

आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद -उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1 ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
फोन नंबर/ PHONE No.: 079-27544557	फैक्स/ FAX : 079-27544463	E-mail:- oahmedabad2@gmail.com

To

24AAACT5456A1ZR

M/s Torrent Pharmaceuticals Limited
 Torrent House, Off Ashram Road,
 Ashram Road, Ahmedabad-380009.

Tax Period - July 2017 (Erroneous refund)

F.Y. - 2017-18

Act - CGST Act, 2017

Section / sub-section under which Order is being issued - Sec 73(9)

SCN /Demand Reference No. -GEXCOM/SCN/GST/339/2020-ADJN-O/o Commr-CGST
 Ahmedabad(N). Date: 02.12.2020

Brief facts of the case :

1.M/s. Torrent Pharmaceuticals Limited, Torrent House, Off Ashram Road, Ahmadabad (hereinafter referred as to the claimant) is registered with Central Goods & Services Tax Department having GSTIN No. 24AAACT5456A1ZR.

2.The claimant had filed a refund claim of Rs.2,03,11,454/-for IGST, 27,74,011/- for CGST and Rs. 27,74,011/- for SGST dated 23.01.2018 for the month of July, 2017 on account of input tax credit (ITC) accumulated due to Zero rated supply of goods.

Table 1 : Refund claim applications filed by the assessee

Refund period	Application Reference(ARN) No.	Amount of Refund claim (Rs.)			
		IGST	CGST	SGST	Total
July 17	AB2407178959583	20311454	2774011	2774011	25859476

3. Vide following final refund order (Form GST-RFD-06), the above refund claims was sanctioned to the claimant:

Table 2 : Refund claims sanctioned to the claimant.

Refund period	Refund Order (Form-RFD-06) No. & Date	Amount of Refund Sanctioned (Rs.)			
		IGST	CGST	SGST	Total
July 17	Div-VII/GST-Refund/05/final/Torrent/2018 dated 07.03.2018	20311454	2774011	2774011	25859476

The said claim file was then sent for post-audit. The Assistant Commissioner, Audit Cell vide letter F.No.VI/1(b)-48/Post-Audit/Div-VII/2017-18 dated 23.05.2018 observed that "as per the GSTR-3B, the claimant has shown eligible ITC of Rs. 7,90,86,358/- of IGST, Rs. 1,06,41,987/- of CGST and Rs. 1,06,41,987/- of SGST. Further, it is observed that they have

utilized IGST credit of Rs. 7,90,86,358/-, CGST credit of Rs. 1,06,41,358/- and SGST credit of Rs. 1,06,41,358/- for the payment of duty during July, 2017". Thus, it appeared that there was no unutilized input tax credit available with the claimant for refund. The Jurisdictional Assistant Commissioner had replied for the same vide their office letter F.No. Div-VII/CGST/Misc./Refund-Rebate/17-18 dated 16.10.2018. However the Deputy Commissioner (Audit) vide letter F.No.VI/1(b)-48/Post-Audit/Div-VII/17-18 dated 23.10.2018 observed that "as per above, the claimant preferred claim for the month of July-2017 whereas there was no sufficient balance available in respect of IGST, CGST & SGST, as the total eligible ITC for the month of July-2017 is Rs.10,03,70,332/ which has been utilized by the claimant for payment of duty for the said month. Similar aspects also noticed in the claim for the month of August-2017 as the claimant have not sufficient balance at the end of tax period to debit against their claimed amount. Thus, it appears that your compliance is not relevant in context of provisions under Section 54(3) i.e, "a registered person may claim refund of any unutilized ITC at the end of any tax period" that has not been followed while allowing the subject claims for the month of July-2017 and August-2017. Hence, the claim sanctioned does not appear proper and it is requested to take necessary action for safeguards to the revenue".

5. In view of the above, it appeared the said claimant was not eligible for refund of Input Tax Credit on zero-rated supply of goods and services amounting to Rs.2,03,11,454/-for IGST, Rs. 27,74,011/- for CGST and Rs. 27,74,011/- for SGST as the claimant was not having any unutilized balance of ITC in IGST, CGST and SGST. The refund amount ineligible to the claimant calculated by audit as under:

Table 3 : Amount ineligible to the claimant

Refund period	Refund Order (Form-RFD-06) No. & Date	Refund Amount ineligible (Rs.)			
		IGST	CGST	SGST	Total
July 17	Div-VII/GST-Refund/05/final/Torrent/2018 dated 07.03.2018	20311454	2774011	2774011	25859476

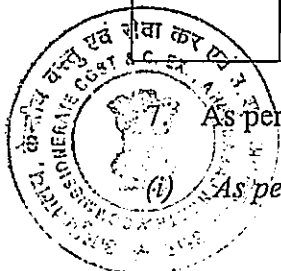
6. Further, it was observed that the aforesaid Final Refund order (RFD-06) has not been accepted by the department. The reviewing authority vide Review Order, mentioned below reviewed the refund sanctioned on the grounds mentioned below and filed Appeal before Commissioner (Appeals), Central Tax, Ahmedabad against the said refund order:

Table 4 : Details of Review orders

Refund period	Refund Order (Form-RFD-06) No. & Date	Review order No. & Date	Appeal filed on
July 17	Div-VII/GST-Refund/05/final/Torrent/2018 dated 07.03.2018	25/2018-19 dated 24.10.2018	25.10.2018

As per review order departmental appeal was filed on following grounds-

As per sub-section (3) of the Section 54 of the CGST Act, 2017 :



"a registered person may claim refund of any unutilized input tax credit at the end of any tax period."

(ii) In the month for which refund claim was filed i.e. refund period, there was no balance of input tax credit lying unutilized.

(iii) The Adjudicating authority has erroneously sanctioned refund of Rs. 25859476/- for July 2017 which needs to be recovered along with interest.

8. The Commissioner (Appeals), Central Tax, Ahmedabad vide Order-in-Appeals No. AHM-EXCUS-002-APP-207& 208-18-19 dated 07.03.2019(issued on 08.05.2019), allowed the Departmental appeal filed above and set aside the impugned order and allowed the prayer of the department for recovery of the erroneous refund along with interest. Para 6, of the Order-in-appeal is as under:

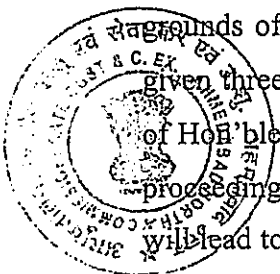
"Therefore, as per the discussion held, the appeals filed by the department is allowed and as proposed, I set aside the impugned orders and direct the proper authority to recover the refund/excess refund granted to the respondents along with interest at appropriate rate".


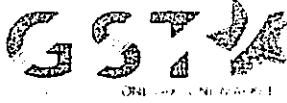
9. In view of above, the grant of refund of Rs.25859476/-(Rs.20311454/- for IGST, Rs.2774011/- for CGST and Rs.2774011/- for SGST) for the month of July 2017 vide RFD-06 Order No. Div-VII/GST-Refund/05/final/Torrent/2018 dated 07.03.2018 to M/s. Torrent Pharmaceuticals Limited in respect of refund of unutilized ITC in relation to exports of Goods/Services appeared to be erroneous and required to be recovered from them under Section 73(1) of the CGST Act, 2017 along with applicable interest.

10. So a Demand notice for erroneously refunded amount of Rs.25859476/- was issued to the assessee under section 73(1) of CGST Act on 02.12.2020 for safe guard of revenue. It is pertinent to mention that as per available records assessee has approached to Hon'ble Gujarat High Court vide SCA No.17988 of 2019 against the Order of Commissioner Appeals due to non constitution of Appellate Tribunal for GST. Hon'ble High Court has restrained the Department from recovery as interim relief to the party vide Order dated 16.10.2019.

11. Personal hearing in the matter was fixed on 19.01.2021 at 11.00 AM. Shri Ankit Jani, Manager Taxation, Torrent Pharmaceutical appeared on behalf of the noticee. He requested not to pass any order as the matter is pending before Hon'ble High Court.

