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

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-25/OA/2019

आदेश की तारीख़/Date of Order : - 19.02.2021
जारी करने की तारीख़/Date of Issue :- 19.02.2021

DIN No:20210264WT000000F85F

द्वारा पारित/Passed by:- मारुत त्रिपाठी / *Marut Tripathi*
संयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 46/JC/MT/2020-21

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के 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।

(77) उक्त अपील की प्रति।

(78) 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:

(77) Copy of accompanied Appeal.

(78) 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/ The Show Cause Notice No.STC/04-180/Prev/Gr.III/Markcom/15-16 dated 16.05.2019 issued to M/s. Markcom Solutions Pvt.Ltd, 4th Floor, Abhilasa Business Centre, Near Navrangpura Bus Stand, Navrangpura, Ahmedabad 380 009 and to Shri Dipesh Sheth, Director of M/s.Markcom Solutions Pvt.Ltd, 4th Floor, Abhilasa Business Centre, Near Navrangpura Bus Stand, Navrangpura, Ahmedabad - 380 009.

BRIEF FACTS OF THE CASE:

On the basis of intelligence developed, that M/s Markcom Solutions Pvt Ltd, 204-205, Benkesha Complex, Near Navrangpura Bus Stand, Navrangpura, Ahmedabad - 380009 holding Service Tax Registration No AAECM6140NST001 and is engaged in providing "Event Management Services" but were claiming reimbursement of the expenses while filing ST-3 returns. However, looking at their type of service provided i.e. "Event Management Services", such reimbursement of the expenses were not allowed. It was also noticed that the service provider was also not paying Service Tax on gross amount as per their Profit & Loss Accounts. Accordingly a search was carried out on 23.12.2015 at above premises under section 82 of the Finance Act, 1994.

2. It appeared that M/s. Markcom Solutions Pvt Ltd (here-in-after referred to as 'the said service provider') is registered with the Service Tax Department in 2004-05. The said service provider is engaged in providing services falling under the category of "Event Management Services" and **w.e.f. 1-7-2012, engaged in providing taxable services as defined under Section 65B(44) which are not falling under negative list of services as defined under Section 66D of the Finance Act, 2012.**

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

4. The registered address of the said service provider viz., *M/s.* Markcom Solutions Pvt Ltd was searched on 23.12.2015 under section 82 of the Finance Act, 1994 as amended vide search warrant no 109/2015-16 issued from F No. STC/04180/Prev./Gr-III/Markcom/15-16 dated 23.12.2015, issued by Joint Commissioner, ST Prev), HQ, A'bad. The premises of the Company was searched and Trial Balance, Balance Sheet, Income Tax return and sample invoices raised by them for the period from 2012-13 (Jan-Mar) to 2015-16 (up to Nov, 15) were recovered.

5. On scrutiny of the said documents submitted, Statement of the Partner or the Company viz., Shri Dipesh Sheth, after issuance of "Summons to witness" letter bearing F.No. STC/04-180/Prev./Gr-III/Markcom/15-16 dated 23.12.2015, was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

6. **STATEMENT:** The brief summary of the statement of Shri Dipesh Sheth, Director of M/s. Markcom Solutions Pvt Ltd taken on 23.12.2015 is reproduced below.

i. That their company is engaged in providing "Event Management Services" and he looks after the business since 2006-07, however they took registration under "Business Auxiliary Services" by mistake.

ii. That their company neither has taken reimbursement for the period 2012-13 (Jan-Mar) and 2013-14 nor paid Service Tax on gross amount as per Profit & Loss Accounts. Further their company has claimed reimbursement in the year 2014-15 and paid Service Tax after deducting reimbursement amount as mentioned in the ST-3 returns. However, 2015-16 onwards they were not claiming any reimbursement and charging Service Tax on full amount. All this is due to ignorance. The company was of the opinion that such reimbursement is allowed in the business which was further stopped in the year 2015-16 as per the advice of their consultant.

iii. That they have charged Service Tax on gross value of the invoice since Apr 2015 and prior to that, they have charged Service Tax on agency fees.

iv. That they have been taking Cenvat Credit on some common input services eg. Telecommunication Services, Courier Services etc. They utilized the said credit.

v. That the director of the company agreed that they are required to pay the service Tax on gross amount and reimbursement is not allowed in the present nature of service.

vi. That they do not work as PURE AGENT.

vii. That their outstanding service tax liability for the period 2012-13 (Jan-Mar) to 2015-16 (upto Nov) comes to Rs. 92,22,423/- agrees for the same.

viii.That the service provider failed to pay service tax on monthly basis in spite of the knowledge and being Pvt. Ltd company.

7. SCRUTINY OF THE DOCUMENTS: During the course of search, some documents viz. sales invoice registerers, invoices etc, were found and the same were resumed under panchnama dated 23.12.2015 the Service Tax officers and also subsequent submission by the service provider on demand by department. On scrutiny of the said documents, it was noticed that:

8. In case of taxable services provided by organizer of event, the value is required to be determined as per provisions of Section 67, which provides that where the service tax is payable on value, such value shall be the gross amount charged by the service provider for such services provided or to be provided. Therefore, the gross amount charged, as determined under section 67, will form part of value of taxable service. Further, Notification No. 26/2012-ST dated 20.06.2012 provides for abatement in respect of services specified in the table attached to the notification. None of the serial numbers specified therein related to services in relation to event management. Therefore no abatement has been granted for determination of value of taxable

service for these services.

9. The service provider vide letter dated 28.12.2015 submitted that they used to add agency fees when the invoice amount went above Rs.1,50,000/- and charged Service Tax on agency fees but when the invoice amount went below Rs.1,50,000/- they charged Service Tax on full amount. The service provider had submitted year-wise summary of the invoices for the period 2012-13 (Jan-March) to 2015-16 (upto Nov) as under:-

Period	Billed amount/Rs.	Agency charges/Rs.	Service Tax payable/Rs.	Paid/Rs.	Differntial amount to be paid/Rs.
(2012-13) Jan-March	9329287	902252	154877	94389	60488
2013-14	27078508	1983599	1231670	273792	957878
2014-15	26956764	2573065	621064	400300	220764
2015-16 (Apr-May)	0	0	0	0	0
2015-16 (June – 14 Nov	7221251	129378	1029088	0	1029088
2015-16 (15 Nov-30 Nov)	579050	0	83962	0	83962
Total	71164860	5588294	3120661	768481	2352180

10. That the service provider produced copy of Cenvat Credit Register for the year 2013-14, 2014-15 vide their letter dated 29.12.2015 wherein it was found that they have also taken Cenvat Credit of the services received from Decorators, Caterers, Publicity, Sound Services etc. which are not eligible if the service provider claims himself as "Pure Agent", when the service provider has taken such credit, he is not an pure agent.

11. Further several letters dated 09.07.2018; 25.07.2018 ; 07.08.2018 and Summon dated 07.02.2019 were issued to the service provider to submit the relevant records such as ST-3 returns, P& L accounts, reconciliation statements according to P & L a/c and ST-3 Returns for the period from 2012-13(Jan-Mar) to 2017-18 (Upto June '17) but they did not give any compliances. However further period of P& L a/c and ST-3 returns have been downloaded from the website of Registrar of Company & Service Tax portal respectively and the Tax liabilities have been tabulated as below:-

Period	Taxable income as per Profit and Loss A/c (Rs)	Service Net Taxable value shown in ST-3 Returns (Rs.)	Differential value between P&L ST-3 (Rs.)	Rate of Service Tax	Service Tax to be paid on differential value/Rs.
2012-13 (Jan-Mar)	10386419	763669	9622750	12.36%	1189372
2013-14	30035469	2215144	27820325	12.36%	3438592
2014-15	30141293	3238672	26902621	12.36%	3325164
2015-16(Apr-May	0	0	0	12.36%	0
2015-16(June-14 Nov)	8379702	6677266	1702436	14.00%	238341
2015-16 (15 Nov-March)	56148184	36749053	19399131	14.50%	2812874
2016-17	50101358	17574028	32527330	15.00%	4879100

2017-18 (upto June 17)	10861910	3765503	7096407	15.00%	106441
Total Tax liability					16947904

12. The service provider vide letter dated 10.03.2016 submitted that they satisfy the conditions of "Pure Agent" under Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 and accordingly, they charge the "Agency Fees: in their invoice and charge service tax on the "Agency Fees". However, on scrutiny of the documents, it is revealed that the service provider does not fall under "Pure Agent" conditions.

13. Further, during the Search, in the statement dated 23.12.15, the Director of the company confirmed that they are not working as pure agent, the present opinion is their afterthought.

14. The service provider has provided the challans for payment of Service Tax amounting to Rs. 21,93,249/- (Rs. 16,44,362/- through PLA and Rs. 5,48,887/- through Cenvat) for the period from 12-13(Jan -March) to 15-16(upto Nov'15). Neither the Service provider has submitted any proof of service tax payments for the further period nor they had given any response against issuing of letters/summons.

LEGAL PROVISIONS:

15. **Section 66B,** inserted by the Finance Act, 2012, w.e.f. 1-7-2012 states that "There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve/fourteen per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed."

Services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

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

(q) Mortuary/Funeral services

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

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

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

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

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

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

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

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

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

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

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

19. According to **Section 70** of the Finance Act, 1994 every person liable to pay service tax is required to assess the tax himself due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service tax by disclosing wholly & truly all materials facts in ST-3 returns.

