service Tax mentioned hereinabove deliberately.

50. In view of the above, I find that the assessee had not discharged their service tax liability correctly under the service category of "Advertising Agency Service" ; they have contravened the provisions of Section 67 of Finance Act, 1994 in as much that they failed to determine the correct value of taxable service provided by them, Section 68 of Finance Act, 1994 read with Rule 6 of the Service Tax Rule, 1994, in as much as that they failed to determine and pay the correct amount of Service tax and the provisions of section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rule, 1994 in as much as they have failed to correctly assess their service tax liability and file correct ST-3 Returns, hence they are liable for penalty under Section 77 of the Finance Act, 1994.

51. In view of the above, the assessee have rendered themselves liable for stringent penal action as per the provisions of section 78 of Finance Act, 1994 for suppression with intent to evade payment of service tax.

52. The assessee has evaded the payment of the above amounts of service tax. Hence as per the provisions of Section 75 of the Finance Act, 1994, the assessee are required to pay interest on the amount of service tax, from the date they were required to make the payment till the date they deposit the service tax amount in the Government exchequer:

52.1 Section 75 states 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 simple interest at 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 Government, by notification in the Official Gazette, for the period by which such crediting of the tax or any part thereof is delayed."**

53. As regards imposition of penalty under Section 76, 77 and 78 of the Act. I have already held that the demand under the notice is recoverable, by invoking the extended period of time under Section 73 of the Act and Section 75 of the Act mandates levy of interest on delayed payment of Service Tax. Therefore, the demand is recoverable alongwith interest under the said Section. Further, I find that during the relevant period, Section 78 of the Act provides as follows:

**"78. Penalty for suppressing value of taxable service.-**

**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  
collusion; or  
willful mis-statement; or  
suppression of facts; or**

**(b) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, the person, liable to pay 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 such service tax and interest thereon, if any, payable by him, which shall not**



*be less than, but which shall not exceed twice, the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded;*

*Provided that where.....*

*Provided further that.....*

*Provided also that.....*

*Provided also that.....*

*Provided also that if the penalty is payable under this section, the provisions of section 76 shall not apply*

**Explanation - For the removal of doubts, it is hereby declared that-**

- (1) *the provisions of this section shall also apply to cases in which the order determining the service tax under sub-section (2) of Section 73 relates to notices issued prior to the day on which the Finance Act, 2003 receives the consent of the President.*
- (2) *any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."*

54. It is observed that where any Service Tax has not been levied or paid or has been short-levied or short-paid by the reason of suppression of facts or fraud or collusion or willful mis-statement or contravention of any of the Act or the Rules made thereunder with intent to evade payment of Service Tax, Section 78 of the Act provides for mandatory penalty and the person, liable to pay such Service Tax, shall also be liable to pay a penalty, in addition to such Service Tax and interest thereon. The amount of penalty leviable under this section is not less than the amount equal to Service Tax and not more than twice the amount of Service Tax to be paid under Section 73 of the Act. It is settled law that penalty is imposable on the basis of law operating on the date on which the wrongful act is committed, and it is levied on the totality of facts and circumstances of each case under the relevant provisions. In view of the findings given in foregoing paras, as extended period of time for demand under proviso to Section 73 of the Act is invocable in the present case, I find that the assessee has rendered themselves liable for penalty under Section 78 of the Act for the various acts/commission committed by them, as discussed in foregoing paras.

55. As regards imposition of penalty under Section 78, I find that as the said service provider has suppressed the facts with intention to evade payment of service tax, penalty under Section 78 of the Finance Act, 1994 is mandatorily imposable as has been held by the Apex court in the case of Dharmendra Textile Mills Ltd-2008 (231) ELT 3 (SC) and Rajasthan Spinning & Weaving Mills Ltd-2009 (238) ELT 3 (SC). Therefore, I hold that penalty is imposable on the said service provider under Section 78 of the Finance Act, 1994.

56. As regards imposition of penalty under section 77 of the Finance Act, 1994, I observe that in the present case the assessee had failed to comply with provisions of the Act/Rules in as much as they have failed to self-assess the correct taxable value and not showed the same in their statutory returns. Hence, they are liable to penalty under this Section 77 of the Finance Act also.