12. After PH in the case the assessee has submitted a reply of the SCN on 25.01.2021. In their reply the assessee has discussed about brief issue of the case from para-1 to 7 and given the grounds of defence in para-8 under the heading of 'Preliminary reply to SCN'. Noticee have given three grounds under para-8, firstly they have submitted that the present notice is violation of Hon'ble High Court which restrained the respondent department from initiating any recovery proceeding and should be dropped on this sole ground, secondly they submit that present notice will lead to duplicity of adjudication proceeding as the matter on merit is already adjudicated and refund granted and appeal proceedings are pending before High Court. Further they have stated



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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN 20210264WT0000111A4A

फा.सं./F.No. STC/15-04/OA/2018

आदेश की तारीख/Date of Order :- 05.02.2021

जारी करने की तारीख/Date of Issue :- 05.02.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 42/JC/ MT /2020-21

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

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

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

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

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

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

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

(1) उक्त अपील की प्रति।

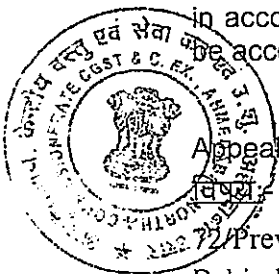
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

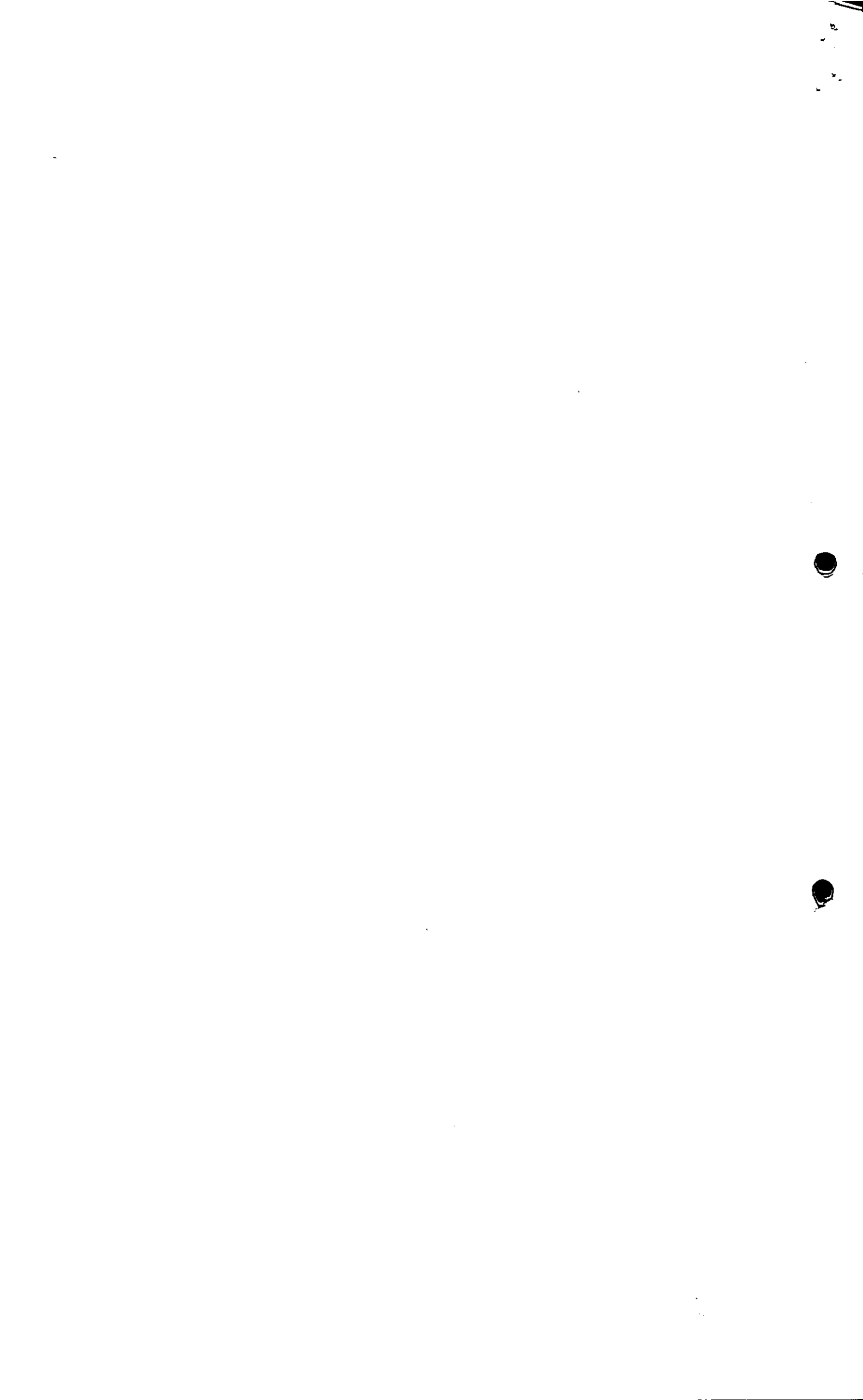
The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

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

विषय: कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. STC/04-22/Prev/13-14 dated 31.01.2018 issued to M/s.Shukan Enjoy situated at Opp: Shayona Tilak, Behind Vishwakarma Temple, New S.G.Road, Chandlodia, Ahmedabad.





Brief Facts of the Case:

On the basis of intelligence gathered and cultivated by the erstwhile Service Tax Commissionerate, Ahmedabad, M/s.Shukan Enjoy (a unit of Shukan Corporation Pvt.Ltd (hereinafter referred to as "Service Provider"), situated at Opp: Shayona Tilak, Behind Vishwakarma Temple, New S.G.Road, Chandlodia, Ahmedabad, engaged in providing taxable services of "Construction of Residential Complex Services", "Commercial or Industrial Construction Services" and "Transport of Goods by Road Service" etc was not registered with Service Tax Department and was not paying Service Tax.

2. Residential-cum-commercial complex named Shukan Enjoy was being built by M/s Shukan Corporation Pvt. Ltd., 14, 4th Floor, Shukan Mall, Near Rajasthan Hospital, Shahibaug, Ahmedabad. Shukan Enjoy is an individual project and a Limited Company under the umbrella of a group namely Shukan Group (M/s Shukan Corporation Pvt. Ltd.).

3. Accordingly, a search operation was conducted by the Preventive officers at the premises of said Service Provider situated at Shukan Enjoy, Opp. Shayona Tilak, B/h Vishwakanna Temple, New S. G. Road, Chandlodiya, Ahmedabad on 03.10.2013 and during search operation Shri Maheshkumar R Patel, Director of M/s Shukan Corporation. Pvt. Ltd. accepted that they have started bookings in the scheme Shukan Enjoy from January-2013 but have not taken Service Tax Registration and have not paid the applicable Service Tax. Therefore, for further investigation required documents were withdrawn under Panchnama dated 03.10.2013.

4. A statement of Shri Rameshbhai Revabhai Patel, one of the Directors of M/s Shukan Corporation Pvt. Ltd., was recorded on 04.10.2013 under Section 14 of erstwhile Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Shri Rameshbhai Revabhai Patel in his Statement dated 04.10.2013, interalia stated that he is looking after all the affairs relating to Service Tax matters; that he is responsible for discharging proper Service Tax liability; the timely payment of Service Tax liability and the day-to-day affairs related to Service Tax; that all projects under Shukan Group are separately registered with Service Tax Department. However, M/s.Shukan Enjoy has not obtained Service Tax registration and therefore, the applicable Tax could not be paid. In his Statement dated 04.10.2013 Sh. Rameshbhai R. Patel accepted the Service Tax liability for the period from 2011-12 to 2013-14 (upto 03-10-2013) for the amount of **Rs.50,95,016/-** towards "Construction of Residential Complexes Services" & "Commercial or Industrial Construction Services" and agreed to pay the same at the

statement of Shri Maheshkumar R Patel, one of the directors of M/s Shukan Enjoy, was also recorded on 03.10.2013 under Section 14 of erstwhile Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. In his Statement dated



03.10.2013 Shri Maheshkumar R Patel accepted the Service Tax liability for the period from 2012-13 to 2013-14 (upto September 2013) for amount of Rs.63,527/- for Transport of Goods by Road Services and agreed to pay the same at the earliest.

6. With regard to services provided by the service provider M / s Shukan Enjoy, post 01.07.2012 period since there is no service wise classification due to introduction of Negative List however in the definition of 'service' contained in clause {44) of section 65B of the Act it has been stated that service includes a declared service. The phrase 'declared service' is defined in the said section as an activity carried out by a person for another for consideration and specified in Section 66E of the Finance Act, 1994.

7. Clause (b) of the Section 66E of the Act covers services of construction for all purposes including commercial and residential, and also includes construction by builder on behalf of the buyer. The description of services covered under this entry is as under:

"Section 66E(b): construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;

Explanation-For the purpose of this clause,

(I) *The expression "competent authority" means the Government or any authority to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following namely:*

(A) Architect registered with council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(B) Chartered engineer registered with the Institution of Engineers (India); or

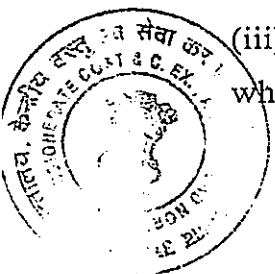
(C) Licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) The expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure.

8. A reading of above clause reveals that following services are covered under the above description-

(i) Services of construction of a complex, building, civil structure or a part thereof;
(ii) Services of construction include additions alterations, replacement or remodelling of any existing civil structure; and

(iii) Services construction of a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of



completion certificate by the competent authority.

9. Further, Notification No.26/2012-Service Tax dated 20.06.2012 (effective from 01-07-2012), granted abatement to 'Construction of Complex' service of tax equal to 75 per cent, as the case may be, of the service tax otherwise payable. In effect, only 25 per cent, as the case may be, of the gross amount charged by assessee for providing the said taxable service will be subjected to service tax at the prescribed rate. The abatement is available subject to conditions that (i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions-of the CENVAT Credit Rules, 2004; (ii) The value of the land is included in the amount charged from the service receiver.

