आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
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F.No:- STC/15-20/OA/2019

आदेश की तारीख़/Date of Order : - 29.01.2021
जारी करने की तारीख़/Date of Issue :- 29.01.2021

DIN No.-20210164WT0000611468

द्वारा पारित/Passed by:- एम. एल. मीणा / *M.L.Meena*
अपर आयुक्त / Additional *Commissioner*

मूल आदेश संख्या / Order-In-Original No. 39/ADC/2020-21/MLM

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 विरूद्ध 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 रू .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

(73) उक्त अपील की प्रति।

(74) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (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:

(73) Copy of accompanied Appeal.

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

विषय:- कारण बताओ सूचना/ Show Cause Notice No.VI/1(b)/CTA/Tech-7/SCN/Karnavati/2019-20 dated 16.04.2019 issued against M/s Karnavati Club Limited, Sarkhej-Gandhinagar Highway, Ahmedabad 380058.

Brief facts of the case:

M/s Karnavati Club Limited, Sarkhej-Gandhinagar Highway, Ahmedabad 380058 ('assessee') holding a Service Tax Registration No AAACK7865QST001 were providing taxable services namely Club & Association Services, Mandap Keeper Services, Selling of Space, Health & Fitness Centre services, Commercial training and coaching services etc.

2. During the course of audit of the Service Tax records of the said assessee for the period from October 2013 to June 2017, the following observations were raised-

Revenue Para No.1 –Short payment of Service Tax on renting of space and other infrastructure facilities.

3. It was noticed that the said assessee had let out its space and other infrastructure facilities to various entities like TGB, Avakar Decorators, Havmor etc. Apart from the agreed rent for such facilities, the said assessee were also recovering amounts as reimbursement of electricity burning expenses. It was also seen that they had not discharged service tax on these reimbursable amounts collected by them. It appeared that the said assessee had not fulfilled all the conditions for claiming deductions as a 'pure agent' and therefore, service tax was payable by them on the reimbursable amounts.

4. An observation was raised by the Audit officers under letters dated 28.3.2019 and 8.4.2019 requesting the said assessee to pay service tax on the reimbursable amounts. The said assessee under their letter dated 8.4.2019 have informed that they are not in agreement with the objection. They stated that service tax is not applicable on supply of electricity. They cited the rulings in the case of South Eastern Coalfields Ltd reported at 2019 (22) GSTL 393 (T), Amit Sales at 2017 (47) STR 156(T), ICC Reality (India) Pvt Ltd at 202 (32) STR 427(T) and Intercontinental Consultants & Technocrats Pvt. Ltd at 2013 (29) **STR 9(Del).**

5. The relevant text of Section 67(1) of the Act reads as under:

"SECTION [67. Valuation of taxable services for charging service tax. **(1)** Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, -

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

(ii) .....

(iii) .....

(2) .....

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

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation. - For the purposes of this section, -

(a) ["consideration" includes -

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed"

Rule 5 of the Valuation Rules reads as under:

"RULE 5. Inclusion in or exclusion from value of certain expenditure or costs. - (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service".

2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely-

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorises the service provider to make payment on his behalf.

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1. - For the purposes of sub-rule (2), "pure agent" means a person who -

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services".

6. The relevant text to Section 65B(44) of the Finance Act, 1994 ('Act') reads as under:

"'service' means any activity carried out by a person for another for consideration, and includes a declared service""

7. 'Taxable Service' defined under Section 65B(51) of the Act reads as under:

""taxable service" means any service on which service tax is leviable under section 66B"

8. It appeared that Section 67(1)(a)(i) of the Act defines consideration as any amount payable for the taxable services. It also adds on to say that all reimbursable expenditure or costs incurred by the service provider would be addable to the gross taxable value, except in certain circumstances which are detailed in Rule 5(2) of the Valuation Rules. Rule 5(1) of the Valuation Rules also includes all expenditure or costs incurred by the service provider in the value for the purpose of charging service tax. The only exception is carved out under Rule 5(2) of the Valuation Rules. For exclusion of value of reimbursable expenditure or costs incurred by the service provider, the conditions detailed in Rule 5(2) of the Valuation Rules have to be followed. Explanation 1 to Rule 5(2) of the Valuation Rules defines 'pure agent' as detailed above.

9. It is seen that the said assessee has not entered into any contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service. It appeared that the said assessee does not fall within the meaning of 'pure agent' as envisaged under Explanation 1 to Rule 5(2) of the Valuation Rules. It further appeared from the above that the assessee has not received the actual amounts incurred to procure goods or services in the above cases. In some of the cases, the said assessee recovered a lumpsum amount from the service recipient amounting to Rs 10,000/- whereas in some cases, the recovery has been made on actual consumption basis. It also appeared that the said assessee has recovered amounts @ Rs 11 per unit against the actual cost of electricity of Rs 8 (approximate) from the entities to whom they have rent out the space. This is as per the bills raised by the said assessee. It further appeared that the said assessee is not engaged in the supply of electricity and is utlising electricity to provide output services. Accordingly, the arguments made by the said assessee are not correct.

10. The assessee has received more amounts as detailed above, against the actual expenses incurred by them. Clause (d) to Explanation 1 to Rule 5(2) of the Valuation Rules envisages that the assessee receives only the actual amount incurred to procure such goods or services. Condition No (vii) to Rule 5(2) of the Valuation Rules also says that the assessee recovers from the recipient of service only such amount as has been paid by him to the third party. It is seen that the assessee has recovered more amounts than the actual amounts incurred by them for procuring such goods or services. The condition No (vii) to Rule 5(2) of the Valuation Rules and clause (d) of Explanation 1 to Rule 5(2) of the Valuation Rules have not been complied by the assessee as they have not received the actual amounts as reimbursement for which payments were made to third parties and, therefore, not acted as a 'pure agent'.

11. Rule 5(2) of the Valuation Rules envisages exclusion of certain expenditure or costs incurred from the value only if all the conditions of the rule is followed. As the said assessee have not followed all the conditions for exclusion of value, they do not appear to be falling within the ambit of 'pure agent' for the purpose of excluding the value of reimbursements received by them. There is no doubt that in order to exclude the expenditure or costs incurred by the assessee, they should have acted as a pure agent and all the conditions mentioned in Rule 5(2) of the Valuation Rules was to be followed in principle. The benefits are considerable and substantial and therefore, the condition has to be necessarily fulfilled for exclusion of value. It, therefore, appeared that the expenditure or costs which have been incurred by the assessee in providing the taxable services to the various entities as mentioned above would be treated as a consideration and covered under the definition of 'service' as per the provisions of Section 65B(44) of the Act and 'taxable service' under Section 65B(51) of the Act. Accordingly, the consideration received by the assessee from the different entities as mentioned above needs to be included in the value for the purpose of charging service tax, as per the provisions of Section 67(1)(a)(ii) of the Act read with Rule 5(1) of the Valuation Rules.

12. On going through their financial records for the period from October 2013 to June 2017, it is seen that they have received an income by way of reimbursement of Rs.5,78,49,566/- on which Service Tax involved comes to Rs.77,62,689/- in the name of electricity burning expenses. Therefore, it appeared that the assessee has contravened the provisions of-

- Explanation a(ii) to Section 67(1) of the Act read with Rule 5(1) of the Valuation Rules as they have failed to include the value of reimbursements received from different entities as mentioned above as consideration in the transaction value for the purpose of payment of service tax, as they did not act as their pure agent;
- Section 68 of the Act read with Rule 6 of the Rules as they have failed to pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.
- Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed.

13. It also appeared that the assessee have at no point of time disclosed that they had received consideration as reimbursements from the different entities for the service provided by them. It appeared that they have not shown the amount charged as pure agent, under Part B (B 1.10) of their ST 3 return for the periods in dispute, and have therefore, suppressed the material facts with an intent to evade payment of duty.

14. Therefore, it, appeared that they have suppressed the material facts with an intent to evade the payment of service tax by non-exclusion of the costs or expenditure incurred by them and received as consideration from different entities, falling within the ambit of the provisions of Section 67(1)(a)(ii) of the Act read with Rule 5(1) of the Valuation Rules. Accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' for demand of service tax amounting to Rs 77,62,689/- on the reimbursable amounts of Rs 5,78,49,566/-. It appeared that the assessee have not paid the service tax amounting to Rs

77,62,689/- as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act. It appeared that by the act of not disclosing the amount of consideration received on account of costs or expenditure incurred by them from different entities, trying to exclude them for determining the taxable value as per Rule 5(2) of the Valuation Rules by wrongly claiming the deductions as a 'pure agent', the assessee has suppressed the material facts from the department with an intention to evade the payment of service tax, as discussed above. It, therefore, appeared that the assessee in addition to the payment of service tax along with interest would also be liable for penal action under the provisions of Sections 78(1) of the Act.