20. As per the provisions of **Section 73(1)** of the Act where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded, the Central Excise Officer may within thirty months from the relevant date, serve notice on the person chargeable with service tax which has not been levied or paid or which has been short levied or short paid or the person to whom such tax refund has erroneously been made requiring him to show cause why he should not pay amount specified in the notice; Provided that where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded by the reasons of -

(a) fraud or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with service tax or his agent, the provisions of this sub section shall have effect, as for the. words "thirty months", the words "five years" had been substituted.

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

22. In view of the facts discussed in foregoing paras and material evidence available on record, it appeared that the said service provider have contravened the provisions of Section 66 of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to determine; collect and pay the service tax amounting to **Rs. 16947904/-** (including education cess and S & H Edu. Cess) for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) within the stipulated time limit; they have failed to declare value of taxable service in their service tax returns to the department in the prescribed return in form ST-3 and thus suppressed the amount of charges received by them for providing taxable services.

23. Thus, it is evident that the said service provider has escaped the assessment and not furnished the actual value while discharging Service Tax liability. Further, it appeared that the said service provider has not disclosed these facts to Service Tax department in their S.T.-3 returns filed by them and thus as per Section 73 of the Finance Act, 1994 as amended, short payment of service tax amounting to **Rs. 16947904/-** (including Education cess and S & H Edu. Cess) for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) is required to be recovered.

24. In view of above, it appeared that Service Tax not paid by the said service provider is

required to be recovered under **Section 73** of Finance Act, 1994. As per **Section 75** ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. In the instant case, the said service provider has not discharged their Service Tax liability and hence is liable to pay interest under Section 75 as amended of the Finance Act, 1994.

25. From forgoing paras, it appeared that therefore, the said service provider has failed to discharge their service tax liability on services provided to their customers with intent to evade payment of service Tax and hence, they are required to pay total service tax of **Rs. 16947904/-** (including Education cess and S & H Edu. Gess) for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) along with interest as applicable for the services provided to their customers. Thus, the service tax of **Rs. 16947907/-** (including Education cess and S & H Edu. Cess) for the period from 201213 (Jan-Mar) to 2017-18 (upto June,2017) is required to be recovered from them under proviso to Section 73(1) of Finance Act, 1994 read With Section 68 of the Finance Act, 1994 and applicable interest under Section 75 of Finance Act, 1994.

26. From the facts mentioned in the foregoing paras, it appeared that the said service provider has contravened the provisions of-

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

(b) Section 67 of the Finance Act, 1994 in as much as they failed to pay appropriate Service Tax on the gross value amount charged by them in respect of the taxable services of "Event Management Services" provided by them.

(c) **Section 68** of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, in as much as they have failed to determine and make payment of proper Service Tax in full as **Rs. 16947904/-** (including Education cess and S & H Edu. Cess) for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) and w.e.f. 1-7-2012, engaged in providing taxable services as defined under Section 65B(44) which are not falling under Negative list of services as defined under Section 660 of the Finance Act, 2012, to the credit of the Government within the statutory time-limit prescribed at the relevant time period.

(d) **Section 70** of the Finance Act, 1994 with Rule 7 of the Service Tax Rules, 1994, in as much as they have failed to self-assess the Service Tax on the Taxable value for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) within the stipulated time limit, resulting into non-payment of Service tax. As per the provision of Section 70, every person liable to pay the service tax shall himself assess the tax due on the services provided by him.

27. The said service provider has not disclosed full, true and correct information about the value of the services provided by them. Thus, it appeared that there is a deliberate withholding of

essential and material information from the department about service provided and value realized by them. It appeared that all these - material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of proviso to **Section 73(1)** of the Finance Act, 1994 to demand the Service Tax not paid.

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

29. 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.

30. All the above acts of contravention on the part of the said service provider appeared to have been committed deliberately by way of not declaring material facts to the department and not paying the correct service tax during the period of Financial year from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) suppressing the correct taxable amount with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to **Rs. 16947904/-** (including Education cess and S & H Edu. Cess) for the period from 2012- 13 (Jan-Mar) to 2017-18 (upto June,2017) which has not been paid by them is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. All these acts of contravention appeared to constitute offence of nature as described in the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 and also rendered themselves liable for penal action under the provisions of Section 77 and 78 of the Finance Act, 1994 as amended from time to time. They are also liable to pay interest at the appropriate rates for the period from due date of payment of Service Tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

31. All the above acts of contravention on the part of the said service provider appear to have been committed by way of suppression of facts/contravention of the provisions with an

intent to evade payment of Service Tax and therefore, the said Service Tax not paid is required to be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years. Such acts of contravention of the provisions of Section 66B, 68 & 70 of the Finance Act, 1994, Section 75 of the Finance Act, 1994, appeared to be punishable under the provision of **Section 78** of the Finance Act, 1994.

32. In view of the facts discussed hereinabove and material evidences available on records, it further appeared that Shri Dipesh Sheth, Director of MIs Markcom Solutions Pvt Ltd., is the person who handles all the activity of the said company. Thus, he is the overall in-charge of all the affairs of M/s Markcom Solutions Pvt Ltd. Further, he is the Person who appeared to have conceived the entire plan regarding the evasion and not depositing the Service tax to the tune of **Rs. 16947904/-** including Education cess and SHEdu. Cess) for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) as mentioned in foregoing paras. He has misinterpreted the concept of "Pure Agent" and failed to pay the amount to the credit of the Central Government thereby; he knowingly evaded the payment of Service Tax, as discussed in length in foregoing paras. Further, he has also failed to assess/declare the correct taxable value by not filing periodical ST-3 Returns in time for the taxable services provided/received by them. Thus, he appeared to have deliberately Suppressed the correct value of the taxable services provided/received by them from i.e. Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made there under, as discussed herein above in length. Thus, he, being Director of the Company appeared to have masterminded/abetted in the evasion of Service Tax on the taxable services as discussed hereinabove. He has, thus, violated the provisions of the Finance Act, 1994 and rules framed thereunder with intent to evade payment of huge amount of Service Tax. In view of the above, Shri Dipesh Sheth, Director of M/s.Markcom Solutions India Pvt.Ltd, appeared to be liable to penal action under Section 78A of the Finance Act, 1994 for the omissions & Commissions committed by him.

33. Therefore, M/s.Marcom Solutions Pvt.Ltd, 4th Floor, Abhilasa Business Centre, Near Navrangpura Bus Stand, Navrangpura, Ahmedabad 380 009 were called upon to show cause to the Additional/Joint Commissioner, CGST & Central Excise, Ahmedabad North, vide show cause notice No.STC/04-180/Prev/Gr.III/Markcom/15-16 dated 16.05.2019, as to why-

(i) The Taxable Income under Head " Event Management Service" received by the service provider during the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) by them from their clients and shown in books of accounts should not be treated as Gross income in terms of Section 65B(44) read with Section 66D of the Finance Act, 1994 with effect from 01.07.2012.

(ii) The Service Tax amounting to Rs.1,69,47,904/-(One Crore sixty nine lakh forty seven thousand nine hundred four only) including Education cess and S & H Edu. Cess for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) should not be demanded and

recovered from them under proviso to Section 73(1) read with Section 68 of the Finance Act, 1994.

(iii) Further, the service tax amount paid to the tune of Rs.21,93,249/- (Rs.16,44,362/- through PLA and Rs. 5,48,887/- through Cenvat inclusive of Edu.cess+ HSEC) for the above period should not be appropriated against their Service Tax liabilities at para (ii);

(iv) **Interest** on the **entire Service Tax liability** at **the prescribed rate** should not be charged and recovered in terms of the provision **Section 75** of the Finance Act, 1994 as amended time to time.

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

(vi) **Late fee** should not be recovered for non filling/ late filling of the service tax returns **under the provision of Section 70 (1)** of the Finance Act, 1994, read with Rules 7C of the service Tax Rules 1994 as amended.

(vii) **Penalty** should not be imposed upon them under the provision of **Section 78** ibid for contravening of the provisions and not disclosing the amount of Service Tax for taxable service provided by them with sole intention to evade the payment of applicable Service Tax;

34. Shri Dipesh Sheth, Director of M/s.Markcom Solutions Pvt.Ltd, 4th Floor, Abhilasa Business Centre, Near Navrangpura Bus Stand, Navrangpura, Ahmedabad - 380 009 was called upon to show cause to the Additional Commissioner, CGST & C.Ex. Ahmedabad North, as to why personal **Penalty** should not be imposed upon him under the provision of **Section 78A** of the Finance Act, 1994 for contravening of the provisions and for evasion of service tax and failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due;

Defence Reply:

35. Vide letter dated 09.01.2021, the service provider submitted that-

36. They denied all the charges leveled in the show cause notice. They stated that their company is a well-established, reputed and law abiding company in existence. They denied that there was any "intelligence" on their part on the basis of which the subject SCN was issued.

The subject SCN mainly requires MSPL and its Director to show cause as to why reimbursement as pure agent should not be disallowed. They stated that in the subject SCN, they failed to recognize that majority of contracts (in which deduction of pure agent is claimed) are with Government of Gujarat, wherein all contracts are allotted by government on their terms and conditions. Hence the serious charges as leveled under para 26 could not sustain, as director had no chance to intervene in formation of government contracts and hence question of evasion of

tax intentionally gets eliminated and further there cannot be the issue of master minding the evasion of taxes on the part of company or its director. They alleged that the SCN has issued with pre-judice mind of increasing litigation as from the opening para itself mentions that *"such reimbursement of the expenses are not allowed"*.