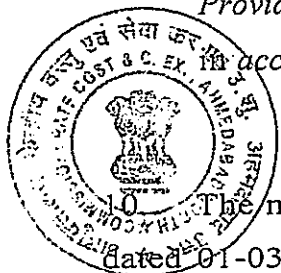
Sr.No.	Description of taxable Service	Percentage	Conditions
12	<i>Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority</i>	25	<i>(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The value of land is included in the amount charged from the service receiver.</i>

For the purpose of exemption at Serial No.12 -

The amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract after deduction.

- (i) *the amount charged for such goods or services supplied to the service provider, if any;*
and
(ii) *the value added tax or sales tax, if any, levied thereon:*

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.



The notification No.26/2012-ST was amended vide Notification No.02/2013-ST dated 01-03-2013 (effective from 01-03-2013) and further amended vide notification no.09/2013-ST dated 01-05-2013 and reads as under:

Sr.No.	Description of taxable Service	Percentage	Conditions
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12	<p><i>Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority</i></p> <p><i>{a} for a residential unit satisfying both the following conditions, namely:-</i></p> <p><i>(i) the carpet area of the unit is less than 2000 square feet; and</i></p> <p><i>(ii) the amount charged for the unit is less than rupees one crore;</i></p>	25	<p><i>(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.</i></p> <p><i>(ii) The value of land is included in the amount charged from the service receiver.</i></p>
	<i>(b) for other than the (a) above.</i>	30	

11. Thus, the builder or a developer is entitled to avail exemption in the form of abatement of tax equal to 75 per cent of the service tax if conditions (i) & (ii) stated above are fulfilled for all constructions upto 28-02-2013 however in the case of other than residential unit the criteria of abatement of tax equal to 70 percent would apply from 01-03-2013.

12. From the foregoing legal provisions it is clear that M/s Shukan Enjoy was providing taxable service liable for payment of service tax at the prescribed rate on abated value of 25 percent for residential units in complex Shukan Enjoy and at abated value of 25% upto 28-02-2013 for sale of shops in said complex and at abated value of 30% from 01-03-2013.

13. During the course of investigation M/s Shukan Enjoy took service tax registration bearing No.AAQCS8987D005 on 14-10-2013 and submitted a copy of same along with ledger accounts upto 03-10-2013 on 19.11.2013. The Service provider also paid partial service tax during the period as per Annexure G to the show cause notice.

14. A letter was written on the service provider on 08.12.2014 for submission of documents such as copies of ST-3 Returns and GAR-7 Challans, Balance sheet and Profit & Loss account, Ledger Accounts, Invoices Agreements/Contracts, Form 26AS issued by Income Tax Authorities, Income : Tax return for the period from 2011-12 to 2013-14 however said letter was returned undelivered. Further, investigation in the case was carried out on the basis of the records withdrawn from the premises of the service provider at the time of search under Panchnama dated 03-10-2013 and the records submitted by the service provider vide letter dated 19.11.2013.

The service provider didn't discharge the complete service tax liability accepted Sh.



Rameshbhai R. Patel in his statement dated 04-10-2013 and continued to evade the same. In the meanwhile it was learnt that said project named 'Shukan Enjoy' was put to auction by secured creditor M/s Kotak Mahindra Bank Limited, 4 Floor, Siddhi Vinayak Complex, Shivranjini Cross Road, Satellite, Ahmedabad pursuant to the Order of Hon'ble Debt Recovery Tribunal-I, Ahmedabad in OA No.179/2014 (M/s KMBL v/s M/s SCPL & Others) .

16. The Hon'ble DRT-I, Ahmedabad on 01-09-2014 in OA No. 179/2014 filed by M/s Kotak Mahindra Bank Limited, Ahmedabad against M/ s Shukan Corporation Pvt. Ltd., passed following orders.

The Applicant Bank in present case filed this Original Application to recover an amount of Rs.51,82,01,287/-. The Tribunal vide its order dated 15-05-2014 has passed as ex-parte interim order. In compliance to the said order till today the Defendant did not disclose on oath full detail and particulars of movable properties including all the receivables towards sold and unsold flats/units etc. Now in order to protect the interest of the applicants, the above noted interim applications i.e. Exhibit A/ 17, A/ 18, A/ 19 & A/ 21 have been filed. Order on Exhibit A/ 17

Prayers made in paragraph No.(5Jf) is granted until further order. The Court Receiver appointed below Exh.A/ 19 will implement this order. For remaining prayers issue show-cause-notice to all the defendants why the interim reliefs prayed in paragraph-5 should not be granted. Order on Exhibit A/ 18

The Applicant prayed that the Court Receivers appointed by this Tribunal be permitted to negotiate with interested prospective buyers intend to purchase the flats/ units in all 3 projects (details of which are described in Exhibit A/1, A/ 2 & A/ 3 of the original application and to finalize their offers towards recovery of dues of the Applicant and to get the flat/unit received by the applicant and to sell of the respective flat/unit excluding the flat/unit of the purchaser who filed civil and criminal cases against the Applicant.

Strictly Speaking, the Debt of the Applicant is yet to be adjudicated by this Tribunal. This is a peculiar case where the Directors/partners/borrowers/guarantors are absconding and one of the partners/Directors is in jail custody. Nobody is there to manage the affairs of the Defendant No, 1 Company as well as the partnership firm.

There is very possibility that the mortgaged properties might be sold illegally and 3rd parties might occupy these flats/units illegally and/ or illegal 3rd party interest might also be created. Therefore, to meet the ends of justice the: prayers made in paragraph No.9(a) & A/ 18 are allowed until further order. Issue showcause-notice to Defendants why the relief should not be granted. Order on Exhibit A/ 19

Heard the Ld. Advocate of the Applicant. In view of the foregoing, the prayer made in

paragraph No.7(a) of the interim Application Exhibit A/ 19 is allowed until further order. Sh Mangesh Silimkar & Sh. Sunil Joshi, the Bank Officers are appointed as Court Receivers in terms of prayers made in Paragraph No. 7(a) of the Exhibit A/ 19. The Court Receivers are permitted to take physical possession of the unsold/unclaimed flats/units i.e. 234 flats/units in terms of Exhibit A/28, filed by the Applicant on 14-08-2014. The Court Receivers are directed to prepare a detailed inventory report in presence of two independent witnesses/ Panchs of the unsold/unclaimed flats/units after taking physical possession; If necessary the Court Receiver are

permitted to take help of local police station. The Court

Receivers are permitted to sell the above noted unsold/unclaimed flats/units to the prospective buyers after taking possession through public auction after giving proper sale notice in well circulated newspapers.

17. In view of situation observed in above cited order of Hon'ble DRT and in light of fact that service provider neither filed any ST-3 returns nor furnished complete details of income on account of sale of units in residential complex & shops in commercial complex and other service tax liabilities, if any, after 1410-2013, there appeared a possibility of continued and further evasion of service tax by the service provider.

18. Therefore, the jurisdictional Sub-Registrar, (Sola-8), Ahmedabad vide a letter dated 07-11-2017 by Superintendent (Prev.), CGST & C.Ex., A'bad, was requested to provide copy of documents (dastavej/Banakhat) registered on account of sale of units in scheme Shukan Enjoy. On 29-12-2017, Sub Registrar provided a copy of documents available on record in a CD (marked as Annexure-E to this show cause notice).

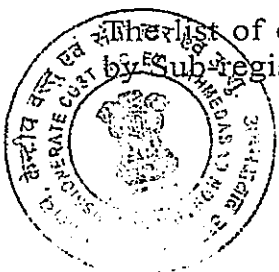
19. The types of documents provided included

(i) Registered Banakhats with M/s Shukan Corporation Pvt. Ltd. which contained the details of payments made to M/s Shukan Corporation Pvt. Ltd. for purchase of flats in scheme 'Shukan Enjoy'

(ii) Registered Banakhat with M/s. Shree Hari Enterprise, 1, Abhishek Society, Meghani Nagar, Ahmedabad-380016 which buyer entered in view of auction of 'Shukan Enjoy'; these banakhats contained the details of payments made to M/s Shukan Corporation Pvt. Ltd. for purchase of flats in scheme 'Shukan Enjoy' and M/s Shree Hari Enterprise after verification agreed to adjust towards purchase of respective flats by respective buyers.

(iii) Notices of LIS Pendency which various buyers filed in Civil Court against M/s Shukan Corporation Pvt. Ltd.; these notices also contained details of payments made to M/s Shukan Corporation Pvt. Ltd.

The list of documents registered for sale/purchase of units in scheme Shukan Enjoy by Sub Registrar office is annexed as Annexure-D to the show cause notice.



20. Vide a letter dated 07-11-2017, Superintendent (Prev.), CGST & C.Ex., A'bad-North sought the status of issuance of completion certificate (building use permission) in respect of scheme 'Shukan Enjoy' from jurisdictional Town Development Officer, Ahmedabad Municipal Corporation. The Deputy Estate Officer (New West Zone) AMC vide their letter 07-11-2017 informed that the scheme 'Shukan Enjoy' has been renamed as Shayona Aagman' and said scheme has not yet applied for granting building use permission.