Revenue Para No 2 - Short payment of service tax due to different in revenue reconciliation

15. A reconciliation of the income shown in their financial statements and those shown in their ST 3 returns for the same period was undertaken. It was noticed that there was a difference in income shown by the said assessee in their financial records and ST3 returns.

16. Therefore, an observation was raised by the Audit officers vide letters dated 28.3.2019 and 8.4.2019 requesting the said assessee to pay the service tax on the differential income. The said assessee vide their letter dated 8.4.2019 have informed that they are not in agreement with the objection. The differential income during the period from 2013-14 to 2017-18 (upto June 2017) comes to Rs.4,93,29,151/- and the service tax leviable has been calculated which comes to Rs.70,03,176/- .

17. It was the contention of the said assessee that the department has added the amount of deposit along with advances and therefore, the amount of deposit was required to be deducted. They sought deduction on certain amounts on which service tax was not applicable like Aqua Aerobics at warm water SW pool Aquaa, Football tournament, Cricket tournament, Membership list sale, Housie income, Havmor Icecream Income (TGB), Cancel charges for lawn & hall, REIM to TGB for members credit (restaurant bills), miscellaneous income (scrap), Reciprocal affiliation club, Bumper Housie Income, Interclub Swimming competition, Library charges and penalty interest.

18. It appeared that the amounts received as advances by the said assessee against bookings made, are being adjusted towards the value of services provided by them to various service recipients at the time of final settlement of accounts. Therefore, it appeared there is no case for deduction of the amounts received as advances. It also appeared that no supporting evidentiary documents and figures have been provided by the said assessee on their claim for non levy of service on certain incomes as referred above. It, therefore, appeared that the contention of the said assessee is incorrect and they are required to pay service tax amounting to Rs 70,03, 176/- on the taxable value of Rs 4,93,29,151/-.

19. It appeared from the above that there is an activity carried out by the said assessee. The activity has been carried out by the said assessee for their customers. There is a consideration received by the said assessee from their customers. It, therefore, appeared that the activity carried out by the said assessee falls within the meaning of 'service' as defined under the provisions of

Section 65B(44) of the Act.

20. It is seen that the activities do not find mention in any of the provisions of Section 66D of the Act. It, therefore, appeared that they do not fall under the negative list and therefore, are taxable services. Further, there is no exemption provided under the mega exemption Notfn No 25/2012-ST dated 20.6.2012, as amended or any other notification issued under the Act. Accordingly, it appeared that the services provided by the said assessee are taxable and liable for payment of service tax. The activity appeared to be taxable as defined under Section 65B(51) of the Act.

21. From the foregoing facts and discussions, it appeared that the said assessee has contravened the provisions of:

- Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 ('Rules') as they have failed to pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed;

- Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed.

22. It appeared that the said assessee have not disclosed to the revenue that they had provided services to their customers on which income was earned by them. They have not informed that they were providing a taxable service falling within the definition of 'service' as envisaged under the provisions of Section 65B(44) of the Act. They have shown the entire consideration as income in their financial records but have not shown the same consideration as receipt in their ST3 returns before the audit objection was detected.

23. Therefore, it appeared that they have suppressed the material facts in their ST3 returns with an intent to evade the payment of service tax of receiving a consideration on the services provided to them to their customers within the ambit of Section 658(44) of the Act. Accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' in this case.

24. It is seen that there is a difference in showing receipts of income receipts to the tune of Rs 4,93,29,151/- for the period from October 2013 to June 2017 and therefore, service tax not paid amounting to Rs 70,03,176/- is liable to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Act by invoking the extended period of time of five years as there is a case of suppression of facts with an intent to evade the payment of service tax. It appeared that the assessee has not paid the service tax amounting to Rs 70,03,176/- as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act. It appeared that by the act of not disclosing the amount of consideration received on account of the services provided by the said assessee, the assessee has suppressed the material facts with an intention to evade the payment of service tax, as discussed above and it, therefore, appeared that the assessee in addition to the payment of service tax along with interest would also be liable for penal action under the provisions of Sections 78(1) of the Act.

Revenue Para No 3 - Wrong utilisation of credit pertaining to Education Cess and Secondary & Higher Education Cess

25. On scrutiny of their ST3 returns for the months of October 2015 and October 2016, it was noticed that the said assessee had transferred the unutilised Cenvat Credit of education cess and secondary & higher education cess for payment of Basic duty amounting to Rs 75,246/-. An observation was raised by the officers vide letter dated 28.3.2019 requesting the said assessee to reverse the Cenvat Credit as transfer and utilisation of these credits were not allowed under the Cenvat Credit Rules, 2004 ('Cenvat Rules'). The said assessee vide their letter dated 8.4.2019 have informed that they are not in agreement with the objection. It was contended by them that they had reversed the Cenvat Credit after availment and therefore, interest and penalty would not be applicable.

Rule 3(7)(b) of the Cenvat Rules reads as under:

"[(b) CENVAT credit in respect of-

(vi) the education cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

[(via) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and]

(vii) ..... shall be utilised towards payment of duty of excise or as the case may be, of service tax leviable .....

Provided further that the credit of the Secondary and Higher Education Cess on excisable goods and the Secondary and Higher Education Cess on taxable services can be utilized, either for payment of the Secondary and Higher Education Cess on excisable goods or for the payment of the Secondary and Higher Education Cess on taxable services :]"

26. It appeared from the 1st Proviso that the Cenvat Credit of education cess availed on taxable services can only be utilized for payment of education cess on excisable goods or for the payment of education cess on taxable services. Similarly, it appeared from the 2nd proviso that the Cenvat Credit of secondary & higher education cess availed on taxable services can only be utilized for payment of secondary & higher education cess on excisable goods or for the payment of secondary & higher education cess on taxable services. It appeared that there is a restriction in utilization of the education cess and the secondary & higher education cess availed on taxable services. It appeared that there is a bar for utilization of the education cess and the secondary & higher education cess towards the basic duty.

27. It is also seen that the said assessee has not provided any documents evidencing the reversal of Cenvat Credit wrongly utilized by them during the course of audit. Accordingly, the wrongly utilized Cenvat credit of education cess and secondary & higher education cess amounting to Rs 75,246/- needs to be demanded and recovered from the said assessee. It,

therefore, appeared that the assessee have contravened the provisions of:

1st and the 2nd proviso to Rule 3(7)(b) of the Cenvat Rules as they have failed to reverse the education cess and secondary & higher education cess, wrongly utilized towards the payment of basic duty

28. It appeared that the assessee have willfully not reversed the education cess and secondary & higher education cess wrongly utilized towards the payment of basic duty, as envisaged under the 1st and 2nd proviso to Rule 3(7)(b) of the Cenvat Credit Rules. It appeared that the said assessee have not disclosed to the revenue in any of the records/returns that they had utilized the Cenvat Credit of education cess and secondary & higher education cess towards the payment of basic duty, before the audit objection was detected.

29. From the above discussions, it appeared that the assessee has suppressed the material facts with an intent to evade the payment of duty by not reversing the wrongly utilized Cenvat Credit and accordingly, the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules is applicable for invoking the extended period of 'five years' for demand and recovery of the amount of Rs 75,246/-. It appeared that the assessee has not reversed the Cenvat Credit amounting to 'Rs 75,246/-, and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. It appeared that by the act of non reversal of the Cenvat Credit wrongly utilized by them, in contravention to the 1st and 2nd proviso of Rule 3(7)(b) of the Cenvat Rules and not disclosing these facts in their returns, the assessee has suppressed the material facts with an intention to evade the payment of duty, and it, therefore, appeared that the assessee in addition to the reversal of Cenvat Credit along with interest would also be liable for penal action under the provisions of Sections 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules.

Revenue Para No 4: Short payment of service tax on reconciliation of ledgers of legal charges paid to Advocate vis-a-vis ST 3 returns

30. On reconciliation of the amounts paid to Advocates for legal service from their ledgers vis-a-vis their ST3 returns filed, it was observed that there was a difference of Rs.3,63,000/- in the values shown and thereby, leading to a short payment of service tax to the tune of Rs.48,497/- . The relevant text to Notfn No 30/2012-ST dated 20.6.2012, as amended, reads as under:

"Notification 30/2012 Service Tax dated 20.6.2012 (Incorporating the amendments till 30.06.2017) GSR. .....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part 11, Section 3, Subsection (i),vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004- Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government

hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

1. The taxable services,

(B) an individual advocate or a firm of advocates by way of support services

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Sr.No.	Description of service	Percentage of service tax payable by the person providing service.	Percentage of service tax payable by the person receiving the service
5	In respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services.	Nil	100%

31. From the table to the Notfn No 30/2012-ST dated 20.6.2012 read with the provisions of Rule 2 (1) (d) of the Rules, as amended, it is clear that in respect of services provided or agreed to be provided by individual advocates, the said assessee is liable to pay the service tax at 100% of the value of taxable services. It is not disputed by the said assessee that the service tax is payable on the taxable value of services received from individual advocates. However, it appeared that during the reconciliation of ledgers relating to payment of money to advocates for legal services vis-a-vis the value shown in their ST3 returns, the taxable value has been shown lesser by Rs 3,63,000/- and thereby has resulted in short payment of service tax to the tune of Rs 48,497/-.