37. They stated that under para 16 of the SCN, the authority had clearly accepted that the service provider have failed to determine the tax and has never collected and hence not paid. Under the assumption without admission, if tax is payable, then the authority is bound by section 67 of the Finance Act, 1994 to calculate the tax by cum-duty method by re-quantifying the taxable value. Hence even if the tax is payable the same cannot be calculated directly by applying the tax rate on the amount received as it amounts to cascading effect.

38. They stated that in the subject SCN, under para 20(a) it was alleged that under section 67, the Noticee failed to pay appropriate service tax on the gross value amount charged by them. They denied it and stated that whatever gross amount is charged (Agency Fees) has been fully disclosed (as per awarded contracts) and whereever amount collected as pure agent is directly recovered from the service receiver on cost to cost basis. Hence the allegation of no proper disclosure or suppression cannot sustain.

39. They submitted that in the subject SCN, under para 7 the authority has clearly stated that some documents viz sales invoice register, invoices etc were found where were resumed under panchanama dated 23.12.2015 and in addition to this three sample invoice set was also been provided (as per para 7.5 table point no.7) to clarify the position of agency charges and amount collected as pure agent from Government of Gujarat.

40. The service provider re-submitted a copy of reply submitted during investigation dated 10.03.2016 which mentions about brief nature of business and the SCN has been issued without verification of proper records and in gross violations of provision of the established law.

41. The service provider submitted that their for deduction of amount claimed as "Pure Agent" in terms of Explanation-I of Rule 5(2) as discussed in para 7.5 of the SCN cannot be denied on grounds and clearly shows that the impugned SCN issued without appreciating facts available on records. The service provider submitted a chart wherein the "pure agent" has been defined as per 5(2) of Valuation Rules.

Rules 5(2) of Determination of Value Rules 2006	Department Contention	Further Clarification
(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;	Practice discontinued from April 2015 and full service tax was charged.	• The contracts/ agreement which coversthis specific condition are the only invoices on which expenditure is claimed as Pure Agent on behalf of
(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;		the client and not all the contracts/agreements. • From April 2015 onwards, all Government Contracts were continued with same practice for which ledger copy is attached. • The examples which were quoted are the invoices of private parties and not government contracts. Hence not related to the claim of **Hence the observation is factually incorrect and without verification of records available on record.**
(iii) the recipient of service is liable to make payment to the third party; (iv) the recipient of service authorizes 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;	Not all the covered in agreement / contract covers this clause. Which revealed non fulfillment of "Pure Agent" condition.	• The contracts/ agreement which coversthis specific condition are the only invoices on which expenditure is claimed as Pure Agent on behalf of the clientand not all the contracts/agreements. • From April 2015 onwards, all Government Contracts were continued with same practice for which ledger copy is attached. • The Authority has vaguely provided disagreement to this point, however no specific observations are provided, however we provide with sample invoice along with agreement and supporting to claim the correct position of books of accounts. **Hence the observation is factually incorrect and without verification of records available on record.**
(vi) the payment made by the service provider on behalf of the recipient of	Authority has accepted that amount is shown separately.	• The Authority has vaguely provided

service has been separately indicated in the invoice issued by the service provider to the recipient of service;		disagreement to this point, mentioning difference between the head wise expenditure and payment particular, however there are no specific observations are provided.
(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party;		• To this it is to let this esteemed office know that payments are done to parties and expenses are booked as per their nature. **Hence the observation is factually incorrect and without verification of records available on record.**
(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.	Authority has mentioned that additional charges are being charges over and above agency charges.	• The Authority has vaguely provided disagreement to this point, mentioning difference between the head wise expenditure and payment particular, however there are no specific observations are provided. • The details provided are not understood properly nor the Noticee was asked for any explanation about the same. The details of figures 9,10,11,12 of Annexure-C are the actual details of expenditures and not additional amount charged as disagreed by the authority. **Hence the observation is factually incorrect and without verification of records available on record.**

42. The service provider stated that they are not in agreement with the very foundation of the impugned SCN as the same is based on the aforesaid comments on the definition of "Pure Agent", it was interpreted by the department that they are not pure agent. The reasons advanced by the department for such an interpretation are erroneous and can be further explained in more detail along with available judicial backup of the Honorable Apex Court.

43. The service provider submitted that they are at the liberty to give treatment according to the contract entered by them with the service recipient/ client or customers. In the absence of any guidelines or Instructions available in the law, the department cannot enforce particular way of tax treatment to be followed to the particular contract. Hence they submitted that this contention of the department is not correct, not legal and beyond the provision of law which cannot be sustained.

44. They submitted that the title of goods or services are of Government of Gujarat / Service Receiver (as per contract), they had never claimed any Cenvat Credit on the said invoices when the same are related to reimbursement claimed. In view of aforesaid factual matrix, the contention of the department that they are not "Pure Agent" does not hold water. Therefore the allegation that they are not pure agent does not survive. Hence the very foundation of the show cause notice is demolished and therefore they submitted that the present show cause notice is not sustainable under the Law.

45. The said service provider has submitted that in the assessment practice followed by them they have fulfilled the conditions (i) to (vii) as prescribed in Rule 5(2) of Service Tax (Determination of value) Rules, 2006, they are very much covered in the definition of "Pure Agent" and this being so, they have correctly availed the deduction of the expenses incurred by them for hiring services which is not provided by them but hired on behalf of their service recipients. They submitted that they are not liable to pay services tax for the service which they had not provided. In support of their claim they submitted that the constitutional validity of Rule 5(2) (Determination of Value) Rules, 2006 was challenged by way of Writ Petition in the Hon'ble High Court of Delhi by M/s Intercontinental Consultants & Technocrats Pvt.Ltd., reported in 2013(29)STR.9(Del) wherein the Hon'ble High court while allowing the petition has held that-

Service Tax (Determination of Value) Rules, 2006 - Rule 5(1) - Expenditure/costs, such as travel, hotel stay, transportation, etc., incurred by service provider in course of providing taxable service - Stipulation that it has to be treated as consideration for taxable service and included in value for charging Service Tax - HELD : It purports to tax not what is due from service provider under charging Section 66 of Finance Act, 1994 - It is ultra vires Section 67 ibid, which quantifies the charge of Service Tax, both before and after its amendment of 1-5-2006 - In these Sections phrase 'for such service' is important - Such expenditure/costs cannot be considered as amount charged by Service provider 'for such service' provided by him - Power to make rules could not exceed or go beyond Section which provides for charge or collection of Service Tax - Apart from being ultra vires, Rule ibid may also result in double taxation, if expenses like air travel tickets, had already been subjected to Service Tax - Also, 'consideration in money' or gross amount charged' used in Section 67 ibid did not have widest sense of including such expenditure/costs; in their definition in Explanation to the section, these expenditure/costs have not been included - Even if Rule ibid is considered to have been made under Section 94 ibid,

which provides for delegated legislation, it could only be for carrying out provisions of Chapter V of Finance Act, 1994 which provides for the levy, quantification and collection of the Service Tax - It was no answer to say that under Section 94(4) ibid, every rule framed by Central Government had to be laid before each House of Parliament, which have power to modify them. - The illustration 3 given below the Rule amplifies what is meant by sub-rule (1). In the illustration given, the architect who renders the service incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc. to enable him to effectively perform the services, The illustration, therefore, says that these expenses are to be included in the value of the taxable service. The illustration clearly shows how the boundaries of Section 67 of Finance Act, 1994 are breached by the Rule. Sub-section (4) of Section 67 which enables the determination of the value of the taxable service "in such manner as may be prescribed" is expressly made subject to the provisions of sub-section (1). The thread which runs through Sections 66, 67 and 94, which empowers the Central Government to make rules for carrying out the provisions of Chapter V of Finance Act, 1994 is manifest, in the sense that only the service actually provided by the service provider can be valued and assessed to Service Tax. We are, therefore, undoubtedly of the opinion that Rule 5(1) of the Rules runs counter and is repugnant to Sections 66 dnd 67 of the Act and to that extent it is ultra vires. It purports to tax not what is due from the service provider under the charging Section, but it seeks to extract something more from him by including in the valuation of the taxable service the other expenditure and costs which are incurred by the service provider "in the course of providing taxable service". What is brought to charge under the relevant Sections is only the consideration for the taxable service. By including the expenditure and costs, Rule 5(1) goes far beyond the charging provisions and cannot be upheld. [paras 10, 11, 12, 18]

Valuation (Service Tax) - Scope of - Section 67(1) of Finance Act, 1994 is subject to provisions of Chapter V, which includes Section 66 ibid - This means value of taxable services has to be in consonance with Section 66 ibid which levies tax only on taxable service and nothing else - It is inbuilt mechanism to ensure that only taxable service shall be evaluated under Section 67 ibid, whereunder value of taxable service is gross amount charged by service provider 'for such service' - Harmonious reading of Sections 66 and 67(1)(i) ibid indicates that valuation of taxable service is only a consideration paid as quid pro quo for service can be brought to charge. [para 18]

Valuation (Service Tax) - Consulting engineer - Expenditure/costs such as air travel, hotel stay, etc, incurred for service - They are not includible gross taxable value of service - Only value of service rendered as consulting engineer could be brought to charge - Sections 65(31), 66 and 67(1)(i) of Finance Act, 1994. [para 10]

Administrative law - Delegated legislation - Laying of Rule framed by Central Government before each House of Parliament, with power to modify them - It cannot add any greater force to the Rules than what they ordinarily have as species of subordinate legislation. [para 18]

Double taxation - It can be levied - But it should be clearly provided for and intended - It cannot be enforced by implication. [para 11]

On appeal by the department in the Hon'ble Supreme Court of India was decided as under as reported in 2014 (35) S.T.R. J99 (S.C.).