21. During the course of investigation it was also found that said property was auctioned and M/s Shree Hari Enterprise, 1, Abhishek Society, Meghani Nagar, Ahmedabad-380016 has purchased it after a successful bid of Rs.9,75,00,000/-. On 17-01-2018 summon was issued to Sh. Piyush B. Patel, Partner of M/ s Shree Hari Enterprise to give a statement before Superintendent (Prev.) CGST & C.Ex. under sub-section 2(e) of Section 174 of CGST Act, 2017. In his statement dated 18-01-2018 Sh. Piyush Patel stated that they participated in the public auction for the said property conducted on 22-12-2015 and after a successful bid of Rs.9,75,00,000/-, sale deed for the said property was made on 29-03-2016. Sh. Piyush Patel also submitted the copy of sale deed dated 29-03-2016 as per which they have to adjust a claim of Rs. 19,08,00,000/- (Rupees Nineteen Crore Eight Lakhs Only) towards alleged claim of unit/ flat claimants. He also submitted a list to such claimants containing details of payments made by these claimants to M/s Shukan Corporation Pvt. Ltd. for purchase of flats/units and stated that this list was provided to them by M/s Kotak Mahindra Bank Limited. Sh. Piyush B. Patel also informed that they have renamed the same as 'Shyaona Aagman'.

22. M/s.Kotak Mahindra Bank Limited, 4th Floor, Siddhi Vinayak Complex, Shivranjini Cross Road, Satellite, Ahmedabad vide a letter dated 12-01-2018 was also asked to submit details of case available with them. M/s Kotak 'Mahindra Bank Ltd vide a letter dated submitted a copy of Indenture of Mortgage dated 07-09-2013 executed by M/s Shukan Corporation Pvt. Ltd. in favour of M/s Kotak Mahindra Bank Ltd. before Sub-Registrar-ABM at Serial Number 7474/2013. The said indenture of mortgage contained details of sold/unsold flats/units in said scheme 'Shukan Enjoy' along with the details of payments made by the buyers as declared by M/s Shukan Corporation Pvt Ltd. at the time of execution of indenture of mortgage.

Letters were written to M/s Shukan Coporattion Pvt. Ltd. 14, 401, Shukan Mall, Rajasthan Hospital, Sahibaug, A'bad on 18-01.2018 for providing details of tax liability & proof of payment of same however it was found that Punjab National Bank, opp. Hathi Singh Ni Vadi, Near HB Kapadia School, Shahibaug; Ahmedabad has taken possession of said office premises & has sold to M/s Sheetal infrastructure Pvt. Ltd. 25, 4% Floor Shukan Mall, Near Rajasthan Hospital, Sahibaug,



A'bad on 15-04-2015. M/s Shukan Corporation Pvt. Ltd. don't have their office at said premises any longer.

24. Details of collection towards sale of flats/ shops was worked out on the documents withdrawn under Panchnama dated 03-10-2013, ledger accounts submitted by M/s Shukan Corporation Pvt. Ltd. on 19-11-2013, documents obtained from Sub-Registrar office on 29-12-2017 and payments receipts withdrawn under Panchnama dated 03-10-2013 added with cash payment Rs.1,98,50,000/- accepted by Sh.Rameshbhai Patel, in his statement dated 04-10-2013, the details of which are annexed as Annexure A to the Show Cause notice.

Collection for Residential Complex in Scheme Shukan Enjoy (A Unit of SCPL)	
Year	Member's Collection
2012-13	Rs.2,51,57,409/
2013-14	Rs.23,51,36,317 /
2014-15 (upto April 2014)	Rs.1,23,21,970/-
Total	Rs.27,26,15,696/

Collection for commercial Complex in Scheme Shukan Enjoy (A Unit of SCPL)	
Year	Member's Collection
2012-13 (Jan,13 & Feb,13)	Rs.64,04,000/
2012-13 (Mar,13)	Rs.46,82,000/
2013-14	Rs.1,53,63,000/-
2014-15 (upto April 2014)	Rs.23,50,000/
Total	Rs.2,87,99,000/-

25. Since, details of income on account of sale of residential flats/units by M/s Shukan Enjoy was service tax liability for the period Jan-2013 to April- 2014 for Construction of a complex service found to be **Rs.94,52,115/**(Rupees Ninety Four Lakhs Fifty Two Thousand One Hundred Fifteen Only) {Rs.84,23,825/- on services of construction of residential units & Rs. 10,28,290/- on services of other than construction of residential units). The details of which are annexed as annexure A to the Show Cause Notice.

26. The meanin and scope of the taxable Service "Trans ortation of Goods by Road" brought under the category of taxable service under the Finance Act, 1994 is elaborated hereunder:-

19. As per section 65B(26) of Finance Act, 1994, as amended. defines 'Goods Transport Agency, as *means any person who provides service in relation to transport of goods by .road and issued consignment note, by whatever name called.*

27. It is also significant to see who are those specified persons who become liable to pay Service Tax when they receive from a GTA. As per Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994, in relation to



taxable services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,-

- (i) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (ii) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (iii) any co-operative society established by or under any law;
- (iv) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;
- (v) anybody corporate established, by or under any law; or
- (vi) any partnership firm whether registered or not under any law including
- (vii) association of persons;

any person who pays or; is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

Thus if the recipient of GTA service belongs to any of the above category, in that case, the recipient of service is liable to pay service tax.

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

28. Accordingly Reverse charge mechanism is created in case of services Goods Transport Agency. As per sub-section (2) of section 68 of Finance Act, 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994, service tax shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying service tax in relation to such service. Further, as per provision to sub-section (2) of section 68 of Finance Act, 1994, the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the Service Provider.

29. Notification No.31/2012-ST dated 20-06-2012 (effective from 01-7-2012)

Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%



Here, M/s.Shukan Enjoy has received services in relation to Goods Transport Agency Service and the same are liable for payment of service tax under reverse charge mechanism and partial reverse charge mechanism.

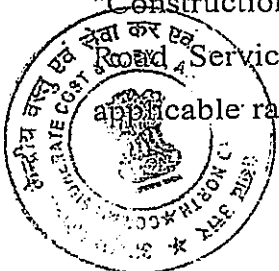
30. In terms of Notification No.26/2012-ST dated 20-06-2012 (effective from 01-07-2012) following abatement is available for payment of service tax on Goods Transport Agency Service subject to conditions contained therein:-

Sr.No	Description of taxable service	Percentage	Conditions
7	Services of goods transport agency in relation to transportation of goods	25	Cenvat Credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the Cenvat Credit Rules, 2004.

31. In view of legal provisions in respect of Goods Transport Agency Service, based on the records available service tax liability of Rs.63,527/- (Rupees Sixty Three Thousand Five Hundred Twenty Seven Only) was found for the period 2011-12 to 2013-14 (upto 03.10.2013) details of which were marked as Annexure B to the show cause notice.

32. According to Section 67 of the Finance Act, 1994 as amended from time to time where service tax is chargeable on any taxable service with reference to its value, then such value shall be the gross amount charged by the service provider (subject to abatements prevailing) for such service. provided or to be provided by him. 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. Thus, the value to be considered for calculation of service tax was the gross amount charged for providing the taxable services. The said service provider was not paying the service tax charged for the taxable services rendered. In other words, they have short paid on the gross amount charged/received for the taxable services and thereby contravened the provisions of Section 67 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994.

33. As per the provisions of Finance Act, 1994 and rules made thereunder, the service provider was required to assess correct value for the service provided by them as well as to pay service tax on the actual amount of income received by them for services rendered in due course as prescribed and to follow all the procedure laid down in the Act and Rules. In this case, the service provider had rendered/ received taxable service under category "Construction of Complexes' defined under Section 66E(b) ibid and "Transport of Goods by Road Service" defined under Section 65B(26) ibid, and failed to pay service tax at applicable rate. Further, the service provider had failed to file ST-3 returns for the taxable



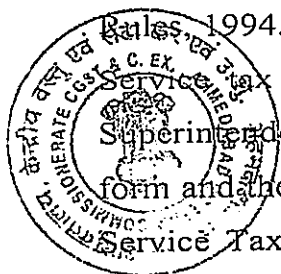
services rendered by them. It clears that the service provider had failed to make timely payment of the Service Tax as provided in Section 68 of the Act read with Rule 6 of the Service Tax Rule, 1994.

34. As provided under section 68 (1) of the act that every person providing taxable service to any person shall pay service tax at the rate specified in section 66 and 66(B) in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case M/s. Shukan Enjoy had not paid/short paid service tax total amounting to **Rs.95,15,642/-** (*Rupees Ninety Five Lakhs Fifteen Thousand Six Hundred Forty Two Only*) (*including Education Cess and Secondary & Higher Secondary Education Cess*), as per Annexure "A" and "B" to the show cause notice, towards their service provided/received and thereby violated the provision of Section 68(1) of the Act read with Rule 6 of the erstwhile Service Tax Rule. 1994

35. During the investigation, the said service provider discharged the service tax liability of **Rs.63,527 /-** along with Interest of **Rs.2,836/-** under category of "Transport of Goods. by Road Service" vide challan no.80007, 80008 and 80009 all dated 17.10.13 and **Rs.33,44,901/**along with interest of **Rs.2,13,339/-** under head of "Construction of Complexes" Services vide challan no. 80090, 80091, 80092, 80093 all dated 16.10.2013 and vide challan no. 80005 dated 17.10.2013. Thus, against the Service Tax liability of Rs.95,15,642/- the service provider has paid Service Tax of Rs.34,08,428/-.