32. From the foregoing facts and discussions, it appeared that the said assessee have contravened the provisions of:

- Notfn No 30/2012-ST dated 20.6.2012, as amended as they have failed to pay the service tax, as envisaged in the table above;
- Section 68 of the Act read with Rule 6 of the Rules as they have failed to pay appropriate service tax at the rate specified in section 66 in such manner and within such period as may be prescribed;
- Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed.

33. It, therefore, appeared that they have suppressed the value of taxable services received by them in their ST3 returns vis-a-vis their financial ledgers with an intent to evade the payment of service tax. Accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' for demand and recovery of duty in this case.

34. As tabulated above, it is seen that there is a difference in showing the taxable value to the

tune of Rs 3,63,000/- for the period from October 2013 to June 2017 and therefore, service tax short paid amounting to Rs 48,497/- is liable to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Act by invoking the extended period of time of five years as there is a case of suppression of facts with an intent to evade the payment of service tax. It is seen that the said assessee have made a service tax payment of Rs 31,749/- and therefore, this payment is to be adjusted against the total service tax demand. It appears that the assessee has not paid the service tax as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act. It appears that by the act of suppressing the taxable value of services received by them from advocates, the assessee appeared to have rendered themselves liable for penal under the provisions of Sections 78(1) of the Act.

Revenue Para No 5 - Ineligible cenvat credit taken on input services used for providing exempted services

35. It was noticed that the said assessee had availed Cenvat Credit on input services namely decoration, photography, video recording, band service, stage light, sound system, event management services. It appeared that these services were used for organising different events like musical nights, fashion show, hasya darbar, dayro, drama etc. It was seen that these events were exempted from payment of service tax in terms of Sr No 47 to Notfn No 25/2012-ST dated 20.6.2012, as amended. It, therefore, appeared that as the output services were exempted, no Cenvat Credit would be available to the said assessee in terms of Rule 6(1) of the Cenvat Rules.

36. An observation was raised by the Audit officers vide letters dated 28.3.2019 and 8.4.2019 requesting the said assessee to reverse the Cenvat Credit amounting to Rs 11,05,749/-. The said assessee under their letter dated 8.4.2019 have informed that they are not in agreement with the objection. The total ineligible Cenvat Credit so availed comes to Rs.11,05,749/- .The relevant text to Notification No.25/2012-ST dated 20.06.2012 as amended reads as under:-

"G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March: 2012, the Central Government, being satisfied that it is necessary in the public interest so to do hereby exempts the following taxable services from the whole of the service tax leviable thereof under section 66B of the said Act, namely:-

37. Services by way of right to admission to, - (i) exhibition of cinematographic film, circus, dance or theatrical performance including drama or ballet; (ii) recognized sporting event (iii) award function, concert, pagent, musical performance or any sporting event other than a recognized sporting event, where the consideration for admission is not more than Rs.500 per person.

It appeared from the text of Sr No 47 to Notfn No 25/2012-ST dated 20.6.2012, as amended, services provided for events like musical nights, fashion show, hasya darbar, dayro,

drama etc are exempted services.' The relevant portion of Rule 6 of the Cenvat Rules are reproduced below:

"RULE 6. [Obligation of a manufacturer or producer of final products and a [provider of output service]]. [(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be:

[(3) (a) A manufacturer who manufactures two classes of goods, namely :-

(i) non-exempted goods removed;

(ii) exempted goods removed;

Or

(b) a provider of output service who provides two classes of services, namely :-

(i) non-exempted services;

(ii) exempted services,

shall follow any one of the following options applicable to him, namely:-

[(i) pay an amount equal to six *per cent.* of value of the exempted goods and seven *per cent.* of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or]

(ii) pay an amount as determined under sub-rule (3A)"

39. It appeared from the above Rule 6(1) of the Cenvat Rules that no Cenvat Credit is allowed in respect of input services which are used for the provision of exempted services. The said assessee had to reverse/pay the amount, as per the provisions of Rule 6(3) of the Cenvat Rules which has not been done. Accordingly, it appeared that the Cenvat Credit amounting to Rs 11,05,749/- as tabulated above, availed by the said assessee on services which are exempted is to be disallowed and recovered from them. It, therefore, appeared that the assessee have contravened the provisions of:

- Rule 6(1) of the Cenvat Credit Rules read with the provisions of Rule 6(3) of the Cenvat Credit Rules as they have wrongly availed Cenvat Credit on input services, which were used in provision of exempted services and not reversed/paid the amount.

40. It appeared that the assessee have wilfully availed the ineligible Cenvat Credit though they knew that the input services were to be used for the provision of exempted services, as envisaged in Sr No 47 to Notfn No 25/2012-ST dated 20.6.2012, as amended. It appeared that

the said assessee have not disclosed to the revenue in any of the records/returns that they had wrongly availed the Cenvat Credit used in exempted services, before the audit objection was detected.

41. From the above discussions, it appeared that the assessee has suppressed the material facts with an intent to evade the payment of duty by not reversing/paying the wrongly availed Cenvat Credit and accordingly, the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules is applicable for invoking the extended period of 'five years' for disallowance and recovery of the Cenvat Credit amounting to Rs 11,05,749/-. It appeared that the assessee has not reversed/paid the Cenvat Credit amounting to Rs 11,05,749/-, as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. It appeared that by the act of wrong availment of Cenvat Credit and non reversal/non-payment of the same and not disclosing these facts in their returns, the assessee has suppressed the material facts with an intention to evade the payment of duty, as discussed above and it, therefore, appeared that the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules.

42. Full trust has been placed on the service providers. Accordingly, measures such as self-assessment, etc, based on mutual trust and confidence are in place. Further, a service provider is not required to maintain any statutory or separate records under the provisions of the Finance Act and Rules made thereunder, as considerable amount of trust is placed on the private records maintained by them for their normal business purposes which are accepted. From the evidences, it appeared that the said assessee has knowingly evaded the payment of service tax/knowingly not paid the amount of the wrongly availed Cenvat Credit and knowingly not reversed the Cenvat Credit. The deliberate non-payment of service tax, non-reversal of Cenvat credit and non-payment of amount under Rule 6 of the Cenvat Rules is in disregard to the requirements of law and breach of trust reposed on them in a voluntary tax compliance regime.

43. Moreover, in the present regime of liberalization, self-assessment and filing of returns online, no documents whatsoever are submitted by the said assessee to the department and therefore, the department would only come to know about such nonpayment of service tax/amounts during audit or preventive/other checks. In the case of Mahavir Plastics Vs CCE, Mumbai reported at 2010 (255) EL T 241 (T), it has been held that if facts are gathered by department in subsequent investigation, extended period can be invoked. In the case of Lalit Enterprises reported at 2009 (23) STR 275 (T), it was held that extended period is invokable when department came to know of service charges received by appellant on verification of his accounts.

44. Therefore, M/s Karnavati Club Ltd. Sarkhej-Gandhinagar Highway, Ahmedabad 380 058 are called upon to show cause to the Additional/ Joint Commissioner of Central Tax, Ahmedabad North Commissionerate, Navrangpura, Ahmedabad 380 009 as to why:

(i) the reimbursable amount of Rs 5,78,49,566/- received as consideration by the assessee from

various entities, should not be included in the assessable value for the purpose of charging service tax, as per Explanation (a)(ii) to Section 67(1) of the Act read with Rule 5(1) of the Valuation Rules;

ii.Service Tax amounting to Rs 77,62,689/- (Rupees Seventy seven lakhs sixty two thousand six hundred eighty nine only), as tabulated above, should not be recovered from them, by invoking the extended period of five years, under the proviso to Section 73(1) of the Act;

iii.service tax amounting to Rs 70,03,176/- (Rupees Seventy lakhs three thousand one hundred seventy six only), short paid by the assessee, as tabulated above, should not be recovered from them under the proviso of Section 73(1) of the Act;

iv.the Cenvat Credit of education cess and secondary & higher education cess amounting to Rs 75,246/- (Rupees Seventy five thousand two hundred forty six only), wrongly utilized by the said assessee for payment of basic duty, should not be disallowed and recovered from them, under the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules;

v. Service tax amounting to Rs 48,497- (Rupees Forty eight thousand four hundred ninety seven only), short paid on legal services, should not be recovered from them under the proviso of Section 73 of the Act. As the said assessee have paid an amount of Rs 31,749/- towards their liability under DRC-03 debit Entry No DC2404190030544 dated 6.4.2019, they are required to show cause as to why this amount of Rs 31,749/- should not be appropriated towards the proposed demand.

vi.Cenvat Credit amounting to Rs 11,05,749/-, wrongly availed on input services used for providing exempted services, should not be recovered from them under the proviso of Section 73(1) of the Act read with the provisions of Rule 14(1(ii) of the Cenvat Rules;

vii. penalty should not be imposed on them, under the provisions of Section 78(1) of the Act on the service tax demand at (ii), (iii) and (v) above;

viii.penalty should not be imposed on them, under the provisions of Section 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules on the demand at (iv) and (vi) above;

ix.interest should not be charged and recovered from them, under the provisions of Section 75 of the Act on the service tax demand at (ii), (iii) and (v) above;

x.interest should not be charged and recovered from them, under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules on the service tax demand at (iv) and (vi).