Consulting Engineer's service — Whether expenditure/costs such as travel, hotel, stay, etc. includible in gross taxable value of service?

The Supreme Court Bench comprising Hon'ble Mr. Justice H.L. Dattu and Hon'ble Mr. Justice S.A. Bobde on 10-2-2014 leavegrantedin Petition for Special Leave to Appeal (Civil) No. 32257 of 2013 filed by Union of India against the Judgment and Order dated 30-11-2012 in W.P. (C) No. 6370 of 2008 of Delhi High Court as reported in 2013 (29) S.T.R. 9 (Del.) (Intercontinental Consultants & Technocrats Pvt. Ltd. v. Union of India).

The Delhi High Court in its impugned order had held that it purports to tax not what is due from service provider under charging Section 66 of Finance Act, 1994. It is ultra vires Section 67 ibid, which quantifies the charge of Service Tax, both before and after its amendment of 1-5-2006. Expenditure/costs such as travel, hotel, stay, etc., cannot be considered as amount charged by service provider "for such service" provided by him. Power to make rules could not exceed or go beyond section which provides for charge or collection of Service Tax. Rule ibid may also result in double taxation, if expenses like air travel tickets, had already been subjected to Service Tax. It is inbuilt mechanism to ensure that only taxable services shall be evaluated under Section 67 ibid, where under value of taxable service is gross amount charged by service provider 'for such service'. Expenditure/costs like air travel, hotel stay, etc., are not includible in gross taxable value of services. Only value of service rendered as consulting engineer could be brought to charge. Even rule framed by Central Government shall be laid before each House of Parliament, which has power to modify it. It cannot add any greater force to the Rules than what they ordinarily have as species of subordinate legislation. Double taxation can be levied but it should be clearly provided for and intended. It cannot be enforced by implication.

46. They stated that in the said decision it was categorically held by the Hon'ble Supreme Court of India that the service provider is not providing service of Air Travel, Hotel Stay etc. are not includible in gross taxable value of services. Only value of service rendered as consulting engineer could be brought to charge.

47. The genesis of the said decision is that the value of services which is not provided by the service provider cannot form part of taxable value. Applying the same analogy they submitted that in their case they have claimed the deduction of the value of services which were not provided by them was correctly claimed. Accordingly they contend that service tax on such deduction cannot be demanded by the department. Thus the in view of aforesaid submission the show cause notice is not sustainable on the merits itself.

48. The service provider has submitted that even if service tax was applicable and payable on the part of reimbursement which was claimed by them as deduction on the basis of concept of Pure Agent as per Determination of Value Rules (Service Tax) 2006, the demand cannot sustain to the extend on the below mentioned grounds as to either tax is not calculated giving benefit of Cum-Duty Value or there is deliberate reliance on wrong grounds for invoking extended period or on false allegations, they stated as under.

-that if duty was payable, the service tax has to be calculated by Cum-Duty method and the value of taxable services has to re-quantified accordingly and benefit of cum-duty has to be given to them. They submitted that on wrong assumption basis also the actual demand is not of Rs. 1,69,47,907/- but of Rs. 1,49,12,299/-, the calculation of the same is provided as under,

Period	Taxable Income as per Profit and Loss Account	Service net taxable value showin in ST-3 returns	Differential value between P&L and ST-3 Returns	Rate of Service Tax	Service Tax requied to be paid on differential value
2012-13(Jan-March	10386419	763669	9622750	12.36%	1058537
2013-14	30035469	2215144	27820325	12.36%	3060335
2014-15	30141293	3238672	26902621	12.36%	2959384
2015-16(April-May)	0	0	0	12.36%	0
2015-16 (June to Nov)	8379702	6677266	1702436	14%	209071
2015-16(Nov to March)	56148184	36749053	19399131	14.50%	2456659
2016-17	50101358	17574028	32527330	15%	4242695
2017-18(april to June)	10861910	3765503	7096407	15%	925618
	196054335	**70983335**	**125071000**		**14912299**

49. From the above calculated duty amount on the basis of cum-duty calculation that duty was payable them submitted that while filing ST-3 returns for the year 2014-15 and for the year 2016-17 they have claimed Rs.2,69,01,638/- as reimbursement expenses and Rs.3,19,69,490/- as deduction towards Exemption in the respective returns and also they claimed that demand for the year 2014-15 should have been issued within normal period of 18 months as per section 73 of the Finance Act, 1994 *(this provision of 18 months under section 73 of Finance Act, 1994 was replaced by 30 months effective from 14.05.2016 by Finance Act, 2016)* as against which they were served show cause notice on 20.05.2019. The details of the due dates due the year 2014-2015, date of filing of ST-3 return for the same period and reimbursement claim which is shown in ST-3 returns are as under.

Year	Due date	Actual date of filing	Reimbursement declared	SCN should have been issued by 18 month time limit
2014-15 (H-1)	14-11-2014	11-06-2015	8346131	13-05-2016
2014-15 (H-2)	25-04-2015	11-06-2015	18555507	24-10-2017
FY 2014-15			**26901638**	

50. Accordingly they contended that demand of service tax on value of reimbursement of Rs. 2,69,01,638/- for the year 2014-15 is hit by the limitation. Further during the year 2016-17 they

have shown Rs. 3,19,69,490/- as deduction towards Exemptions in their ST-3 returns filed for the respective year and the value of exempted services shown are as under,.

Year	The Value of Exempted Services
2016-17(H-1)	10668789
2016-17(H-2)	21300701
Total 2016-17	**31969490**

51. They stated that the impugned show cause notice have not challenged the exemption claimed by them hence the demand of service tax which is wrongly calculated without giving benefit of deduction of the amount of Rs. 3,19,69,490/- on this exemption claimed cannot be considered as it would amount to travelling beyond the show cause notice which is not permissible under the law.

52. They stated that in the show cause notice for calculating short payment of Service Tax the department has not considered the above two deduction. In this regard they submitted that they have not suppressed the facts of deduction towards reimbursement and exemption from the department as the said deductions was already claimed in the returns. Accordingly as submitted above demand of service tax for the year 2014-15 and 2016-17 has to be reduced form the total demand of service tax. Accordingly, as per their contention the demand for short payment of service tax should have been re-quantified as under,

Period	Taxable Income as per Profit and Loss Account	Service net taxable value showin in ST-3 returns	Differential value between P&L and ST-3 Returns	Deduction permissibl e under ST3	Net Taxable Value	Rate of Service Tax	Service Tax requied to be paid on differenti al value
2012-13(Jan-March	10386419	763669	9622750		9622750	12.36%	1058537
2013-14	30035469	2215144	27820325		27820325	12.36%	3060335
2014-15	30141293	3238672	26902621	26901638	983	12.36%	108
2015-16(April-May)	0	0	0		0	12.36%	0
2015-16 (June to Nov)	8379702	6677266	1702436		1702436	14%	209071
2015-16(Nov to March)	56148184	36749053	19399131		19399131	14.50%	2456659
2016-17	50101358	17574028	32527330	31969490	557840	15%	72762
2017-18(april to June)	10861910	3765503	7096407		7096407	15%	925618
	196054335	**70983335**	**125071000**	**58871128**	**66199872**		**7783089**

53. They submitted that as per above calculation also under assumption and without admission the demand of service tax which should have formed part of the impugned SCN should have been Rs. 77,83,089/- and not Rs. 1,69,47,904/- which required to be considered and

accordingly interest & penalty to that extent has to be recomputed and has to be reduced accordingly.

54. Further they submitted that as per para 7.6 & para 27(iii) of the impugned SCN they had already deposited Rs. 21,93,249/- which presently forms part of appropriation just to levy increasing interest and penalties should be considered as deposit till the dispute is settled or demand is neutralized or it's finalized. The notice submitted that the SCN is not sustainable and required to be dropped.

55. The service provider has stated that there was no suppression on their part as contracts warded were majorly from Government of Gujarat and the differential amount on which authority has calculated the payable duty amount is the amount which is claimed by them from contracting parties as amount spent in the capacity of pure agent and the same stands deductible from the taxable value as the same can never be the part of gross amount charged.