36. As per Section 70 of the erstwhile Finance Act, 1994, very person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider has not assessed the tax due, properly, on the services provided by him and failed to file correct ST-3 Returns in time thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the erstwhile Service Tax Rules, 1994.

37. M/s.Shukan Enjoy (An unit of M/s. Shukan Corporation Pvt.Ltd.) had obtained the service tax Registration on 14.10.2013 only after search by the preventive officers on 03.10.2013, it appeared that the Service Provider has contravened provisions of Section 69 of the Finance Act, 1994 read with Rule 4 of the erstwhile Service Tax Rules, 1994. As per the Section 69 of the Finance Act, 1994, every person liable to pay service tax is required to make an application for registration to the jurisdictional Superintendent of Service Tax within such time and in such manner as prescribed. The form and the manner of taking registration are prescribed under Rule 4 of the erstwhile Service Tax Rules, 1994. In the present Case, M/s. Shukan Enjoy (An unit of M/s.



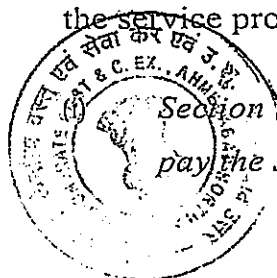
Shukan Corporation Pvt.Ltd.) has failed to take service tax registration within the prescribed time and thus contravened the provisions of Section 69 of the erstwhile Finance Act, 1994 read with Rule 4 of the erstwhile Service Tax Rules, 1994.

38. The government has from the very beginning placed full trust on the Service provider so far service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appeared that the service provider has not taken into account the incomes received by them for rendering taxable services for the Purpose of payment of service tax and thereby, service tax liabilities are not properly discharged by them. The non- filing/incorrect filing of ST-3 returns thereby non-declaration of the value of taxable service correctly in ST-3 returns and not paying the amount of service tax is utter disregard to the requirements of law and breach of trust deposited on them such outright act in defiance of law appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of erstwhile Finance Act 1994 for suppression, and concealment or non furnishing value of taxable service with intent to evade payment of service tax.

39. In view of above discussion, it clearly comes out that all these material information and value of taxable services have been concealed from the department purposefully but not declaring the amount received against the services rendered. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts and to commit fraud. Therefore, service tax is required to be demanded and recovered from them under Section 73(1) of erstwhile Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the erstwhile Finance Act, 1994 (32 of 1994) as the service provider has suppressed/not declared the nature and value of the taxable services. Thus, the outstanding Service Tax liability requires to be recovered from the service provider by applying the extended period of five years.

40. From the foregoing paras and discussion made herein above, it appeared that the service provider has contravened the provisions of-

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



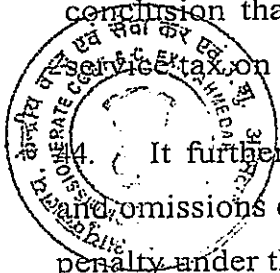
- (ii) *Section 67 of the erstwhile Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2011-12 to 2013-14;*
- (iii) *Section 68 of the erstwhile Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they failed to make payment of service tax during the period 2011-12 to 2013-14, to the credit of the Government account within the stipulated time limit;*
- (iv) *Section 69 of the erstwhile Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 in as-much-as they failed to take registration of service tax during within the prescribed time limit;*
- (v) *Section 70 of the erstwhile Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules; 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file ST-3 returns during the period 2011-12 to 2013-14.*

41. In view of the foregoing paras, it appeared that the service provider have contravened provisions of Finance Act, 1994 and the rules made there under with intent to evade payment of Service Tax and therefore the amount of outstanding Service Tax liability is required to be recovered along with interest under sections 73 and 75 of the Finance Act, 1994 by invoking the extended period of five years as per the provision to Section 73(1) of the Finance Act, 1994.

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

43. The value of taxable service in respect of aforesaid services rendered/ received by them has not been subjected to assessment. Eventually, they have wilfully made the mis-statement and not paid Service Tax. Thus, the service provider has failed to self-assess the Service Tax payable on the taxable value received correctly; failed to file/incorrectly file S.T-3 returns as per provisions of the Finance Act, 1994, and also failed to pay the Service Tax at the applicable rate on the taxable value. Thus, on going through the facts and circumstances of the instant case, it appeared to lead towards a conclusion that the service provider has deliberately and wilfully evaded payment of Service Tax on income received as discussed above.

It further appeared that on account of all the above narrated acts of commission and omissions on the part of the service provider, they have rendered themselves liable to penalty under the following provisions of the Finance Act, 1994, as amended.



(i) Section 77 of the Finance Act, 1994, in as much as they failed to self assess the tax due on the services provided/ received;

(ii) Section 77(1) of the Finance Act, 1994, in as much as they failed to get registered with Service Tax within the prescribed time limit.

(iii) Section 78 of the Finance Act, 1994, in as much as they have misstated the taxable value of the services provided/received by them to the service recipients and they have, knowingly and willfully, not paid the correct amount of Service Tax leviable on such amount.

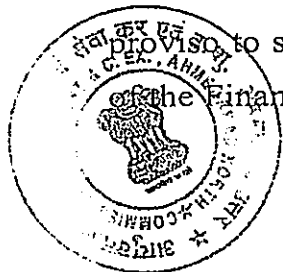
(iv) The company viz., M/s Shukan Enjoy has committed contraventions, namely evasion of service tax & failure to pay amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due. Shri Maheshkumar R Patel, Director of M/s Shukan Corporation Pvt. Ltd., and Shri Rameshbhai Revabhai Patel, Managing Director of M/s Shukan Corporation Pvt. Ltd., who at the time of such contravention were in charge of, and were responsible to, the company for the conduct of business of such company and were knowingly concerned with such contravention, have thus, made themselves liable to a penalty which may extend to one lakh rupees under Section 78A of the Finance Act, 1994.

45. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid/ short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years. All these acts of contravention of the provisions of Section 65, 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

46. Therefore, M/s.Shukan Enjoy, Opp: Shayona Tilak, Behind Vishwakarma Temple, New SG Road, Chandlodia, Ahmedabad were called upon to show cause to the Joint Commissioner, CGST & Central Excise, Ahmedabad North vide Show Cause Notice F.No.STC/04-72/Prev/13-14 dated 31.01.2018 as to why:-

(i) the amount of evaded Service Tax to the tune of **Rs.94,52,115/(Rupees Ninety Four Lakhs Fifty Two Thousand One Hundred Fifteen only) (Including Edu.Cess & S.H.E.Cess)** leviable on 'Construction of Complex' Services provided during the period from Jan-2013 to April-2014, should not be demanded & recovered from them under

proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.



(ii) Service Tax amount of Rs. 33,44,901/- (Rupees Thirty Three Lac Forty Four Thousand Nine Hundred One only), which were paid during the investigation towards payment in the Government Account- Service Tax for 'Construction of Complex' Services should not be considered as payable amount and be appropriated against the total outstanding Service Tax liability of Rs.94,52,115/- (including Cess) for the period from Jan-2013 to April-2014 .

(iii) why the amount of evaded Service Tax to the tune of Rs.63,527/- (Rupees Sixty Three Thousand Five Hundred and Twenty Seven only) (Including Edu.Cess & S.H.E.Cess) leviable on 'Transport of Goods by Road' Service received during the period from 2011-12 to 03-10-2013, should not be demanded & recovered from them under provision to sub-section (l) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

(iv) Service Tax amount of Rs. 63,527 /- (Rupees Sixty Three Thousand Five Hundred and Twenty Seven Only), which were paid during the investigation towards payment for 'Transport of Goods by Road' Service, should not be considered as payable amount and appropriated against the total outstanding Service Tax liability of Rs. 63,527/- (including Cess) for the period from 2011-12 to 03-10-2013.

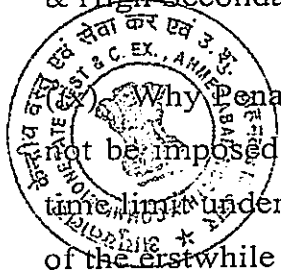
(v) why interest on such service tax at the appropriate rate prescribed under the provisions of Section 75 of the Finance Act, 1994, as amended should not be demanded and recovered from them;

(vi) During the course of investigation, Rs.2,16,175/- already paid by the service provider as Interest, should not be appropriated towards applicable Interest on amount of Service Tax short paid by them.

(vii) Why penalty should not be imposed upon them under section 77 of the Finance Act, 1994, as amended, for contravention of Section 70 of the Finance Act, 1994 for not filing the prescribed ST-3 returns for the period 2011-12 to 2014-15;

(viii) Why penalty under section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the taxable value and material facts before the department resulting into non-payment of Service Tax, Education Cess and Secondary & High Secondary Education cess.