Defence Reply:

The assessee vide their written submission received in this office on 19.08.2019 and 14.10.2019 submitted that –

They are members club and under the principle of mutuality they are not liable to service tax. They explained the various provisions of Finance Act, 1994, Service Tax Rules, Cenvat Credit Rules, 2004 and Rule 5 of the Service Tax (Determination of Value) Rules, 2006.

46. They stated that they had applied for the refund of amount of service tax paid by them from time to time. Since the services are not taxable as per the judgment of Gujarat HC in their own case the department has granted refund to the assessee on submission of documents and records on time to time. They submitted Refund orders for the period covered in SCN. Also enclosed protective demands were raised for the said period. While claiming refund they had reversed all CENVAT credit availed by them on monthly basis.

47. They stated that everything is in the knowledge of the department and while granting refund, the same has been called and verified. The question of evocation of extended period does not arise.

48. They argued that Section 173 and 174 (2) of the CGST Act, 2017 is not applicable to the present case. They relied the following case laws.

(i) Honorable Supreme Court in the case of Rayala Corporation (P) Ltd. Vs. Director of Enforcement (1969) 2 SCC 412

(ii)Honorable Supreme Court in the case of Air India Vs. Union of India (1995) 4 SCC 734

Supreme Court in the case of Kolhapur Cane Sugar Works Vs. Union of India (2000) 2 SCC 536.

49. They stated that the show cause notice seeking to levy service tax under Section 73 which forms part of Chapter V which does not exist in the statute books as on the date of show cause notice is not maintainable. They submitted that Repeal and Saving provisions do not permit issue of notice by one authority and adjudication by another authority. They relied the following case laws.

(i) Hon'ble Gujarat High Court in the case of OWS Warehouse Services LLP Vs UOI (2018) 19 GSTL 29.

(ii) Hon'ble Jharkhand High Court in the case of Sulabh International Social Service Organization Vs UOI in W.P. No. 1599/2019 dated 04.04.2019

(iii) Honourable Supreme Court in the case of Commissioner of Central Excise Vs. Brindavan Beverages (2007) 213 ELT 487 has held as under:

HonorableSupreme Court while dismissing the Civil Appeal filed by the Commissioner against the Tribunal's Final Order No. 1132/2001 dated 17.07.2001 in the case *of Commissioner of* Central Excise Vs. Chirakkadavu Rubber Latex Works (2002) 140 ELT 87 has held that the Show Cause Notice is vague and therefore the same is not maintainable.

(iv) Supreme Court in the case of Air India Vs. Union of India (1995) 4 SCC 734.

(v) The Delhi High Court in the case of Mangali Impex Vs. Union of India (2016) 335 ELT 605.

(vi) The Tribunal in the case of Naresh Sukhwani Vs. Commissioner of Customs (Adj.) (2003) 156 ELT 214.

(vii) The Tribunal in the case of Auto Ignition Ltd. Vs. Commissioner of Customs (2002) 144 ELT 631.

(viii) The Tribunal in the case of National Transport Co. Vs. Commissioner of Customs (2003) 152 ELT 373.

(ix) Consolidated Enterprises Vs. Commissioner of Customs (2001) 137 ELT 1223, C.M. Textile Vs. Commissioner of Customs (2004) 168 ELT 132.

(x) Supreme Court in the case of A.K. Roy & Another Vs. State of Punjab (1986) 4 SCC 326 and Mangulal Chunilal Vs. ManilalMaganlal& Another (AIR-1968-SC-822).

50. They stated that they have filed ST-3 returns for the period October 2013 to June 2017 and facts regarding rendering of services and payment of service tax was mentioned in the ST 3 returns. They prepared their books of accounts showing profit and loss account and balance sheet for the years 2013-14 to 2017-18. Receipt of reimbursement of electricity charges were included in profit and loss account. Therefore, they have not suppressed facts with intend to evade payment of tax on account of suppression of facts or misstatement. Therefore the department can not invoke extended period of time for issuing SCN. They produced a chart on the date of filing ST-3. They also stated that the SCN has been issued before finalising audit report.

51. They stated that they have not suppressed the facts or mis-stated income with intend to evade payment of tax under proviso 73(1) of the Finance Act,1994. Therefore extended period of five years to issue show cause notice should not be applied. They relied on the following case laws.

(i) Hon'ble Supreme Court in case of Commissioner of Customs Vs. Magus Metals Pvt. Ltd. (2017) 355 ELT 323.

(ii) Hon'ble Supreme Court in the case of Blue Star Ltd Vs. Union of India (2015) 322 ELT 820.

(iii) Rolex Logistics Pvt Ltd Vs Commissioner of Service Tax (2009) 13 STR 147.

(iv) Hon'ble Supreme Court in the case of Pushpam Pharmaceuticals Company Vs Collector of C. Ex. Bombay (1995) 78 ELT 401.

Hon'able Supreme Court of India in case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.).

Hon'ble Supreme Court in the case of CCE Vs. Ballarpur Industries (2007) 8 SCC 89.

52. Regarding - non payment of service tax on reimbursement received for electric burning expenses, they stated that they recovered electricity burning charges of Rs.5,78,49,566/- for the

period from October 2013 to June,2017. Electricity is covered under chapter 27 of the Central Excise Tariff Act,1985. Electricity is a goods and chargeable to nil rate of Central Excise duty. Therefore service tax is not applicable on supply of electricity duty under provision of Chapter V of Finance Act,1994. They relied the cases of -

(i) In case of ICC Reality (India) Pvt Ltd. Vs. Commissioner of C.Ex., Pune-III [2013(32) STR 427(Tri.-Mumbai)].

(ii) In case of South Eastern Col fields Ltd. V/s. Commissioner of C.EX.&S.T., Raipur[2019(22)GSTL393(TRI.-Del)],

(iii) The Tribunal in the case of Golflinks Embassy Business Park Vs. Commissioner of Service Tax (2012) 26 STR 124.

(iv) The Tribunal in the case of Eon Hinjewadi Infrastructure Pvt. Ltd (2012) TIOL 1688.

(v) Polad Traders Pvt. Vs Commissioner of Central Excise (2010) TIOL 1, Chitrali properties Pvt. Ltd Vs. CCE (2013) TIOL 236."

(vi) The Tribunal in the case of Vansum Industries Vs Commissioner of Central Excise (2013) TIOL 92.

(vii) Honorable High Court in case of Intercontinental Consultants & Technocrats Pvt Ltd. Vs. Union Of India [2013 (29)S.T.R. 9(Del.)] held as under:-

(viii) Amit Sales V/s. Commissioner of Central Excise-Jaipur-I [2017(47)STR156(TRI.-Del.)].

53. They stated that electricity is considered as goods and supply of electricity is supply of goods, and not a supply of service. The electricity charges collected by the assessee are part of supply of electricity. Therefore the assessee is not required to pay service tax on amount of electricity charges collected

54. They stated that Short payment of service tax to the tune of Rs.70,03,176/- during reconciliation of income shown in financial statements and ST-3 returns for the period 2013-14 to June 2017 are due to-

The audit party has added amount of deposit along with advances. The amount of deposit is required to be deducted.