56. They further, stated that the interpretation of the department that such deductions are forming part of the taxable value as they are not "Pure Agent". Because of the different interpretation by the department the present demand of service tax has been raised, invoking suppression of fact on our part and accordingly penalty under section 78 of the Finance Act,1994 has been proposed upon us is not correct. In this regard they invited attention to para 3.4 of the Circular No. 1053/2/2017-CX., dated 10-3-2017 issued by CBEC from F. No. 96/1/2017-CX.I. They also relied the case of Adhikrut Jabti Evam Vasulivs Commissioner of Central Excise, Indore reported as 2017 (6) GSTL 529 (Tri-Delhi), Bee Am Industries Pvt. Ltd Vs Commissioner of Central Excise and Service Tax, Meerut-1reported as 2017 (4) G.S.T.L. 185 (Tri. - Del.) the Hon'ble Principal Bench of Tribunal Delhi and Reliance Life Insurance Co. Ltd vs Commissioner of Service Tax, Mumbai reported as 2018 (363) E.L.T. 1050 (Tri. - Mumbai),

57. They stated that all the aforesaid decisions are based on the ratios of the decisions of Higher forum such as Larger Bench, High court and Supreme Court of India. Therefore in the matter of Interpretation such decisions are having binding effect on the department. Accordingly they submitted that the present show cause notice which was issued under proviso to Section 73(1) of the Finance Act, 1994 is not maintainable and accordingly the penalty proposed under section 78 is also not sustainable and required to be dropped.

58. They also submitted that no interest is payable under Section 75 of the act as the demand itself is illegal and unsustainable. They submitted that there was no suppression of the facts by them.

59. They stated that there was no intention on their part to not to disclose the reimbursable value as stated in the alleged SCN and also the present issue is solely related to interpretation, hence the provisions of penalty in these circumstances is unsustainable under Section 78 of the

Finance Act, 1994. They relied the case of Tamilnadu Housing Board Vs. C.C.E. reported in 1194 (74) ELT 9 (SC), wherein it was held that an intention to evade tax is not a mere failure to pay the tax, it is much more. The person alleged to have evaded payment of a tax must be proved to be aware of the taxability of the transaction and must deliberately avoided payment of tax. Thus, intent to avoid payment of tax in law much more than mere failure to pay tax.

60. In view of above they requested to decide the show cause notice on merits as well as on limitation ground and no interest and penalties stand the test of merit and to grand them an opportunity for personal hearing before the case is adjudicated.

61. Vide additional submission dated 13.01.2021, they stated that -

62. during the FY 2017-2018 the authority has confirmed have taken / downloaded the balance sheet from website of Registrar of Companies and found total turnover for whole year was stated to the tune of Rs. 4,34,47,640/- and while preparing the alleged SCN the authority has simply divided total turnover by 4 quarters assuming the turnover is equally spread throughout the year. They stated that the authority has wrongly applied the ratio of equal apportionment of the turnover during entire year, however the taxable value during quarter 1 (i.e. from April 2017 to June 2017) was actually of Rs. 37,65,503/- which is correctly reported in ST-3 return filed for the even period and not the taxable value as per alleged SCN which is wrongly arrived without actual verification of records available of Rs. 1,08,61,910/- (Rs. 4,34,47,640/-"/" 4 quarters = Rs. 1,08,61,910/- for quarter 1st "April 2017 to June 2017"),

63. They submitted that the re-calculated demand of Rs. 77,83,089/- will further get reduced by the alleged demand of Rs. 9,25,618/- (calculated on Cum-Duty basis) for the year 2017-2018 (upto June 2017) (against this the alleged SCN had calculated the demand of Rs.10,64,461/-), the recalculated table is produced as under,

Period	Taxable Income as per Profit and Loss Account	Service net taxable value shown in ST-3 returns	Differential value between P&L and ST-3 Returns	Deduction permissble under ST3	Net Taxable Value	Rate of Service Tax	Service Tax requied to be paid on differential value
2012-13(Jan-March	10386419	763669	9622750		9622750	12.36 %	1058537
2013-14	30035469	2215144	27820325		27820325	12.36 %	3060335
2014-15	30141293	3238672	26902621	26901638	983	12.36 %	108
2015-16(April-May)	0	0	0		0	12.36 %	0
2015-16 (June to Nov)	8379702	6677266	1702436		1702436	14%	209071

2015-16(Nov to March)	56148184	36749053	19399131		19399131	14.50 %	2456659
2016-17	50101358	17574028	32527330	31969490	557840	15%	72762
2017-18(april to June)	3765503	3765503	0		0	15%	0
	188957928	**70983335**	**117974593**	**58871128**	**59103465**		**6857471**

64. Considering the above they submitted that even on assumption basis and without admission, the total demand cannot exceed Rs. 68,57,471/- accordingly interest and penalties have to be recalculated and that they are eligible for deduction under Service Tax (Determination of value) Rules, 2006 and the SCN should be dropped in the best interest of justice. They also submitted the following documents.

65. Two sample copies of invoices containing agency charges and reimbursement amount (Invoice No. MSPL-DMFT-08-1826 dt. 17.08.2016 & Invoice MSPL-VNP-08-1821 dt. 01.08.2016) along with contract copy with government of Gujarat and summary of expenses done on behalf of government along with relevant invoices / vouchers.

66. Copy of bank statement from where payment to vendors have been done of Corporation Bank, A/c. No. CA/01/004075 for the month of July 2016, September 2016 & October 2016.

67. Copy of reply dated 10.03.2016 submitted to preventive section.

68. Copies of ST-3 filed for the year 2014-2015 & 2016-2017 to show the value of reimbursement and exempted values are reflected in respective ST-3 returns.

69. Copies of sales ledger (Reimbursement claimed) during the year 2015-2016 & 2016-2017, to prove that business practice with government is continued even after April 2015 to claim reimbursement.

70. Copy of 2017-2018 (Q1) along sales register for the same period confirming the turnover details reflected in ST-3 returns and full applicable tax is paid on the same.

71. Sales ledger for Q1 of 2017-2018 (April 2017 to June 2017) duly CA Certified will be provided by 20th January 2021.

72. Vide another submission dated 21.01.2021, the service provider has stated that -

73. As per their previous reply and as per confirmation and on assumption basis the turnover is assumed to be equally spread throughout the year which is not the actual case for FY 2017-2018 and by dividing total turnover by 4 and arriving at quarter 1 figures (April 2017 to June 2017) the authority has erred in doing so. They submitted the copy of Abstract of Statement of

Profit and Loss for year ending 31st March, 2018 and for FY 2017-2018 (Q1) sales register which is duly certified by their which is fully matching with ST-3 returns on which full applicable tax is paid.

74. They further submitted the following documents.

75. Copy of reply dated 10.03.2016 submitted to preventive section.

76. Copy of 2017-2018 (Q1) along sales register for the same period confirming the turnover details reflected in ST-3 returns and full applicable tax is paid on the same.

77. Sales ledger for Q1 of 2017-2018 (April 2017 to June 2017) duly CA Certified along with Abstract of Statement of Profit and Loss for year ending 31st March, 2018.

78. In view of the above submission, they requested to drop the show cause notice in the interest of justice and again requested to grant an opportunity for personal hearing.

PERSONAL HEARING:

79. Personal hearing in this case was fixed on 28.07.2020, 05.10.2020 and 07.01.2021. As per the oral request of Shri Pravin Dhandharia, CA, hearing was postponed to 11.01.2021 instead of 07.01.2021. Shri Pravin Dhandharia CA appeared for the personal hearing on 11.01.2021 on behalf of both the noticees on 11.01.2021 and stated that the entire demand is factually incorrect on data analysis and hence should be dropped. In relation to which detailed reply will be submitted in two days. He also stated that he has nothing to add more.

DISCUSSION AND FINDINGS:

80. I have carefully gone through the records of the case, submission made by the service provider in reply to the show cause and also submission made during the course of personal hearing.

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

82. Accordingly, the registered premises of the said service provider viz., *M/s.* Markcom Solutions Pvt Ltd was searched on 23.12.2015 under section 82 of the Finance Act, 1994 as amended, vide search warrant no 109/2015-16 issued from F No. STC/04180/Prev./Gr-III/Markcom/15-16 dated 23.12.2015, issued by Joint Commissioner, ST Prev), HQ, A'bad. The premises of the Company was searched and Trial Balance, Balance Sheet, Income Tax return and sample invoices raised by them for the period from 2012-13 (Jan-Mar) to 2015-16 (up to Nov, 15) were recovered. On scrutiny of the said documents, Statement of the Partner or the Company viz., Shri Dipesh Sheth, after issuance of "Summons to witness" letter bearing F.No. STC/04-180/Prev./Gr-lll/Markcom/15-16 dated 23.12.2015, was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

83. During the course of the statement of Shri Dipesh Sheth, Director of M/s. Markcom Solutions Pvt Ltd taken on 23.12.2015, he stated that their company is engaged in providing "Event Management Services" and he looks after the business since 2006-07, however they took registration under "Business Auxiliary Services" by mistake, that their company neither has taken reimbursement for the period 2012-13 (Jan-Mar) and 2013-14 nor paid Service Tax on gross amount as per Profit & Loss Accounts. He further stated that their company has claimed reimbursement in the year 2014-15 and paid Service Tax after deducting reimbursement amount as mentioned in the ST-3 returns. However, 2015-16 onwards they were not claiming any reimbursement and charging Service Tax on full amount. All this is due to ignorance, that the company was of the opinion that such reimbursement is allowed in the business which was further stopped in the year 2015-16 as per the advice of their consultant, that they have charged Service Tax on gross value of the invoice since Apr 2015 and prior to that, they have charged Service Tax on agency fees, that they have been taking Cenvat Credit on some common input services eg. Telecommunication Services, Courier Services etc. and they utilized the said credit. He agreed that they are required to pay the service Tax on gross amount and reimbursement is not allowed in the present nature of service, that that they do not work as PURE AGENT, that he agreed that their outstanding service tax liability for the period 2012-13 (Jan-Mar) to 2015-16 (upto Nov) to Rs. 92,22,423/-.