Why Penalty under section 77(1)(a) of the Finance Act, 1994, as amended, should not be imposed on them for not taking Service Tax Registration within the prescribed time limit under the provisions of Section 69 of the Finance Act, 1994, read with Rule 4 of the erstwhile Service Tax Rules, 1994;



Shri Mahesh Kumar R. Patel, Director of M/s Shukan Corporation Pvt. Ltd., Opp. Shayona Tilak, B/h Vishwakarma Temple, New S. G. Road, Chandlodiya, Ahmedabad & residing at 15, Shukan Palace-I, B/h Hetarth Party Plot, Sola Science City Road, Sola, Ahmedabad, was called upon to show cause to the Joint. Commissioner, CGST & C.Ex., 1st Floor, Custom House, Navarangpura, Ahmedabad- 380009 as to :-

(x) Why penalty should not be imposed upon him under Section 78A of the Finance Act, 1994, as amended, as he was looking after all the activities of Shukan Enjoy Scheme of M/s.Shukan Corporation Pvt. Ltd., which comprises of commercial shops as well as residential houses. Moreover the entire work relating to the Finance, Accounts, al Tax matters etc were done under his supervision and he was looking after day to day work of his company.

Shri Rameshbhai R. Patel, Managing Director of M/ s Shukan Enjoy, having office at Opp. Shayona Tilak, B/h Vishwakarma Temple, New S. G. Road, Chandlodiya, Ahmedabad & residing at A-1, 501 & 504, Kushal Vatika,Nr. Rajasthan Hospital, Shahibaug, Ahmedabad, was called upon to show cause to the Joint Commissioner, CGST & Central Excise, Ahmedabad North, as to-

(xi) Why penalty. should not be imposed upon him under Section 78A of the Finance Act, 1994, as amended, as he was looking after all the activities of Shukan Enjoy Scheme of M/s Shukan Corporation Pvt. Ltd., which comprises of commercial shops as well as residential houses. Moreover the entire work relating to the Finance, Accounts, all Tax matters etc were done under his supervision and he was looking after day to day work of his company.

Defence Reply.

47. No defence reply has been submitted by M/s.Shukan Enjoy in spite of the lapse of more than two years. Further, vide this office letter F.No.STC/15-04/OA/2018 dated 17.04.2018, M/s.Shukan Enjoy was also informed about the option available to them as per the provisions contained under Chapter V of the Central Excise Act, 1944/Chapter XIVA of the Customs Act, 1962/Chapter V of the Central Excise Act, 1944 which is made applicable by Section 83 of the Finance Act, 1994 to the Service Tax matters subject to fulfillment of the conditions contained in the respective Acts. I find that the assessee has not submitted any defence reply in spite of lapse of more than two years. Therefore, it is presumed that they have nothing to defend the case and they accept the charges leveled in the show cause notice.

Personal Hearing.

48. As no reply has been received from M/s.Shukan Enjoy, personal hearing was fixed on 28.03.2019. The personal hearing letter was returned with a remark "left". Therefore, fresh date of hearing was fixed on 17.03.2020, 25.06.2020, 03.08.2020, 23.09.2020. All the communication/letters intimating the date of personal hearings were returned with a remark of "Left". Therefore , vide this



office letter of even number dated 31.12.2020, the jurisdictional Assistant/Deputy Commissioner was requested to deliver the letter intimating about the personal hearing to M/s.Shukan Enjoy. However, the Division Office, vide letter F.No.Div-II/Demand/Misc/2019-20 dated 11.01.2021, forwarded copy of letter from Supdt, AR-II, Division-VII, Ahmedabad under which the Supdt, Range II, Division-VII, had stated that he visited the places and found that the addressee could not be located and also in the residential address the noticee is not staying there. Therefore, he could not deliver the said letters. Efforts was also made to locate the party by the Preventive Wing. Vide their letter F.No.IV/20-18/Misc Corresp/2020-21 dated 21.07.2020, the Assistant Commissioner (P) informed Deputy Commissioner (O&A) that the letter could not be handed over as the assessee was not found at the addresses.

49. I find that the assessee purposefully left the premises to avoid payment of Service Tax and ignoring the show cause notice. They even not cared to submit reply to the show cause notice. As the issue has been inordinately delayed, I can not keep the matter pending for long. Therefore, I have no option but to decide the matter ex-parte.

Discussion and Findings:

50. I have carefully gone through the records of the case available on records. I find that this case has been booked by the Preventive Wing of this Commissionerate on the basis of intelligence gathered by the erstwhile Service Tax Commissionerate, Ahmedabad.

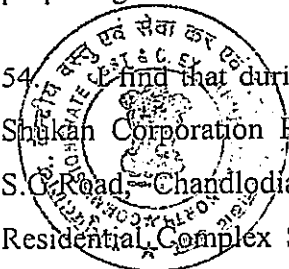
51. I find that that two issues are involved in the present show cause notice they are-

- (i) Non-payment of Service tax on 'Construction of Complex' Services provided by the service provider during the period from January 2013 to April 2014.
- (ii) Non-payment of Service Tax on Transport of Goods by Road' Service received by the service provider during the period from 2011-12 to 31.10.2013.

52. In this case, show cause notice was issued to M/s.Shukan Enjoy, Ahmedabad demanding Service Tax amounting to Rs.94,52,115/- on the 'Construction Complex' Services provided by M/s.Shukan Enjoy during the period from January 2013 to April 2014, proposing interest and penalty in terms of Finance Act, 1994 and Rules made there-under. Show Cause Notices were also issued to Shri Mahesh Kumar R.Patel, Director of M/s.Shukan Corporation Pvt.Ltd and Shri Rameshbhai R.Patel, Managing Director of M/s.Shukan Enjoy proposing penalty under Section 78A of the Finance Act, 1994.

53. Show Cause Notice was also issued for non-payment of Service Tax to the tune of Rs.63,527/- for Transport of Goods by Road Services on the services received from 2011-12 to September, 2013 proposing interest and penalty in terms of Finance Act, 1994 and Rules made there-under.

54. I find that during the course of investigation it was revealed that M/s.Shukan Enjoy (a unit of Shukan Corporation Pvt.Ltd, situated at Opp: Shayona Tilak, Behind Vishwakarma Temple, New S.C.Road, Chandlodia, Ahmedabad, engaged in providing taxable services of "Construction of Residential Complex Services", "Commercial or Industrial Construction Services" and "Transport of



Goods by Road Service" etc and the Service Tax liabilities are not being discharged by them. It was also admitted by Shri Maheshkumar R Patel, one of the Directors of Shukan Enjoy that they have started bookings in the scheme Shukan Enjoy from January-2013 but have not taken Service Tax Registration and have not paid the applicable Service Tax.

55. Further, during the course of the statement of Shri Rameshbhai Revabhai Patel, one of the Directors of M/s Shukan Corporation Pvt. Ltd., recorded on 04.10.2013 under Section 14 of erstwhile Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Shri Rameshbhai Revabhai Patel interalia stated that he is looking after all the affairs relating to Service Tax matters; that he is responsible for discharging proper Service Tax liability; the timely payment of Service Tax liability and the day-to-day affairs related to Service Tax; that all projects under Shukan Group are separately registered with Service Tax Department. However, M/s.Shukan Enjoy has not obtained Service Tax registration and therefore, the applicable Tax could not be paid. Shri Rameshbhai R. Patel accepted the Service Tax liability for the period from 2011-12 to 2013-14 (upto 03-10-2013) for the amount of **Rs.50,95,016/-** towards "Construction of Residential Complexes Services" & "Commercial or Industrial Construction Services" and agreed to pay the same at the earliest.

56. Further, during the course of statement of Shri Maheshkumar R Patel, one of the directors of M/s Shukan Enjoy, was also recorded on 03.10.2013 under Section 14 of erstwhile Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, Shri Maheshkumar R Patel accepted the Service Tax liability for the period from 2012-13 to 2013-14 (upto September 2013) for amount of **Rs.63,527/-** for Transport of Goods by Road Services and agreed to pay the same at the earliest.

57. With reference to the services provided by M/s Shukan Enjoy, post 01.07.2012 period I find that there is no service wise classification due to introduction of Negative List however in the definition of 'service' contained in clause {44} of section 65B of the Finance Act, it has been stated that service includes a declared service. The phrase 'declared service' is defined in the said section as an activity carried out by a person for another for consideration and specified in Section 66E of the Finance Act, 1994.

58. Clause (b) of the Section 66E of the Act covers services of construction for all purposes including commercial and residential, and also includes construction by builder on behalf of the buyer. The description of services covered under this entry is as under:

"Section 66E(b): construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;

Explanation-For the purpose of this clause,



(I) The expression "competent authority" means the Government or any authority to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following namely:

(A) Architect registered with council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(B) Chartered engineer registered with the Institution of Engineers (India);
or

(C) Licensed surveyor of the respective local body of the city or town
or village or development or planning authority;

(II) The expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure.