	October 2013 to March 2014	**2014-15**	**2015-16**	**2016-17**	**April to June 2017**
Total	38,29,173	45,93,396	38,95,294	81,23,779	94,53,737
Less: Amount of Deposit	32,90,797	39,46,204	36,51,371	52,24,763	60,83,629
Total amount of Member	5,38,376	6,47,192	2,43,923	28,99,016	33,70,108

55. The audit party has considered the amount of advances along with service tax value. The amounts of advances are required to be deducted after excluding service tax value. The audit

party has not given deduction of incomes on which service tax is not applicable as detailed below:

- aqua aerobics at warm water swimming pool aqua
- bumper housie income
- cancel charges for lawn & hall
- cricket tournament income cri (sponsorship)
- football tournament
- havmor ice cream income
- housie income
- interclub swimming competition
- library charges
- membership list sale
- miscellaneous income (scrap)
- penalty/interest
- reciprocal affiliation club
- reimbursement to TGB for members credit (restaurant bills)

56. They stated that the show cause notice simply assumes that the difference between financial statements and ST-3 returns automatically represents taxable services without establishing as to how the same is liable to service tax. They stated that the club and its members are one and the same and there cannot be a service between a club and its members. This position has been established in their own case before the Honorable Gujarat High Court. They stated that in case in Special Civil Application Nos 13654, 13655, 13656 of 2005 of Sports Club of Gujarat Limited., Rajpath Club Limited, Karnavati Club Limited versus Union of India held as under:

"In the result, petitions are allowed and it is hereby declared that Section 65(25a), Section 65(105) (zzze) and Section 66 of the Finance (No.2) Act, 1994 as incorporated/amended by the Finance Act, 2005 to the extent that the said provisions purport to levy service tax in respect of services purportedly provided by the petitioner club to its members to be ultra virus. Rule is made absolute with no order as to costs."

(i) The Tribunal followed the various decisions of the Gujarat High Court in their own matter and based on the principles of mutuality held that service tax is not applicable.

(ii) They also referred to the decision of Hon'ble Delhi High Court in the case of Delhi Chit Fund Association Vs. Union of India (2013) 30 STR 347.

(iii) CESTAT Ahmedabad in case of Commissioner of Service Tax –Ahmedabad Vs. Rajpath Club Ltd. (A/10785/2018 dated 26/04/2018) for the period October 2015 to March 2016 held that on the principle of mutuality members and club are not separate entity but are the same. Hence services to own self does not attract service tax.

(iv) In case of M/s. Rajpath Club Ltd., Commissioner (A) by order no. AHM-EXCUS-001-APP-237-17-18 dated18.01.2018 has already decided that the assessee is an incorporated organisation and hence explanation 3 to Section 65B(44) regarding to unincorporated association or a body of person is not applicable to them.

57. Regarding Wrong utilization of credit of Education Cess and Secondary & Higher Education Cess, they stated that they are entitled to avail Cenvat Credit of the education cess and secondary education cess of customs duty based on the decision of the Karnataka High Court in the case of *CCE Vs. Shree Renuka Sugars Ltd. (2014) 302 ELT 33.*

58. Regarding the issue of short payment of service tax noticed on reconciliation of ledgers and ST 3 returns in respect of legal services, they stated that they have legal service of advocate viz Vaibhavi D. Nanavati, Devang Nanavati, Bandish Soparkar, Bhaskar P. Tanna, Saurabh Soparkar, Nirupam D. Nanavati, etc. They produced a table as below and stated that the actual liability under legal service for paying service tax under RCM is to that extent only.

(Amount in Rs.)

Period	Expense incurred on legal service	Amount on which service tax paid under ST-3 Return	Difference of Taxable Value	Service tax payable
2013-14	1,28,17,000	23,07,060	23,07,060	0
2014-15	85,68,000	84,78,000	90,000	11,124
2016-17	7,43,000	7,15,500	27,500	4,125
April to June 2017	1,10,000	0	1,10,000	16500
Total				31,749

59. They stated that they have paid Rs.31,749 before issue of SCN. Therefore, interest and penalty should not be imposed. They enclosed proof of payment of Rs. 31,749.

60. Regarding the issue of ineligible CENVAT credit taken on input services used for providing exempted services, they stated that the credit has already been reversed after Availment as refund is claimed for the amount paid. As the same is reversed before issue of SCN interest and penalty will not applicable. They availed the credit and also reversed the same on monthly basis as refund of the same period is claimed.

61. They stated that penalty not impossible under Section 78(1) of Finance Act,1994 and Rule 15(3) of CENVAT Credit Rules,2004 as they have filed ST-3 returns for the period October

2013 to June 2017 and facts regarding rendering of services and payment of service tax was mentioned in the ST 3 returns. They prepared their books of accounts showing profit and loss account and balance sheet for the years 2013-14 to 2017-18 and facts regarding receipt of reimbursement of electricity charges were included in profit and loss account. They have not suppressed facts with intend to evade payment of tax on account of suppression of facts or misstatement.

62. They also stated that proviso under Section 73(1) of the Finance Act, 1994 is not applicable and also extended period of five years is not applicable to the assessee. They have not suppressed the facts with intend to evade payment of service tax therefore the assessee is not liable to pay penalty under Section 78(1) of the Finance Act,1994 and Rule 15(3) of CENVAT Credit Rules,2004.

63. They also stated that penalty not imposable when matter relates to legal interpretation. They stated that the issue involved relates to interpretation whether electricity is goods or not and whether supply of electricity is a service and whether it attracts service tax. The Honorable Tribunals have held that the penalty should not be imposed when matter relates to question of legal interpretation. They relied the the following case laws.

- Mundra Port and Special Economic Zone Vs. CCE (2009) 18 STT 314.
- Haryana Roadways Engg. Vs CCE (2001) 131 ELT 662
- Biolwara Spinners Ltd. Vs CCE (2001) 135 ELT 719
- Century Cement Vs CCE (2002) 150 ELT 1065
- Aquamall Water Solutions Ltd. 2003 (153) ELT 428
- Blue Cross Laboratories Ltd. Vide order no. A/1529/C-IV/SMB/2007
- Sports & Leisure Apparel Ltd. CCE, Noida 2005 (180) ELT 429
- KK Apachan Vs. CCE, Palakkad (2007) 7 STR 230 (Cestat, Banglore)
- Sharp Metal Industries VS. Commissioner of Central Excise, Lucknow (2012) 23 Taxmann.com 317
- Honorable supreme court in case of CCE Vs. Balakrishna Industries (2006) 201 ELT 325.

64. Finally they requested to set aside the show cause notice and also grant them personal hearing.

Personal Hearing:

6. Personal hearing in this case was fixed on 23.09.2020 and 04.11.2020. Shri Bishan Shah, CA, appeared for personal hearing on 04.11.2020. He reiterated the contention of his written submission dated 19.08.2019 and 14.10.2019. He requested to drop the show cause notice.

Discussion and findings:

66. I have carefully gone through the records of the case, written submission made by the assessee and submission made during the course of personal hearing. The assessee has challenged the issuance of SCN. I find that their argument in this regard are baseless and not warranted looking to the present facts of the case. Therefore, I am not discussing the contention in detail. The issues to be decided in the present case are as under:-

1) Short payment of Service Tax to the tune of Rs.77,62,689/- on renting of space and other infrastructure facilities
2) Short payment of Service Tax of Rs.70,03,176/- due to difference in revenue realization
3) Wrong utilization of Cenvat Credit pertaining to Education Cess and Secondary & Higher Education Cess to the tune of Rs.75,246/-
4) Short payment of Service Tax of Rs.48,487/- of legal charges paid to Advocates.
5) Ineligible availment of Cenvat Credit of Rs.11,05,749/- on input services used for providing exempted services.

67. In the case of short payment of Service Tax to the tune of Rs.77,62,689/- on renting of space and other infrastructure facilities, the show cause notice has alleged that the said assessee had let out its space and other infrastructure facilities to various entities like TGB, Avakar Decorators, Havmor etc. Apart from the agreed rent for such facilities, the said assessee were also recovering amounts as reimbursement of electricity burning expenses. It was also seen that they had not discharged service tax on these reimbursable amounts collected by them. It appeared that the said assessee had not fulfilled all the conditions for claiming deductions as a pure agent' and therefore, service tax was payable by them on the reimbursable amounts.

68. The said assessee stated that they are not in agreement with the objection. They stated that service tax is not applicable on supply of electricity. They cited the rulings in the case of South Eastern Coalfields Ltd reported at 2019 (22) GSTL 393 (T), Amit Sales at 2017 (47) STR 156(T), ICC Reality (India) Pvt Ltd at 202 (32) STR 427(T) and Intercontinental Consultants & Technocrats Pvt Ltd at 2013 (29) STR 9(Del). The assessee has stated that the Electricity is covered under Chapter 27 of the Central Excise Tariff Act, 1985. The Electricity is a goods and chargeable to nil Central Excise duty. Therefore, Service Tax is not applicable on supply of electricity. They relied the case of ICC Reality (India) Pvt. Ltd Vs Commissioner of C.Ex, Pune (2013 (32) STR 427 (Tri-Mumbai). They also relied the case of Eastern Coal Fields Ltd Vs Commissioner of C.Ex & ST, Raipur 2019(22)GSTL 393 (Tri-Del), Goldflinks Embassy Business Park Vs Commissioner of Service Tax (2012) 26 STR 124, Eon Hinjewadi Infrastructure Pvt.Ltd (2012) TIOL 1688, Polad Traders Pvt Ltd Vs Commissioner of Central Excise (2010) TIOL 1, Chitrali Properties Pvt.Ltd Vs CCE (2013) TIOL 236, Vansum Industries Vs Commissioner of Central Excise (2013) TIOL 92, Intercontinental Consultants & Technocharafts Pvt.Ltd Vs Union of India (2013 (29) STR 9 (Del) and Amit Sales Vs Commissioner of Central Excise, Jaipur-1 (2017(47)STR 156 (Tri-Del).