84. The show cause notice alleged that that the service provider failed at pay service tax on monthly basis in spite of the knowledge and being Pvt. Ltd company. During the course of investigation, it was revealed that in case of taxable services provided by organizer of event, the value is required to be determined as per provisions of Section 67, which provides that where the service tax is payable on value, such value shall be the gross amount charged by the service provider for such services provided or to be provided. Therefore, the gross amount charged, as determined under section 67, will form part of value of taxable service. Further, Notification No. 26/2012-ST dated 20.06.2012 provides for abatement in respect of services specified in the table attached to the notification. None of the serial numbers specified therein related to services in relation to event management. Therefore no abatement has been granted for determination of value of taxable service for these services.

85. In reply to the show cause notice, the service provider mainly argued on the following points-

i) Mainly all contracts have been allotted by the Government of Gujarat on their terms and conditions. Therefore, question of evading Tax does not arise.

ii) Director of the company has no chance to intervene in formation of Government contracts and therefore, penalty on him is not maintainable

iii) They are entitled to recalculate the Tax under Section 67 of the Finance Act on cum duty method.

iv) Their claim for "pure agent" of Rule 5(2) of Valuation Rules, 2006 can not be ignored by the Department.

v) They have disclosed all the transaction to the Department and therefore, extended period can not be invoked

vi) Interest and penalty are not payable by them.

86. On going through a photocopy of invoice submitted by the service provider, in the case of invoice No.MSPL/VNP-08-1821 dated 01.08.2016, issued to the Chief Officer, Vapi Nagar Palika, Vapi-Dist Valsad, bill amount Rs.3606096, they have charged agency charges @ 10% i.e. Rs.360610/- . The service provider has charged Service Tax @ 15% on the above transaction. In this case, the invoice amount comes to Rs.4020797/- (including Service Tax). Another invoice No.MSPL/DMFT-08-1826 dated 17.08.2016 issued to Devang Mehta Foundation Trust, Mumbai, has been billed Rs.1527747/-, agency charges Rs.152775/- and they have charged Service Tax on the agency charges. On perusal of the said bills, I find that the service provider has not rendered entire service to the State Government but they rendered services to the State Government too.

87. Regarding their contention that the Director of the company has not intervened in the evasion of Tax is not convincing as during the course of the statement of Shri Dipesh Sheth, Director of M/s. Markcom Solutions Pvt. Ltd taken on 23.12.2015, he himself stated that their company has claimed reimbursement in the year 2014-15 and paid Service Tax after deducting reimbursement amount as mentioned in the ST-3 returns. He agreed that they are required to pay the service Tax on gross amount and reimbursement is not allowed in the present nature of service, that that they do not work as PURE AGENT and also agreed that their outstanding service tax liability for the period 2012-13 (Jan-Mar) to 2015-16 (upto Nov) to Rs. 92,22,423/-. As he was responsible for running the organization, he, being responsible head of the company can not escape from the responsibility of payment of Service Tax. In short, he is responsible for the short payment of Service Tax in the present case. Therefore, their argument in this regard is not tenable.

88. Regarding their contention that they are entitled for payment of Service Tax on cum duty is also not tenable as certain documents sought by the department has not been provided by

them.

89. Regarding the claim of the servicer that they may be treated as "pure agent" of Rule 5(2) of Valuation Rules, 2006, I find that the service provider produced copy of Cenvat Credit Register for the year 2013-14, 2014-15 vide their letter dated 29.12.2015 before the investigating officers, wherein it is found that they have also taken Cenvat Credit of the services received from Decorators, Caterers, Publicity, Sound Services etc. which are not eligible if the service provider claims himself as "Pure Agent", when the service provider has taken such credit, he is not an pure agent. I find that this aspect has been discussed in the show cause notice. Therefore, the request put forward by the service provider in this is not tenable and therefore, rejected.

90. Regarding the contention of the service provider that they have disclosed all the transaction to the Department and therefore, extended period can not be invoked, the service provider has contended that they have claimed Rs.2,69,01,638/- as reimbursement expenses and Rs.3,19,69,490/- as deduction towards Exemption in the respective returns and also they claimed that demand for the year 2014-15 should have been issued within normal period of 18 months as per section 73 of the Finance Act, 1994 as against which they were served show cause notice on 20.05.2019. They submitted the details of the due dates due the year 2014-2015, date of filing of ST-3 return for the same period and reimbursement claimed as shown in ST-3 returns are as under.

Year	Due date	Actual date of filing	Reimbursement declared	SCN should have been issued by 18 month time limit
2014-15 (H-1)	14-11-2014	11-06-2015	8346131	13-05-2016
2014-15 (H-2)	25-04-2015	11-06-2015	18555507	24-10-2017
FY 2014-15			**26901638**	

91. Accordingly they contended that demand of service tax on value of reimbursement of Rs. 2,69,01,638/- for the year 2014-15 is hit by the limitation. Further during the year 2016-17 they have shown Rs. 3,19,69,490/- as deduction towards Exemptions in their ST-3 returns filed for the respective year and the value of exempted services shown are as under,.

Year	The Value of Exempted Services
2016-17(H-1)	10668789
2016-17(H-2)	21300701
Total 2016-17	**31969490**

92. They stated that the impugned show cause notice have not challenged the exemption claimed by them hence the demand of service tax which is wrongly calculated without giving benefit of deduction of the amount of Rs. 3,19,69,490/- on this exemption claimed cannot be considered as it would amount to travelling beyond the show cause notice which is not permissible under the law.

93. They stated that in the show cause notice for calculating short payment of Service Tax the department has not considered the above two deduction. In this regard they submitted that they have not suppressed the facts of deduction towards reimbursement and exemption from the department as the said deductions was already claimed in the returns. Accordingly as submitted above demand of service tax for the year 2014-15 and 2016-17 has to be reduced form the total demand of service tax. Accordingly, as per their contention the demand for short payment of service tax should have been re-quantified as under,

Period	Taxable Income as per Profit and Loss Account	Service net taxable value showin in ST-3 returns	Differential value between P&L and ST-3 Returns	Deduction permissible under ST3	Net Taxable Value	Rate of Service Tax	Service Tax requied to be paid on differential value
2012-13(Jan-March	10386419	763669	9622750		9622750	12.36%	1058537
2013-14	30035469	2215144	27820325		27820325	12.36%	3060335
2014-15	30141293	3238672	26902621	26901638	983	12.36%	108
2015-16(April-May)	0	0	0		0	12.36%	0
2015-16 (June to Nov)	8379702	6677266	1702436		1702436	14%	209071
2015-16(Nov to March)	56148184	36749053	19399131		19399131	14.50%	2456659
2016-17	50101358	17574028	32527330	31969490	557840	15%	72762
2017-18(april to June)	10861910	3765503	7096407		7096407	15%	925618
	196054335	**70983335**	**125071000**	**58871128**	**66199872**		**7783089**

94. They submitted that as per above calculation the demand of service tax which should have formed part of the impugned SCN should have been Rs. 77,83,089/- and not Rs. 1,69,47,904/- which required to be considered and accordingly interest & penalty to that extent has to be recomputed and has to be reduced accordingly.

95. I find that CBEC (Now CBIC) vide Circular No. 185/4/2015-ST dated 07.07.2015 has stated that two part system of return scrutiny was envisaged - a preliminary scrutiny which would be online covering all the returns; and a detailed manual scrutiny of select returns, identified on the basis of risk parameters, to be done by the Division/Range offices and issued guidelines/procedure in carrying out detailed scrutiny, in terms of the provisions contained in the Scrutiny Manual. Board also stated that the purpose of preliminary scrutiny of returns includes ensuring the completeness of the information furnished in the return, arithmetic correctness of the amount computed as tax and its timely payment, timely submission of the return and identification of non-filers and stop-filers and the purpose of detailed manual scrutiny of returns is to ensure the correctness of the assessment made by the assessee which includes checking the taxability of the service, the correctness of the value of taxable services in terms of Section 67 of

the Finance Act, 1994, read with the Service Tax (Determination of Value) Rules, 2006 and the effective rate of tax after taking into account the admissibility of an exemption notification, abatement, or exports, if any; ensuring the correct availment/utilization of Cenvat Credit on inputs, capital goods, and input services in terms of the Cenvat Credit Rules, 2004, etc.

96. It would be evident from above that in the preliminary scrutiny of a ST-3 return, only the primary areas of the return will be taken for scrutiny in order to ensure its compliance according to which the Service Tax law/provisions viz. checking the information declared in the return such as PAN No., accounting code, registration number etc, timely submission of return, arithmetic accuracy of the tax amount declared by the assessee after self assessment in the return etc. are fulfilled by the assessee. No detailed or depth verification of the determination of service tax amount by the assessee after self assessment shown in the return would be conducted by the officer during preliminary scrutiny stage. In the stage of detailed scrutiny, besides a detailed and depth verification of information provided in the return, the officer has to ensure correctness of the assessment done by the assessee by verifying the correctness of classification of services adopted, correctness of the exemption notification availed, correctness of Cenvat Credit amount availed etc.

97. Thus it would be seen that only after the detailed scrutiny of a ST-3 return, the eligibility of an exemption notification claimed or availed by the assessee, declared in their return after their self assessment, can be ascertained by a Central Excise officer. In the present case, it is found that no detailed scrutiny of the returns filed by the assessee during the period in question was done by the Range Officers and these ST-3 returns were only subjected to preliminary scrutiny by the officers.