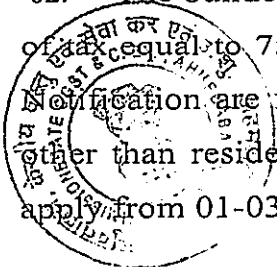
59. A reading of above clause reveals that following services are covered under the above description-

- (i) Services of construction of a complex, building, civil structure or a part thereof;
- (ii) Services of construction include additions alterations, replacement or remodelling of any existing civil structure; and
- (iii) Services construction of a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority.

60. I find that Notification No.26/2012-Service Tax dated 20.06.2012 (effective from 01-07-2012), granted abatement to 'Construction of Complex' service of tax equal to 75 per cent, as the case may be, of the service tax otherwise payable. In effect, only 25 per cent, as the case may be, of the gross amount charged by assessee for providing the said taxable service will be subjected to service tax at the prescribed rate. The abatement is available subject to conditions that (i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions-of the CENVAT Credit Rules, 2004; (ii) The value of the land is included in the amount charged from the service receiver.

61. The notification No.26/2012-ST was amended vide Notification No.02/2013-ST dated 01-03-2013 (effective from 01-03-2013) and further amended vide notification no.09/2013-ST dated 01-05-2013.

62. The builder or a developer is entitled to avail exemption in the form of abatement of tax equal to 75 per cent of the Service Tax if conditions (i) & (ii) stated in the said Notification are fulfilled for all constructions upto 28-02-2013 however in the case of other than residential unit the criteria of abatement of tax equal to 70 percent would apply from 01-03-2013.



63. During the course of recording the Statement of Shri Rameshbhai Revabhai Patel Director of Shukan Corporation Pvt.Ltd and Shri Maheshkumar R.Patel, Director of M/s Shukan Enjoy, it was admitted by them that they were providing taxable service liable for payment of service tax at the prescribed rate on abated value of 25 percent for residential units in complex Shukan Enjoy and at abated value of 25% upto 28-02-2013 for sale of shops in said complex and at abated value of 30% from 01-03-2013.

64. I find that the service provider was requested by the Department for submission certain of documents such as copies of ST-3 Returns and GAR-7 Challans, Balance sheet and Profit & Loss account, Ledger Accounts, Invoices Agreements/Contracts, Form 26AS issued by Income Tax Authorities, Income Tax return for the period from 2011-12 to 2013-14 however, the letter sent to them was returned undelivered. The investigation was carried out on the basis of the records withdrawn from the premises of the service provider at the time of search under Panchnama dated 03-10-2013 and the records submitted by the service provider vide letter dated 19.11.2013.

65. As per the investigation carried out by the officers of the Department on the income on account of sale of residential flats/units by M/s Shukan Enjoy was Service Tax liability for the period Jan-2013 to April- 2014 for Construction of a complex service arrived at **Rs.94,52,115/**(Rupees Ninety Four Lakhs Fifty Two Thousand One Hundred Fifteen Only) {Rs.84,23,825/- on services of construction of residential units & Rs. 10,28,290/- on services of other than construction of residential units) and non payment on Service Tax on Goods Transport Agency Service comes to Rs.63,527/-

66. I also find that during the course of investigation M/s Shukan Enjoy took Service Tax registration bearing No.AAQCS8987D005 on 14-10-2013 and submitted a copy of same along with ledger accounts upto 03-10-2013 on 19.11.2013. During the investigation, the said service provider discharged the service tax liability of **Rs.63,527 /-** along with interest of **Rs.2,836/-** under category of "Transport of Goods. by Road Service" vide challan no.80007, 80008 and 80009 all dated 17.10.13 and **Rs.33,44,901/-** along with interest of **Rs.2,13,339/-** under head of "Construction of Complexes" Services vide challan no. 80090, 80091, 80092, 80093 all dated 16.10.2013 and vide challan no. 80005 dated 17.10.2013. Thus, against the Service Tax liability of Rs.95,15,642/- the service provider has paid Service Tax of Rs.34,08,428/-. The amount so paid by the Service provider is required to be appropriated and adjusted towards the Service Tax and interest payable by them under Section 73(1) and Section 75 of the Finance Act, 1994 respectively.

67. I find that the service provider paid only the partial amount as detailed above during the course of investigation. In fact, the Service Tax, interest and penalty are applicable from the date of 2011-12 to 2014-15 (upto April 2014). Therefore, I hold that the service provider has to fulfill the Tax liabilities



2011-12 to 2014-15 (upto April 2014) along with interest and penalty as per the Finance Act, 1994

and therefore, they are liable to pay interest and penalty on the entire amount demanded in the show cause notice.

68. As per Section 70 of the erstwhile Finance Act, 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider has not assessed the tax due, properly, on the services provided by him, as discussed above, and failed to file correct ST-3 Returns in time thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the erstwhile Service Tax Rules, 1994.

69. Further, M/s Shukan Enjoy has also received taxable service "Transportation of Goods by Road" or GTA service. As per section 65B(26) of Finance Act, 1994, as amended defines Goods Transport Agency, means any person who provides service in relation to transport of goods by road and issued consignment note, by whatever name called. It is also significant to see who are those specified persons who become liable to pay service tax when they received services from a GTA. As per Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994, in relation to taxable services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,

- (i) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (ii) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (iii) any co-operative society established by or under any law;
- (iv) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;
- (v) any body corporate established, by or under any law; or
- (vi) any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

Provided that when such person is located in a non-taxable territory, the provider of such service

shall be liable to pay service tax

Thus, if the recipient of GTA service belongs to any of the above category, in that case, the recipient of service is liable to pay service tax.



70. As per sub-section (2) of section 68 of Finance Act, 1994 read with Rule 2(1(d) of Service Tax Rules, 1994, service tax shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying service tax in relation to such service. Further, as per provision to sub-section (2) of section 68 of Finance Act, 1994, the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the Service Provider.

71. As per notification No.31/2012-ST dated 20-06-2012 (effective from 01-07-2012), the liability under Reverse Charge Mechanism was fixed at 100% of service tax payable by the person receiving the service. I find that M/s. Shukan Enjoy received services in relation to Goods Transport Agency Service and the same are liable for payment of 100% service tax under reverse charge mechanism.

72. In terms of Notification No.26/2012-ST dated 20-06-2012 (effective from 01-07-2012) as amended following abatement is available for payment of service tax on Goods Transport Agency Service subject to conditions contained therein:-

Sr.No.	Description of taxable service	Percentage	Conditions
7	Services of goods transport agency in relation to transportation of goods	25	Cenvat credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the Cenvat Credit Rules, 2004.

73. In view of the above, M/s.Shukan Enjoy are liable to pay Service Tax in respect of Goods Transport Agency Service amounting to Rs.63,527/- (Rupees Sixty Three Thousand Five Hundred Twenty Seven Only) for the period from 2011-12 to 2013-14 (upto September 2013).

74. As per Section 67 of the Finance Act, 1994 as amended from time to time where service tax is chargeable on any taxable service with reference to its value, then such value shall be the gross amount charged by the service provider (subject to abatements prevailing) for such service provided or to be provided by him. 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. Thus, the value to be considered for calculation of service tax was the gross amount charged for providing taxable services. The said service provider was not paying the service tax charged for taxable services rendered. In other words, they have short paid on the gross amount charged/received for the taxable services and thereby contravened the provisions of Section 67 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994.

75. Further, as per the provisions of the Finance Act, 1994 and rules made thereunder, the service provider was required to assess correct value for the service provided by them as well as to pay service tax on the actual amount of income received by them for services rendered in due course as prescribed and to follow all the procedure laid down in the Act and Rules. In this case, the service provider had



rendered/received taxable service under category "Construction of Complexes" defined under Section 66E(b) *ibid* and "Transport of Goods by Road Service" defined under Section 65B(26) *ibid*, and failed to pay service tax at applicable rate. Further, the service provider had failed to file ST-3 returns for the taxable services rendered by them. It clears that the service provider had failed to make timely payment of the Service Tax as provided in Section 68 of the Act read with Rule 6 of the Service Tax Rule, 1994.

76. As per section 68 (1) of the act that 'every person providing taxable service to any person shall pay service tax at the rate specified in section 66 and 66(B) in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. M/s Shukan Enjoy had not paid / short paid Service Tax total amounting to Rs.95,15,642/- (Rs.94,52,115/- Construction of Complex Service + Rs. 63,527/- Goods Transport Agency Service) (Rupees Ninety Five Lakhs Fifteen Thousand Six Hundred and Forty Two Only) (including Education Cess and Secondary & Higher Secondary Education Cess, Suwachh Bharat Cess & Krishi Kalyan Cess), towards their service provided/received and thereby violated the provision of Section 68(1) of the Act read with Rule 6 of the erstwhile Service Tax Rule, 1994.

77. As per Section 70 of the erstwhile Finance Act, 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. The said service provider has not assessed the tax due, properly, on the services provided by him, and failed to file correct ST-3 Returns in time thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the erstwhile Service Tax Rules, 1994.