69. I find that Section 67(1)(a)(i) of the Finance Act, 1994 defines consideration as any

amount payable for the taxable services. It also adds on to say that all reimbursable expenditure or costs incurred by the service provider would be addable to the gross taxable value, except in certain circumstances which are detailed in Rule 5(2) of the Valuation Rules. Rule 5(1) of the Valuation Rules also includes all expenditure or costs incurred by the service provider in the value for the purpose of charging service tax. The only exception is carved out under Rule 5(2) of the Valuation Rules. For exclusion of value of reimbursable expenditure or costs incurred by the service provider, the conditions detailed in Rule 5(2) of the Valuation Rules have to be followed. Explanation 1 to Rule 5(2) of the Valuation Rules defines 'pure agent' as detailed above.

70. I find that the said assessee has not entered into any contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service. The said assessee does not fall within the meaning of 'pure agent' as envisaged under Explanation 1 to Rule 5(2) of the Valuation Rules. I find that the assessee has not received the actual amounts incurred to procure goods or services in the above cases. In some of the cases, the said assessee recovered a lumpsum amount from the service recipient amounting to Rs 10,000/- and in some cases, the recovery has been made on actual consumption basis. It is also noticed that the said assessee has recovered amounts @ Rs 11 per unit against the actual cost of electricity of Rs 8 (approximate) from the entities to whom they have rented out the space. This is as per the bills raised by the said assessee. It is seen that the said assessee is not engaged in the supply of electricity and is utlising electricity to provide output services. Therefore, the arguments made by the said assessee are not tenable.

71. I find that the assessee has received more amounts than the actual unit of electricity consumed and against the actual expenses incurred by them. Clause (d) to Explanation 1 to Rule 5(2) of the Valuation Rules envisages that the assessee receives only the actual amount incurred to procure such goods or services. Condition No (vii) to Rule 5(2) of the Valuation Rules also says that the assessee recovers from the recipient of service only such amount as has been paid by him to the third party. It is seen that the assessee has recovered more amounts than the actual amounts incurred by them for procuring such goods or services. The condition No (vii) to Rule 5(2) of the Valuation Rules and clause (d) of Explanation 1 to Rule 5(2) of the Valuation Rules have not been complied by the assessee as they have not received the actual amounts as reimbursement for which payments were made to third parties and, therefore, not acted as a 'pure agent' and the expenditure or costs which have been incurred by the assessee in providing the taxable services to the various entities as mentioned above would be treated as a consideration and covered under the definition of 'service' as per the provisions of Section 65B(44) of the Finance Act and 'taxable service' under Section 65B(51) of the Act

72. Rule 5(2) of the Valuation Rules envisages exclusion of certain expenditure or costs incurred from the value only if all the conditions of the rule is followed. As the said assessee have not followed all the conditions for exclusion of value, they do not fall within the ambit of 'pure agent' for the purpose of excluding the value of reimbursements received by them. There is no doubt that in order to exclude the expenditure or costs incurred by the assessee, they should

have acted as a pure agent and all the conditions mentioned in Rule 5(2) of the Valuation Rules was to be followed in principle. The benefits are considerable and substantial and therefore, the condition have to be necessarily fulfilled for exclusion of value. Therefore, the expenditure or costs which have been incurred by the assessee in providing the taxable services to the various entities as mentioned above would be treated as a consideration and covered under the definition of 'service' as per the provisions of Section 65B(44) of the Finance Act and 'taxable service' under Section 65B(51) of the Act. Accordingly, the consideration received by the assessee from the different entities as mentioned above needs to be included in the value for the purpose of charging Service Tax, as per the provisions of Section 67(1)(a)(ii) of the Act read with Rule 5(1) of the Valuation Rules.

73. I find that the assessee has over-charged the electricity charges from their clients. In some cases, they charged Rs.11/- against the actual charge of Rs.8/- (approx) per unit of electricity and in some other cases, they charged lump sum that too more than the actual amount on the electricity consumption. Under the circumstances, they can not be treated as pure agents of the service recipient of service. Under the circumstances, Valuation of taxable value has to be in terms of Section 67 of the Finance Act, 1994. Had the assessee recovered the actual expenses incurred on the consumption of electricity from their clients, they would have met the eligibility criteria for the deduction of the said amount from the taxable value. However, in the present case, they over charged from their customers in the guise of electricity charges. I find that the assessee has not given any details of the amount actual recoverable on the electricity actually consumed and no bifurcation of the amount was given. Therefore, I have no option except to proceed with the amount determined by the Audit party which is available on records. I find that for the period from October 2013 to June 2017, they have received an amount of Rs.5,78,49,566/- in the name of electricity burning expenses on which they are liable to pay Service Tax of Rs.77,62,689/-.

In view of the above, I find that that the assessee has contravened the provisions of-

- Explanation a(ii) to Section 67(1) of the Act read with Rule 5(1) of the Valuation Rules as they have failed to include the value of reimbursements received from different entities as mentioned above as consideration in the transaction value for the purpose of payment of service tax, as they did not act as their pure agent;
- Section 68 of the Act read with Rule 6 of the Rules as they have failed to pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.
- Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed.

74. I find that the assessee have at no point of time disclosed that they had received consideration as reimbursements from the different entities for the service provided by them. They have not shown the amount charged as pure agent, under Part B (B 1.10) of their ST 3 return for the periods in dispute, and have therefore, suppressed the material facts with an intent to

evade payment of duty.

75. Therefore, they have suppressed the material facts with an intent to evade the payment of service tax by non-exclusion of the costs or expenditure incurred by them and received as consideration from different entities, falling within the ambit of the provisions of Section 67(1)(a)(ii) of the Act read with Rule 5(1) of the Valuation Rules. Accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' for demand of service tax amounting to Rs 77,62,689/- on the reimbursable amounts of Rs 5,78,49,566/-. The said assessee have not paid the service tax amounting to Rs 77,62,689/- and therefore, interest is to be recovered from the assessee under the provisions of Section 75 of the Act. By the act of not disclosing the amount of consideration received on account of costs or expenditure incurred by them from different entities, trying to exclude them for determining the taxable value as per Rule 5(2) of the Valuation Rules by wrongly claiming the deductions as a 'pure agent', the assessee has suppressed the material facts from the department with an intention to evade the payment of service tax. The assessee in addition to the payment of service tax along with interest would also be liable for penal action under the provisions of Sections 78(1) of the Act.

76. Regarding short payment of Service Tax of Rs.70,03,176/- due to difference in revenue realization, the show cause notice has alleged that there is a difference in income shown by the said assessee in their financial records and ST-3 Returns to the tune of Rs.4,93,29,151/- thereby short payment of Service Tax of Rs.70,03,176/-. The contention of the assessee that the Department has added the amount of deposit along with advances and therefore, the amount of deposit was required to be deducted. They requested for deduction on certain amounts on which Service Tax was not applicable like Acqua Aerobics at warm water SW pool Aqua, Football tournament, Cricket tournament, Membership list sale, Housie income, Havmor Icecream Income (TGB), Cancellation charges for lawn and hall, REIM to TGB for members credit (restaurant bills) miscellaneous income (scrap), Reciprocal affilation club, Bumper Housie Income, Interclub Swimming completion, Library charges and penalty interest.

77. The assessee has stated that the audit party has added the amount of deposit along with advances and the amount of deposit is to be deducted from the amount. They stated that the Service Tax can be levied only when there is a provision of taxable service. They produced a year-wise table showing the difference of deposit during the period from October 2013 to March 2014, 2014-15, 2015-16, 2016-17 and April to June 2017 as under:-

	October 2013 to March 2014	2014-15	2015-16	2016-17	April to June 2017
Total	38,29,173	45,93,396	38,95,294	81,23,779	94,53,737
Less: Amount of Deposit	32,90,797	39,46,204	36,51,371	52,24,763	60,83,629
Total amount of Member	5,38,376	6,47,192	2,43,923	28,99,016	33,70,108

I find that no co-relation between the difference of income pointed out by the Audit officers which comes to Rs.4,93,29,151 and the amount shown in the table above. Even if the

amount mentioned in the table of total income, Less: Amount of Deposit, Total amount of Member etc are added, no co-relation could be established with the amount of Rs.4,93,29,151/- which is difference of income in the ST-3 and financial statements. For the sake of arguments, say, the amount of deposit or miscellaneous non-taxable income, they should have mentioned in the ST-3 Returns.