98. As discussed above, in preliminary scrutiny of a return, no verification of the service tax amount determined/self-assessed by the assessee by way of verifying correctness of classification of service provided, correctness of exemption claimed/availed etc. would be done. Hence, in the present case, self-assessment done by the assessee after availing the exemption notification, declared in the returns, was not verified by the officer. Thus, the correctness or applicability of the said exemption notification in the services provided by the assessee was not verified by the officer. In such a scenario, it can not be said that as per the information declared in the returns by the assessee, department was aware that the assessee was availing exemption notification wrongly. But only during the course of verification of their records like contracts, invoices, manual registers, invoice wise details etc provided by the assessee it has come to the notice of the department that the assessee had wrongly availed the exemption on the "Pure Agent".

99. Thus would be evident that assesssee has not complied the obligation casts on them under Section 70 of the Finance Act, 1994 in as much as they had not correctly assessed the service tax on the services provided by them and not paid service tax properly by way of mis-declaring the exemption in their ST-3 returns with an intention to evade payment of service tax. The ST-3 returns, wherein the mis-declaration of exemption notifications is made, are subjected to

preliminary scrutiny only and hence the said mis-declaration on the part of assessee was not come into the notice of the department during the course of scrutiny. Only during the course of Preventive check of their records, service tax evasion by the assessee by mis-declaring the exemption notification in their returns and wrong availment of said exemption notification, is revealed. Thus, due to the mis-declaration of exemption notifications in their returns and suppression of the nature of taxable service provided by them with intention to evade payment of tax, ingredients, viz suppression of facts and mis-statement, required to invoke the extended period of five years for demanding service tax not paid under the provisions of proviso to Section 73(1) of Finance Act, 1994, are in existence in the present case.

100. So far as 'suppression of facts' is concerned, the phrase implies that withholding of information is suppression of facts; P. Ramanatha Aiyar's Concise Law Dictionary (1997 Edition Reprint 2003- page 822) explains it to mean the situation where [if] there is an obligation to speak, [failure to do so] will constitute the "suppression of fact" and distinguishes this situation from where there is no obligation to speak, silence cannot be termed "suppression".

101. All these facts narrated above go to show that the assessee mis-declared and suppressed the facts, by non-compliance of the obligations cast upon them by the statutory provisions. The mis-declaration and suppression of the facts clearly gives one conclusion that the assessee had intention to evade the tax, and nothing else. It is imperative to mention here that intent is a state of mind which can only be inferred from the actions or their lack thereof.

102. Hon'ble Supreme Court's decision in the case of CC v. D. Bhoormull - 1983 (13) E.L.T. 1546 (S.C.) in the matter related to proof in criminal or quasi-criminal proceedings held that the Department need not prove the case with mathematical precision; that what is required is to accept a degree of probability and there is no need to produce threadbare evidences in all cases.

103. It is important to recapitulate that this matter has arisen out of Preventive check conducted on the records of the assessee by the Officers of the Commissionerate. Had they not conducted their action of scrutiny/ verification; this evasion of tax would not have been unearthed. In the scheme of self-assessment, the department comes to know about the service rendered and payment made only during the scrutiny of the statutory returns filed by the service providers. Therefore, it places greater onus on the assessee to comply with higher standards of disclosure of information in the statutory returns. It is seen from the facts emerged during the verification of their records that the assessee had failed to disclose the correct nature of the service provided and proper recipient of services by way of mis-declaring the same by declaring wrong exemption in their ST-3 Returns during the aforesaid period. Thus, the assessee had suppressed the material facts from the Department by not disclosing in their ST-3 Returns. This appeared to be done intentionally so as not to bring their activities to the notice of the Department. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. The responsibility of the tax payer to voluntarily make information

disclosures is much greater in a system of self-assessment. Evaluation of tax behavior of the assessee shows intent to evade payment of service tax by an act of omission in as much as that the assessee though being well aware of the unambiguous provisions of the Finance Act, 1994 and Rules made there under, failed to disclose to the department regarding the correct nature of taxable service provided by them by mis-declaring exemption notification in their returns. The assessee had deliberately mis-declared the exemption in their ST-3 Returns and suppressed the actual taxable service provided by them and the actual service recipients from the department with intent to evade the proper payment of service tax on its due date.

104. A case of issuance of show cause notice is barred by limitation of time or not came up for consideration before the Hon'ble Apex Court in the case of Commissioner of Central Excise, Vishakhapatnam Vs. Mehta & Company, reported in 2011 (264) ELT. 481 (SC) and the Hon'ble Court held as follows-

" The cause of action, i.e. date of knowledge could be attributed to the appellant in the year 1997 when in compliance of the memo issued by the appellant and also the summons issued; the hotel furnished its reply setting out the details of the work done by the appellant amounting to Rs. 991.66 lakhs and at that stage only the department came to know that the work order was to carry out the job for furniture also. A bare perusal of the records shows that the aforesaid reply was sent by the respondent on receipt of a letter issued by the Commissioner of Central Excise on 27.02.1997. If the period of limitation of five years is computed from the aforesaid date, the show cause notice having been issued on 15.05.2000, the demand was clearly within the period of limitation as prescribed, which is five years."

105. Hon'ble Tribunal, Mumbai in the case of Tech Mahindra Ltd Vs. Commissioner of C.Excise, Pune-II, reported in 2015 (38) STR. 1200 (Tri-Mumbai) held that non-disclosure of transaction in ST-3 returns inspite of specific statutory mandate in Section 66A of Finance Act, 1994, clearly amounts to suppression of facts; that since the copy of the agreement and relevant information were provided to the department only in 2011 the show cause notice issued in April,2011 is clearly within the period of limitation and therefore, the demands confirmed for the period on or after 18.04.2006 cannot be said to be time-barred at all.

106. In the case of Board of Control for Cricket in India Vs. C.S.T. Mumbai, reported in 2015 (37) STR. 785 (Tri-Mumbai), Hon'ble Tribunal held that appellant neither took registration nor gave details of contracts entered into the department; appellant never declared to the department in statutory returns about considerations paid to non-resident service providers; appellant failed to comply with statutory requirements by suppressing/withholding information; appellant failed to produce any material in support of their claim to bona fide belief; show cause notice having been issued will within period of five years from the date of knowledge, therefore, appellant's contention that show cause notice hit by time bar, not sustainable.

107. South Zonal Bench of Hon'ble Tribunal in the case of Lalit Enterprises Vs. Commissioner of Service Tax, Chennai, reported in 2010 (17) STR. 370, decided the appeal

made against the order of the Appellant Commissioner that demand was not time-barred and also held that the assessee were liable to penalty by ordering as under-

"The lower appellate authority has held that the assessee did not disclose the material facts relating to the second agreement for the White Cement Division, receipt of service charges to the Department and did not pay appropriate service tax on service charges received in connection with the above Division. The contention of the learned counsel for the assessee that the assessee did not omit or fail to disclose any material facts required for verification of the assessee under Section 71 as they were never called upon to produce any accounts, documents or other evidence to verify the correctness of the tax assessed by them and therefore the five years period of limitation is not available to the Department, is not tenable in the light of the fact that verification of the records resulted in the Department coming to know that the assessee did not disclose receipt of service charges for the second agreement for the White Cement Division. Therefore, I am in agreement with the learned DR that five years period has been correctly invoked and applied against the assessee as the case falls within the provision of Section 73(1)(a) of the Finance Act, 1994. I, therefore, hold that the demand is not barred by limitation."

108. In the present case, self-assessment and filing of ST-3 returns were online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about the wrong availment of service tax exemption only during auditing/preventive check of their records.

109. Hon'ble Tribunal, Mumbai in the case of Mahavir Plastics Vs. Commissioner of Central Excise, Mumbai reported in 2010 (255) ELT. 241, while dealing with the plea of the limitation, it is held that the relevant facts were gathered by the department through subsequent investigations and therefore not correct to say that the relevant facts were known to the department during the period of dispute and hence not part of the demand is time barred. Therefore, I hold that in the present case, show cause notice has been rightly issued by the Department by invoking the extended period of limitation and the service provider's contention is rejected and not tenable.

110. The service provider has stated that they are not liable to pay interest and penalty in the present case. I find that this is a case of short payment of Service Tax by way of wrong availment of exemption which came to the notice of the Department during the course of Preventive check/investigation. During the course of investigation, it was revealed that the service provider evaded Service Tax during the period from 2012-13 to 2017-18 (upto June 17) to the tune of Rs.16947904/-. Therefore, I hold that the charges leveled in the Show Cause Notice are sustainable and the service provider is liable to pay Service Tax to the tune of Rs.16947904/- along with interest and are also liable to pay penalty in terms of Finance Act, 1994 and Rules made there-under. Therefore, I reject their plea that they are not liable to pay interest and penalty.

111. In view of the discussion in the foregoing paras and material evidence available on record, it is evident that the said service provider have contravened the provisions of Section 66

of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to determine; collect and pay the service tax amounting to **Rs.** 16947904/- (including education cess and S & H Edu. Cess) for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) within the stipulated time limit; they have failed to declare value of taxable service in their service tax returns to the department in the prescribed return in form ST-3 and thus suppressed the amount of charges received by them for providing taxable services.