57. I find that Shri Mukesh Bhailalbai Patel, Director of M/s. Abhik had been looking after all the work, including Service Tax, of their company since its inception and he was well aware of the activities carried out by their company. Therefore he was concerned with the provisions of the Finance Act, 1994 and appeared to have committed the contravention of the provisions of the Finance Act, 1994 resulting in evasion of Service. None of the above contraventions could have been committed without his consent or guidance. Therefore, I hold that Shri Mukesh Bhailalbai Patel, is liable to penalty as provided under the provisions of Section 78A of the Finance Act, 1994.



58. In view of the above, I pass the following orders:

**ORDER**

- (i) I confirm the demand of Service Tax amounting to Rs. 36,57,694/- (Rupees Thirty Six Lakh Fifty Seven Thousand Six Hundred Ninety Four Only) as shown in Annexure – A1 to the show cause notice under the proviso to sub-section (2) of Section 73 of the Finance Act, 1994 and order the said amount already paid by the assessee, be appropriated against the said demand;
- (ii) I confirm the interest amounting to Rs. 3,90,418/- (Rs. Three Lakh Ninety Thousand Four Hundred Eighteen Only) on the amount of Service Tax not paid / short paid mentioned at (i) above, as shown in Annexure-A2 to the show cause notice, demanded from the assessee under Section 75 of the Finance Act, 1994; and I order the said amount of interest already paid by the assessee be appropriated against the said demand;
- (iii) I confirm the the Service Tax amounting to Rs. 33,35,077/- (Rupees Thirty Three Lakh Thirty Five Thousand Seventy Seven Only) as shown in Annexure – B to the show cause notice, demanded from the assessee and order the same be recovered from them under the proviso to sub-section (2) of Section 73 of the Finance Act, 1994;
- (iv) I confirm the amount of interest calculated at appropriated rate, on the aforesaid amount of Service Tax not paid (mentioned at (iii) above), and order the same be charged and recovered from the assessee under Section 75 of the Finance Act, 1994;
- (v) I impose Penalty amounting to Rs.69,92,771/- (Rupees Sixty Nine Lakhs Nine two Thousand Seven Hundred Seventy one only) under Section 78 of the Finance Act, 1994 should not be imposed upon them.
- (vi) I impose Penalty amounting to Rs.10000/- under Section 77 of the Finance Act, 1994 should not be imposed upon the assessee.
- (vii) I order that Late Fee of Rs. 1,45,000/- (Rupees One Lakh Forty Five Thousand Only), for delayed filing of ST-3 Returns as shown in Annexure – C to the show cause notice, demanded under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994, should be recovered from them.
- (viii) I impose a penalty of Rs. 1,00,000/- on Mukesh Bhailalbhai Patel, Director of M/s. Abhik Advertising Pvt. Ltd., under the provisions of Section 78A of the Finance Act, 1994.

59. The Show Cause Notice No. STC/15-35/OA/2017, dated 7.11.2017 issued by Joint Commissioner, C.G.S.T., Ahmedabad (North), is decided in above terms and hence disposed off.



(Marut Tripathi)  
Joint Commissioner  
C.G.S.T. & C.Ex.,  
Ahmedabad (North)

**BY R.P.A.D./HAND DELIVERY**

F.No. STC/15-35/OA/2017

Date : 12/01/2021.

To,

- (1) M/s. Abhik Advertising Pvt. Ltd.,  
C-3-405, 4<sup>th</sup> Floor, Anushruti Flats,  
Near Muktidham Jain Derasar, Near Thaltej Cross Road,  
S.G. Highway, Thaltej, Ahmedabad – 380 059

(2) Shri Mukesh Bhailalbhai Patel  
Director of M/s. Abhik Advertising Pvt. Ltd.,  
C-3-405, 4<sup>th</sup> Floor, Anushruti Flats,  
Near Muktidham Jain Derasar, Near Thaltej Cross Road,  
S.G. Highway, Thaltej, Ahmedabad – 380 059

Copy to :

1. The Commissioner, Central Goods and Services Tax and Central Excise, H.Q., Commissionerate Ahmedabad – North.
2. The Deputy Commissioner, Central Goods and Services Tax and Central Excise, Division – VII, Commissionerate Ahmedabad – North.
3. The Superintendent, Central Goods and Services Tax and Central Excise, AR-II, Division – VII, Commissionerate Ahmedabad - North

4. Guard File