79. I agree with the view of the Department that the amount received as advances by the said against booking made, are being adjusted towards the value of services provided by them to various service recipients at the time of final settlement of accounts. Therefore, there is no case for deduction of the amount received as advance. Also, I find that no supporting evidencing documents and figures have been provided by the assessee in support of their claim for non-levy of Service Tax on certain incomes. I also find that they have not submitted any satisfactory explanation to the difference except stating that amount of deposit is required to be deducted. Under the circumstances, I am not inclined to accept their contention that the deposit is required to be deducted from the total differential amount. Therefore, I hold that the assessee is liable to pay Service Tax to the tune of Rs.70,03,176/- on the differential amount of Rs.4,93,29,151/-.

80. Regarding the issue of wrong utilization of Cenvat Credit pertaining to Education Cess and Secondary & Higher Education Cess to the tune of Rs.75,246/-, the show cause notice has alleged that the said assessee had transferred the unutilised Cenvat Credit of education cess and secondary & higher education cess for payment of Basic duty amounting to Rs 75,246/-. The said assessee vide their letter dated 8.4.2019 have informed that they are not in agreement with the objection. They cited the decision of the Karnataka High Court in the case of CCE Vs Shree Renuka Sugars Ltd (2014) 302 ELT 33.

81. I find that Notification No.22/2015-CE (NT) dated 29.10.2015 has been issued by the Government allowing credit of Education Cess and Secondary and Higher Education Cess paid on input service in respect of which the invoice, bill, challan or Service Tax Certificate for Transportation of Goods by Rail (referred to in Rule 9) as the case may be is received by the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of Service Tax on any output service. For convenience, I reproduce the said Notification hereunder:-

"Cenvat Credit Rules, 2004 — Fifth amendment of 2015

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely :-

1.(1) These rules may be called the CENVAT Credit (Fifth Amendment) Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 3, in sub-rule (7), in clause (b), after the fifth proviso, the following proviso shall be inserted, namely :-

"Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the premises of the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service.

Provided also that the credit of balance fifty per cent. Education Cess and Secondary and Higher Education Cess paid on capital goods received in the premises of the provider of output service in the financial year 2014-15 can be utilized for payment of service tax on any output service :

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input service in respect of which the invoice, bill, challan or Service Tax Certificate for Transportation of Goods by Rail (referred to in rule 9), as the case may be, is received by the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service.".

82. In view of the above, I find that as per the Notification No.22/2015-CE(NT) dated 29.10.2015, condition to utilize the credit of 'Education Cess and Secondary and Higher Education Cess' has been prescribed to the effect that *"credit of Education Cess and Secondary and Higher Edu ...on Cess paid on input service in respect of which the invoice, bill, challan or Service Tax Certificate for Transportation of Goods by Rail (referred to in rule 9), as the case may be, is received by the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service"* I find that no Cesses are leviable on input services effective from 01.06.2015 as they were subsumed in the Service Tax which was enhanced from 12.36% to a consolidated rate of 14%. From the query memo F.No.CTA/04-46/CIR-VII/AP-48/2017-18 dated 28.03.2019 issued by the Superintendent, Circle-VII, AP-48, CGST Audit, Ahmedabad, I find that the assessee has wrongly availed credit of EC and SHEC by transferring the unutilized credit balance of EC & SHEC totally amounting to Rs.36,044/- and Rs.39202/- in basic credit as shown in ST-3 Return in the month of October-2015 and October 2016. Therefore, it is clear that they used the unutilized amount which is obviously not covered under Notification No.22/2015-CE(NT). Therefore, I reject the assessee's claim that they are eligible to take Cenvat Credit of Education Cess and SHE Cess.

83. In reply to the show cause notice, the assessee has stated that they have reversed the credit before issue of SCN, interest and penalty may not be imposed. However, I find that the payment/reversal of the said credit has not been reflected in the show cause notice. Further, the documents submitted by them showing details of payment/reversal of the said wrongly availed Cenvat credit does not matched with the figures demanded in the show cause notice. Therefore, I hold that the wrongly availed Cenvat of Education Cess and Secondary & Higher Education Cess amounting to Rs.75,246/- is to be recovered from them in terms of Section 73(1) of the Act, 1994 read with Section 14(1) (ii) of the Cenvat Credit Rules, 1994 along with

interest under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of Cenvat Cre Rules, 2004 and penalty in terms of Section 78(1) of the Finance Act, 1994 read with Rule 15(3) of the Cenvat Credit Rules, 2004.

84. Regarding short payment of Service Tax on reconciliation of ledgers of legal charges paid to Advocate vis-a-vis ST 3 returns, the show cause notice has alleged that the assessee has failed to pay Service Tax to the tune of Rs.48,497/- under RCM in terms of Notification No.30/2012-ST dated 20.06.2012.

85. The assessee has stated that only Rs.31,749/- is required to be paid by them and they have already paid Rs.31,749/- before issue of show cause notice and requested not impose any interest and pena..y. I find that the audit officers have already ascertained the amount of Rs.48,497/- and the assessee has not given any convincing evidence to show that the actual amount payable is Rs.31,749/- and not Rs.48,497/-. Further, the assessee paid the amount of Rs.31749/- only during the course of Audit. Therefore, I hold that the assessee is liable to pay interest on the entire amount of Rs.48,497/- and penalty on the amount of Rs.48,497/- in terms of Finance Act, 1994.

86. Regarding Ineligible Cenvat Credit of Rs.11,05,749/- taken on input services used for providing exempted services, the show cause notice has alleged that the assessee had availed Cenvat Credit on input services namely decoration, photography, video recording, band service, stage light, sound system, event management services. The said services were used for organizing different events like musical nights, fashion show, hasya darbar, dayro drama etc. The said events were exempted from payment of Service Tax in terms of Sr.No.47 to Notification No.25/2012-ST dated 20.06.2012 as amended. Since the output services were exempted, no Cenvat Credit would be available to the said assessee in terms of Rule 6(1) of the Cenvat Credit Rules, 2004.

87. The assessee has stated that the Credit has already reversed after availment of refund amount paid. As the same already reversed before issue of show cause notice, they requested not to impose any interest and penalty. They also stated that they availed credit and also reversed the same on monthly basis as refund of the same period is being claimed. The assessee has stated that they reversed the amount before issue of show cause notice but the same has not been reflected in the show cause notice and also no proof of the same has been submitted by the assessee.

Rule 6 of the Cenvat Credit Rules, 2004 states that -

"RULE 6. [Obligation of a manufacturer or producer of final products and a [provider of output service]]. [(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be:

[(3) (a) A manufacturer who manufactures two classes of goods, namely :-

(i) non-exempted goods removed;

(ii) exempted goods removed;

Or

(b) a provider of output service who provides two classes of services, namely :-

(i) non-exempted services;

(ii) exempted services,

shall follow any one of the following options applicable to him, namely:-

[(i) pay an amount equal to six *per cent.* of value of the exempted goods and seven *per cent.* of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or]

(ii) pay an amount as determined under sub-rule (3A)"

88. The Audit officers have worked out the ineligible Cenvat Credit availed by the assessee to the tune of Rs.11,05,749/- which is to be recovered from them in terms of Rule 14(1) (ii) of the Cenvat Credit Rules along with interest and penalty as per the provisions of Finance Act, 1994.

89. The assessee have wilfully availed the ineligible Cenvat Credit though they knew that the input services were to be used for the provision of exempted services, as envisaged in Sr No 47 to Notfn No 25/2012-ST dated 20.6.2012, as amended. The said assessee have not disclosed to the revenue in any of the records/returns that they had wrongly availed the Cenvat Credit used in exempted services, before the audit objection was detected.

90. From the above discussions, it is clear that the assessee has suppressed the material facts with an intent to evade the payment of duty by not reversing/paying the wrongly availed Cenvat Credit and accordingly, the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules is applicable for invoking the extended period of 'five years' for disallowance and recovery of the Cenvat Credit amounting to Rs 11,05,749/-. The assessee has not produced details of the reversal/payment of the wrongly availed Cenvat Credit amounting to Rs 11,05,749/- and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. It appeared that by the act of wrong availment of Cenvat Credit and non reversal/non-payment of the same and not disclosing these facts in their returns, the assessee has suppressed the material facts with an intention to evade the payment of duty, as discussed above and it, therefore, the assessee are also be liable for penal action under the provisions of Sections 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules.