78. The service provider has not taken into account the incomes received by them for rendering taxable services for the purpose of payment of service tax and thereby, service tax liabilities are not properly discharged by them. The non- filing of ST-3, returns and thereby non- declaration of the value of taxable service correctly in ST-3 returns and not paying the amount of service tax is utter disregard to the requirements of law and breach of trust deposited on them. Such outright act in defiance of law appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of erstwhile Finance Act 1994 for suppression, and concealment or non-furnishing value of taxable service with intent to evade payment of service tax.

79. In view of the above facts, it is clearly comes out that all these material information and value of taxable services have been concealed from the department deliberately and consciously to evade payment of service tax purposefully by not declaring the amount received against the services rendered. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts and to commit fraud. Therefore, service tax is required to be recovered from them by invoking extended period of five years under the Section 73(1) of the erstwhile Finance Act, 1994 (32 of 1994) as the service provider has suppressed not declared the nature and value of the taxable services.



80. In view of the discussion above, it is obvious that the service provider has contravened the following provisions of -

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

ii) Section 67 of the erstwhile Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2011-12 to 2014-15 (Upto April-2014);

(iii) Section 68 of the erstwhile Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the period 2011-12 to 2014-15 (Upto April-2014);, to the credit of the Government account within the stipulated time limit;

(iv) Section 70 of the erstwhile Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file ST-3 returns during the period 2011-12 to 2014-15 (Upto April-2014);

81. The service provider has contravened provisions of Finance Act, 1994 and the rules made there under with intent to evade payment of Service Tax and therefore the amount of outstanding Service Tax liability is required to be recovered along with interest under sections 73 and 75 of the Finance Act, 1994 and by invoking the extended period of five years as per the proviso to Section 73(1) of the Finance Act, 1994.

82. The service provider has failed to self-assess the Service Tax payable on the taxable value received correctly; failed to file S.T-3 returns as per provisions of the Finance Act, 1994, and also failed to pay the Service Tax at the applicable rate on the taxable value. Thus, on going through the facts and circumstances of the instant case, lead towards a conclusion that the service provider has deliberately and wilfully evaded payment of service tax on income received by them and the services received by them.

83. On account of all the acts of commission and omissions narrated above on the part of the service provider, they have rendered themselves liable to penalty under the following provisions of the Finance Act, 1994, as amended:

(i) Section 77 of the Finance Act, 1994; in as much as they failed to self assess the tax due on the services provided/received;

(ii) Section 78 of the Finance Act, 1994, in as much as they suppressed the taxable value of the services provided/received by them and they have, knowingly and willfully not paid the Service Tax leviable on such amount.

(iii) The Service Provider viz. M/s Shukan Enjoy has committed contraventions of evasion of service tax & failure to pay amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.



(iv) A vital role has been played by Shri Rameshbhai Revabhai Patel, one of the Directors of M/s Shukan Corporation Pvt.Ltd and Shri Maheshkumar R Patel, Director of M/s.Shukan Enjoy, for the evasion of Service Tax. Both of them have been admitted the Service Tax liabilities during the course of recording their statement recorded on 04.10.2013 and 03.10.2013 respectively under Section 14 of the erstwhile Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Both of them are very responsible persons of the service provider. Without their active role and knowledge, the evasion of Service Tax would not have been possible. They were the persons, at the time of such contravention in-charge of, and were responsible to the firm for the conduct of business of such firm and was knowingly concerned with such contravention, have thus, made themselves liable to a penalty under Section 78A of the Finance Act, 1994.

84. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid/short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years. All these acts of contravention of the provisions of Section 65, 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 liable to penal action under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

85. In view of the above discussion and my findings, I pass the following orders:-

ORDER

(i) I confirm the Service Tax to the tune of **Rs.94,52,115/(Rupees Ninety Four Lakhs Fifty Two Thousand One Hundred and Fifteen only) (Including Edu.Cess & S.H.E.Cess)** leviable on 'Construction of Complex' Services provided during the period from Jan-2013 to April-2014, and order that the said Service Tax be recovered from M/s.Shukan Enjoy (A unit of M/s.Shukan Corporation Pvt.Ltd), under sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

(ii) I order that the Service Tax amount of **Rs. 33,44,901/- (Rupees Thirty Three Lac Forty Four Thousand Nine Hundred and One only)**, which were paid during the investigation towards payment of Service Tax for 'Construction of Complex' Services be considered as payable amount and is appropriated and adjusted against the total outstanding Service Tax liability of **Rs.94,52,115/- (including Cess)** for the period from Jan-2013 to April-2014 .

I confirm the Service Tax of **Rs.63,527/- (Rupees Sixty Three Thousand Five Hundred and Twenty Seven only) (Including Edu.Cess & S.H.E.Cess)** leviable on 'Transport of Goods by Road' Service received during the period from 2011-12 to 03-10-2013 and order that the said amount be recovered from M/s.Shukan Enjoy (A unit of



M/s.Shukan Corporation Pvt.Ltd) under sub-section (l) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

(iv) I order that the **Service Tax amount of Rs. 63,527 /- (Rupees Sixty Three Thousand Five Hundred and Twenty Seven Only)**, which were paid during the investigation towards payment Service Tax on Goods Transport Agency Service, be considered as payable amount and is appropriated and adjusted against the total Service Tax liability of **Rs. 63,527/- (including Cess)** for the period from 2011-12 to 03-10-2013.

(v) I order charging of interest on the amount of Service Tax confirmed above at Serial No. (i) and (iii) at the appropriate rate prescribed under Section 75 of the Finance Act, 1994

(vi) I appropriate and adjust the amount of **Rs.2,16,175/-** already paid by the service provider during the course of investigation towards Interest payable, under Section 75 of the Finance Act, 1994.

(vii) I impose a penalty of Rs.10,000/- on M/s.Shukan Enjoy (A unit of M/s.Shukan Corporation Pvt.Ltd) under section 77 of the Finance Act, 1994, as amended, for contravention of Section 70 of the Finance Act, 1994 for not filing the prescribed ST-3 returns for the period 2011-12 to 2014-15;

(viii) I impose a penalty of Rs.95,15,642/- (Rs.94,52,115+63,527/-) (Rupees Ninety Five Lakhs Fifteen Thousand Six Hundred and Forty Two Only) on M/s.Shukan Enjoy (A unit of M/s.Shukan Corporation Pvt.Ltd), Ahmedabad under section 78 (1) of the Finance Act, 1994

(ix) I impose a Penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s.Shukan Enjoy (A unit of M/s.Shukan Corporation Pvt.Ltd), under section 77(1)(a) of the Finance Act, 1994, as amended, for not taking Service Tax Registration within the prescribed time limit under the provisions of Section 69 of the Finance Act, 1994, read with Rule 4 of the erstwhile Service Tax Rules, 1994;

(x) I impose a penalty of Rs.1,00,000/- (Rupees One Lakh only) on Shri Mahesh Kumar R. Patel, Director of M/s Shukan Enjoy., Ahmedabad under Section 78A of the Finance Act, 1994.

(xi) I impose a penalty of Rs.1,00,000/- (Rupees One Lakh only) on Shri Rameshbhai R. Patel, Managing Director of M/ s Shukan Corporation Pvt,Ltd, under Section 78A of the Finance Act, 1994.



(xii) 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.(viii) above, subject to the condition that such reduced penalty is also paid within the period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

86. Show Cause Notices No.STC/04-72/Prev/13-14 dated 31.01.2018 issued to M/s.Shukan Enjoy (A Unit of M/s.Shukan Corporation Pvt.Ltd), Ahmedabad (2) Shri Maheshkumar R Patel, Director of M/s.Shukan Enjoy (A Unit of M/s.Shukan Corporation Pvt.Ltd), Ahmedabad and (3) Shri Rameshbhai Revabhai Patel, Director of M/s.Shukan Corporation Pvt,Ltd, Ahmedabad are disposed of.


(Maru Tripathi)
Joint Commissioner

F.No.STC/15-04/OA/2018

Date: 05.02.2021.

By Regd post AD.

To

(1)M/s.Shukan Enjoy (A Unit of M/s.Shukan Corporation Pvt.Ltd),
Corporate Office: Opp Shayona Tilak,
Behind Vishwakarma Temple,
New SG Road,
Chandlodia, Ahmedabad.

(2) Shri Maheshkumar R Patel, Director, Shukan Enjoy, Corporate Office Address: Opp Shayona Tilak,
Behind Vishwakarma Temple, New SG Road, Chandlodia, Ahmedabad

Residential Address: 15, Shukan Palace-1, Behind Herarth Party Plot, Sola Science City Road, Sola,
Ahmedabad.

(3) Shri Rameshbhai Revabhai Patel, Director, Shukan Corporation Pvt.Ltd, Corporate Office Address:
Opp: Shayona Tilak, Behind Vishwakarma Temple, New SG Road, Chandlodia, Ahmedabad.

Residential Address: A-1, 501 & 504, Kushal Vatika, Near Rajasthan Hospital, Shahibaug, Ahmedabad.

Copy to :

1. The Commissioner, Central GST & Central Excise, Ahmedabad North
2. The Assistant Commissioner, CGST & Central Excise, Divison-VII, Ahmedabad North
3. The Superintendent, CGST & Central Excise, Range , Division-VII, Ahmedabad North
4. Guard File.



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