112. In reply to the show cause notice, the service provider has relied various case laws including that of Hon'ble Supreme Court. I find that the said case laws are distinguishable as in the present case the Director of the service provider in his statement dated 23.12.2015 has confessed the non payment/short payment of Service Tax and also admitted the Tax liabilities for the period from 2012-13 onwards. Therefore, I find that the case laws relied by the service provider are not relevant to the present case and rejected. Further, I find that the case laws relied by the Department is more appropriate to the present case.

113. It is evident that the said service provider has escaped the assessment and not furnished the actual value while discharging Service Tax liability. Further, the said service provider has not disclosed these facts of short payment to the department and thus as per Section 73 of the Finance Act, 1994 as amended, short payment of service tax amounting to **Rs. 16947904/-** (including Education cess and S & H Edu. Cess) for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) is required to be recovered.

114. In view of above, the Service Tax not paid by the said service provider is required to be recovered under **Section 73** of Finance Act, 1994. As per **Section 75** ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. In the present case, the said service provider has not discharged their Service Tax liability and hence is liable to pay interest under Section 75 as amended of the Finance Act, 1994.

115. Therefore, the said service provider has failed to discharge their service tax liability on services provided to their customers with intent to evade payment of service Tax hence, they are required to pay total service tax of **16947904/-** (including Education cess and S & H Edu. Gess) for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) along with interest as applicable for the services provided to their customers. The service tax of **16947904/-** (including Education cess and S & H Edu. Cess) for the period from 201213 (Jan-Mar) to 2017-18 (upto June,2017) is required to be recovered from them under proviso to Section 73(1) of Finance Act,

1994 read with Section 68 of the Finance Act, 1994 and applicable interest under Section 75 of Finance Act, 1994.

116. From the facts mentioned in the foregoing paras, the said service provider has contravened the provisions of-

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

(b) Section 67 of the Finance Act, 1994 in as much as they failed to pay appropriate Service Tax on the gross value amount charged by them in respect of the taxable services of "Event Management Services" provided by them.

(c) **Section 68** of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, in as much as they have failed to determine and make payment of proper Service Tax in full as **16947904/-** (including Education cess and S & H Edu. Cess) for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017). W.e.f. 1-7-2012, engaged in providing taxable services as defined under Section 65B(44) which are not falling under Negative list of services as defined under Section 66D of the Finance Act, 2012, to the credit of the Government within the statutory time-limit prescribed at the relevant time-period.

(d) **Section 70** of the Finance Act, 1994 with Rule 7 of the Service Tax Rules, 1994, in as much as they have failed to self-assess the Service Tax on the Taxable value for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) within the stipulated time limit, resulting into non-payment of Service tax. As per the provision of Section 70, every person liable to pay the service tax shall himself assess the tax due on the services provided by him.

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

118. The said service provider have contravened the provisions of Section 70 of the Finance Act, 1994 and Rule 7 of the Service tax Rules, 1994 in as much as they failed to assess and pay correct amount of their Service Tax liability and failed to disclose the amount of taxable value and nature of the service provided by them in their ST-3 Returns filed by them. Therefore, the said assessee is liable for penalty under Section 77 of the Finance Act, 1994 for all the contravention and violations made by them.

119. 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.

120. All the above acts of contravention on the part of the said service provider appeared to have been committed deliberately by way of not declaring material facts to the department and not paying the correct service tax during the period of Financial year from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) suppressing the correct taxable amount with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to Rs.**16947904/-** (including Education cess and S & H Edu. Cess) for the period from 2012- 13 (Jan-Mar) to 2017-18 (upto June,2017) which has not been paid by them is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. All these acts of contravention constitute offence of nature as described in the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 and also rendered themselves liable for penal action under the provisions of Section 77 and 78 of the Finance Act, 1994 as amended from time to time. They are also liable to pay interest at the appropriate rates for the period from due date of payment of Service Tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

121. All the above acts of contravention on the part of the said service provider have been committed by way of suppression of facts/contravention of the provisions with an intent to evade payment of Service Tax and therefore, the said Service Tax not paid is required to be recovered from them under proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years. Such acts of contravention of the provisions of Section 66B, 68 & 70 of the Finance Act, 1994, Section 75 of the Finance Act, 1994, is punishable under the provision of **Section 78** of the Finance Act, 1994.

122. I find that Shri Dipesh Sheth, Director of M/s Markcom Solutions Pvt Ltd., is the person who handles all the activity of the said company. Thus, he is the overall in-charge of all the affairs of M/s Markcom Solutions Pvt Ltd. Further, he is the Person who have conceived the entire plan regarding the evasion and not depositing the Service tax to the tune of **Rs. 16947904/-** including Education cess and SHEdu. Cess) for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) as mentioned in foregoing paras. He has misinterpreted the concept of "Pure Agent" and fails to pay the amount to the credit of the Central Government thereby; he knowingly evaded the payment of Service Tax, as discussed in length in foregoing paras. Further, he has also failed to assess/declare the correct taxable value by not filing periodical ST-3

Returns in time for the taxable services provided/received by them. He deliberately Suppressed the correct value of the taxable services provided/received by them from i.e. Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made there under, as discussed herein above in length. Thus, he, being Director of the Company have masterminded/abetted in the evasion of Service Tax on the taxable services as discussed hereinabove. He has, thus, violated the provisions of the Finance Act, 1994 and rules framed there-under with intent to evade payment of huge amount of Service Tax. In view of the above, Shri Dipesh Sheth, Director of M/s. Markcom Solutions India Pvt. Ltd, is liable to penal action under Section 78A of the Finance Act, 1994 for the omissions & Commissions committed by him.

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

ORDER

(i) I order that the Taxable Income under Head " Event Management Service" received by the service provider during the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) from their clients and shown in books of accounts be treated as Gross income in terms of Section 65B(44) read with Section 66D of the Finance Act, 1944 with effect from 01.07.2012.

(ii) I confirm the Service Tax amounting to Rs. **1,69,47,904/-** (One Crore Sixty Nine Lakh Forty Seven thousand Nine hundred and four only) including Education cess and S & H Edu. Cess for the period from 2012-13 (Jan-Mar) to 2017-18 (upto June,2017) under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

(iii) The service tax amount paid by the service provider to the tune of Rs.21,93,249/- (Rs.16,44,362/- through PLA and Rs. 5,48,887/- through Cenvat inclusive of Edu.cess+ HSEC) for the above period is appropriated against their Service Tax liabilities at para (ii) above;

(iv) I order M/s.Markom Solutions Pvt.Ltd, to pay interest on the Service Tax confirmed above at the prescribed rate in terms of the Section 75 of the Finance Act, 1994.

(v) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s.Markom Solutions Pvt.Ltd, under Section 77 (2) of the Finance Act, 1994, as amended.

(vi) I order M/s. Markom Solutions Pvt.Ltd to pay Late fee for non filling/ late filling of the service tax returns under the provision of Section 70 (1) of the Finance Act, 1994, read with Rules 7C of the service Tax Rules 1994 as amended at the prescribed rate as per Finance Act, 1994 and Rules made there under.

(vii) I impose a penalty of Rs. 1,69,47,904/- One Crore Sixty Nine lakh Forty Seven thousand

Nine hundred and four only) on M/s.Markom Solutions Pvt.Ltd, under Section 78(1) of the Finance Act, 1994.

(viii) I impose a penalty of Rs.1,00,000/- (Rupees one lakh only) on Shri Dipesh Sheth, Director of M/s.Markcom Solutions Pvt.Ltd, 4th Floor, Abhilasa Business Centre, Near Navrangpura Bus Stand, Navrangpura, Ahmedabad - 380 009 under Section 78A of the Finance Act, 1994.

(ix) I further order that In terms of Section 78 (1) of the Finance Act, 1994 if M/s. Markom Solutions Pvt. Ltd, Ahmedabad, pays the amount of Service Tax as determined at Sl. No. (ii) above and interest payable thereon at (iv) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Markom Solutions Pvt.Ltd, Ahmedabad shall be twenty-five per cent of the penalty imposed at Sr.No.(vii) above, subject to the condition that such reduced penalty is also paid within the period so specified.

123. Show Cause Notice No.STC/04-180/Prev/Gr.III/Markcom/15-16 dated 16.05.2019 issued to M/s. Markcom Solutions Pvt.Ltd, 4th Floor, Abhilasa Business Centre, Near Navrangpura Bus Stand, Navrangpura, Ahmedabad 380 009 and to Shri Dipesh Sheth, Director of M/s.Markcom Solutions Pvt.Ltd, 4th Floor, Abhilasa Business Centre, Near Navrangpura Bus Stand, Navrangpura, Ahmedabad - 380 009 is disposed-of in the above manner.

(Marut Tripathi)
Joint Commissioner,
CGST & CEx., Ahmedabad-North.

F.No.STC/15-25/OA/2019
Date: 19.02.2021.

To

M/s.Markcom Solutions Pvt.Ltd,
4th Floor, Abhilasa Business Centre,
Near Navrangpura Bus Stand, Navrangpura,
Ahmedabad 380 009

To
Shri Dipesh Sheth, Director, .
M/s.Markcom Solutions Pvt.Ltd,
4th Floor, Abhilasa Business Centre,
Near Navrangpura Bus Stand, Navrangpura,
Ahmedabad 380 009

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 II, Division-VII, Ahmedabad North
4. Guard File.