91. Full trust has been placed on the service providers. Accordingly, measures such as self-assessment, etc, based on mutual trust and confidence are in place. Further, a service provider is not required to maintain any statutory or separate records under the provisions of the Finance Act and Rules made thereunder, as considerable amount of trust is placed on the private records maintained by them for their normal business purposes which are accepted. The said assessee has knowingly evaded the payment of service tax/knowingly not paid the amount of the wrongly availed Cenvat Credit and knowingly not reversed the Cenvat Credit. The deliberate non-payment of service tax, non-reversal of Cenvat credit and non-payment of amount under Rule 6 of the Cenvat Rules is in disregard to the requirements of law and breach of trust reposed on them in a voluntary tax compliance regime.

- In view of the above discussion and my findings above, I hold that - the demand in respect of short payment of Service Tax on renting of space and other infrastructure facilities and reimbursable amount of Rs.5,78,49,566/- received as consideration by the assessee from various entities on account of electricity charges involving Service Tax of Rs.77,62,689/- is recoverable from them as discussed in the above paras in terms of Section 73(1) of the Finance Act, 1994 along with applicable interest and penalty proposed in the show cause notice.

- The assessee is liable to pay Service Tax amounting to Rs.70,03,176/- on the short payment of Service due to difference in revenue reconciliation, as they have not provided convincing evidence to prove their claim that the amount are not taxable. Therefore, the said amount is to be recovered from the assessee by invoking extended period of limitation in terms of Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. They are also liable to pay penalty in terms of Section 78 (1) of the Finance Act, 1994.

- Service Tax of Rs.75,248/- on the wrong utilization of Credit pertaining to Education Cess and Secondary & Higher Education Cess is recoverable from the assessee as proposed in the show cause notice.

- The assessee is liable to pay Service Tax on legal charges to the tune of Rs.48,497/- in terms of Notification No.30/2012-ST dated 20.06.2012 under RCM. As the assessee already paid Rs.31,749/- the said amount is required to be appropriated and adjusted against the Service Tax payable by them. Remaining amount of Rs.16,748/- is to be recovered from them in terms of Section 73(1) of the Finance Act, 1994. As they have not paid interest on the amount paid by them, interest is to be recovered from the assessee in terms of Section 75 of the Finance Act, 1994. They are also liable to pay penalty under the provisions of Section 78(1) of the Finance Act, 1994.

The assessee have taken ineligible Cenvat Credit on input services used for providing exempted services and thus violated Rule 6 of the Cenvat Credit Rules. Therefore, an amount of Rs.11,05,749/- is to be recovered from them under the provision of Section 73(1) of the Finance Act, 1994 read with Rule 14(1)(ii) of the Finance Act, 1994. They are also liable to pay penalty in terms of Section 78(1) of the Finance Act, 1994 read with Section 15(3) of the Cenvat Credit

Rules, 2004.

92. Under self-assessment and filing of returns online, no documents whatsoever are submitted by the said assessee to the department and therefore, the department would only come to know about such nonpayment of service tax/amounts during audit or preventive/other checks. In the case of Mahavir Plastics Vs CCE, Mumbai reported at 2010 (255) EL T 241 (T), it has been held that if facts are gathered by department in subsequent investigation, extended period can be invoked. In the case of Lalit Enterprises reported at 2009 (23) STR 275 (T), it was held that extended period is invokable when department came to know of service charges received by appellant on verification of his accounts.

93. The assessee has submitted a large number of case laws in their support including orders passed by the Hon'ble Supreme Court in Civil Appeal No.7773 of 2019 arising SLP (c) 26883 of 2013-2019-TIOL-449-ST-LB. I find that the said case laws are distinguishable because in the present case in hand the issues involved are non-payment of Service Tax on amount of electricity charges collected in excess of the amount incurred by the assessee, non-payment of Service Tax on difference in the value in ST-3 and balance sheet, wrong availment of Cenvat Credit on Education Cess and Secondary and Higher Education Cess, short payment of Service Tax under RCM on legal expenses and ineligible Cenvat Credit taken on the input services used for providing exempted services. Therefore, the said case laws are not comparable with the present case and accordingly not considered. In view of the above discussion and my findings, I pass the following orders-

ORDER

i. I order that the reimbursable amount of Rs.5,78,49,566/- received as consideration by the assessee from various entities be included in the assessable value for the purpose of charging Service as per Explanation (a)(ii) to 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Valuation Rules.

ii. I confirm the demand of Service Tax amounting to Rs.77,62,689/- (Rupees seventy seven lakhs sixty two thousand six hundred and eighty nine only) and order that the same amount be recovered from M/s.Karnavati Club Ltd, Ahmedabad under Section 73(2) of the Finance Act, 1994.

iii. I order to recover interest on the amount of Service Tax Rs.77,62,689/- confirmed above under Section 75 of the Finance Act, 1994.

iv. I impose a penalty of Rs.77,62,689/- (Rupees seventy seven lakhs sixty two thousand six hundred and eighty nine only) under Section 78(1) of the Finance Act, 1994.

I confirm the Service Tax amounting to Rs 70,03,176/- (Rupees Seventy lakhs, three thousand, one hundred and seventy six only), short paid by the assessee, under the proviso of Section 73(1) of the Finance Act, 1994;

I order M/s.Karnavati Club to pay interest on the amount of Rs.70,03,176/- under Section

75 of the Finance Act, 1994.

vii. I impose a penalty of Rs.70,03,176/- (Rupees seventy lakhs three thousand one hundred and seventy six only) on M/s .Karnavati Club Ltd, Sarkhej-Gandhinagar Highway, Ahmedabad Under Section 78(1) of the Finance Act, 1994.

viii. I disallow Cenvat Credit of education cess and secondary & higher education cess amounting to Rs 75246/-(Rupees seventy five thousand two hundred and forty six only) and order that the said amount be recovered from the assessee under Section 73(1) of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004.

ix. I order that interest be recovered on the amount of Rs.75,246/- from the assessee in terms of Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004.

x. I impose a penalty of Rs.75,246/- (Rupees seventy five thousand two hundred and forty six only) on M/s.Karnavati Club Ltd, Sarkhej-Gandhinagar Highway, Ahmedabad under Section 78(1) of the Finance Act, 1994 read with Rule 15(3) of the Cenvat Credit Rules, 2004.

xi. I confirm the Service Tax amounting to Rs 48,497- (Rupees Forty eight thousand, four hundred and ninety seven only), short paid by the assessee on legal services, under Section 73 of the Finance Act, 1994. As the said assessee have paid an amount of Rs 31,749/- towards their liability under DRC-03 debit Entry No DC2404190030544 dated 6.4.2019, the said amount is appropriated and adjusted against the demand. I order that the remaining amount of Rs.16,748/- be recovered from the assessee under Section 73 of the Finance Act, 1994.

xii. I order M/s.Karnavati Club Ltd, to pay interest on the amount of Rs.48,497/- in terms of Section 75 of the Finance Act, 1994.

xiii. I impose a penalty of Rs.48,497/- (Rupees forty eight thousand four hundred and ninety seven only) on M/s.Karnavati Club Ltd, Ahmedabad in terms of Section 78(1) of the Finance Act, 1994.

xiv. I order that the wrongly availed Cenvat Credit amounting to Rs 11,05,749/-, (Rupees eleven lakhs five thousand seven hundred and forty nine only) on input services used for providing exempted services, be recovered from them under the proviso of Section 73(1) of the Act read with the provisions of Rule 14(1(ii) of the Cenvat Rules, 2004

xv. I order M/s.Karnavati Club Ltd, Ahmedabad to pay interest on the amount of Rs.11,05,749/- under Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004.

xvi. I impose a penalty of Rs.11,05,749/- (Rupees eleven lakhs five thousand seven hundred and forty nine only) on M/s.Karnavati Club Ltd, Ahmedabad under Section 78(1) of the Finance Act, 1994 read with Rule 15(3) of the Cenvat Credit Rules, 2004.

I further Order that in the event the entire amount confirmed as above is paid within thirty days from the receipt of this Order along with applicable interest, the amount of penalty liable to

be paid by them shall be 25% (twenty five per cent) of the penalty imposed at Sr. No.(iv, vii, x, xiii and xvi) above, subject to the condition that such reduced penalty is also paid within the said period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

(M. L. Meena)
Additional Commissioner
CGST & CEx., Ahmedabad-North.

F No. STC/15-20/OA/2019.
By Speed Post AD

Date: 29.01.2021.

To

M/s Karnavati Club Ltd
Sarkhej-Gandhinagar Highway
Ahmedabad 380 058.

Copy to :

1) The Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.
2) The Deputy/Assistant Commissioner, Div-VI CGST & Central Excise, Ahmedabad North.
3) The Superintendent, Range-I Division VI, CGST & Central Excise, Ahmedabad North
4) Guard File.