



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN 20210364WT000000C05D

फा.सं./F.No. STC/15-55/OA/2019

आदेश की तारीख/Date of Order :- 05.03.2021

जारी करने की तारीख/Date of Issue :- 05.03.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 50/JC/ MT /2020-21**

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच 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. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

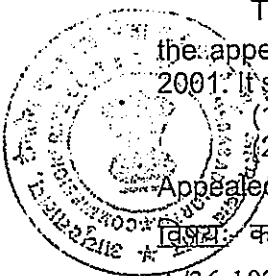
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

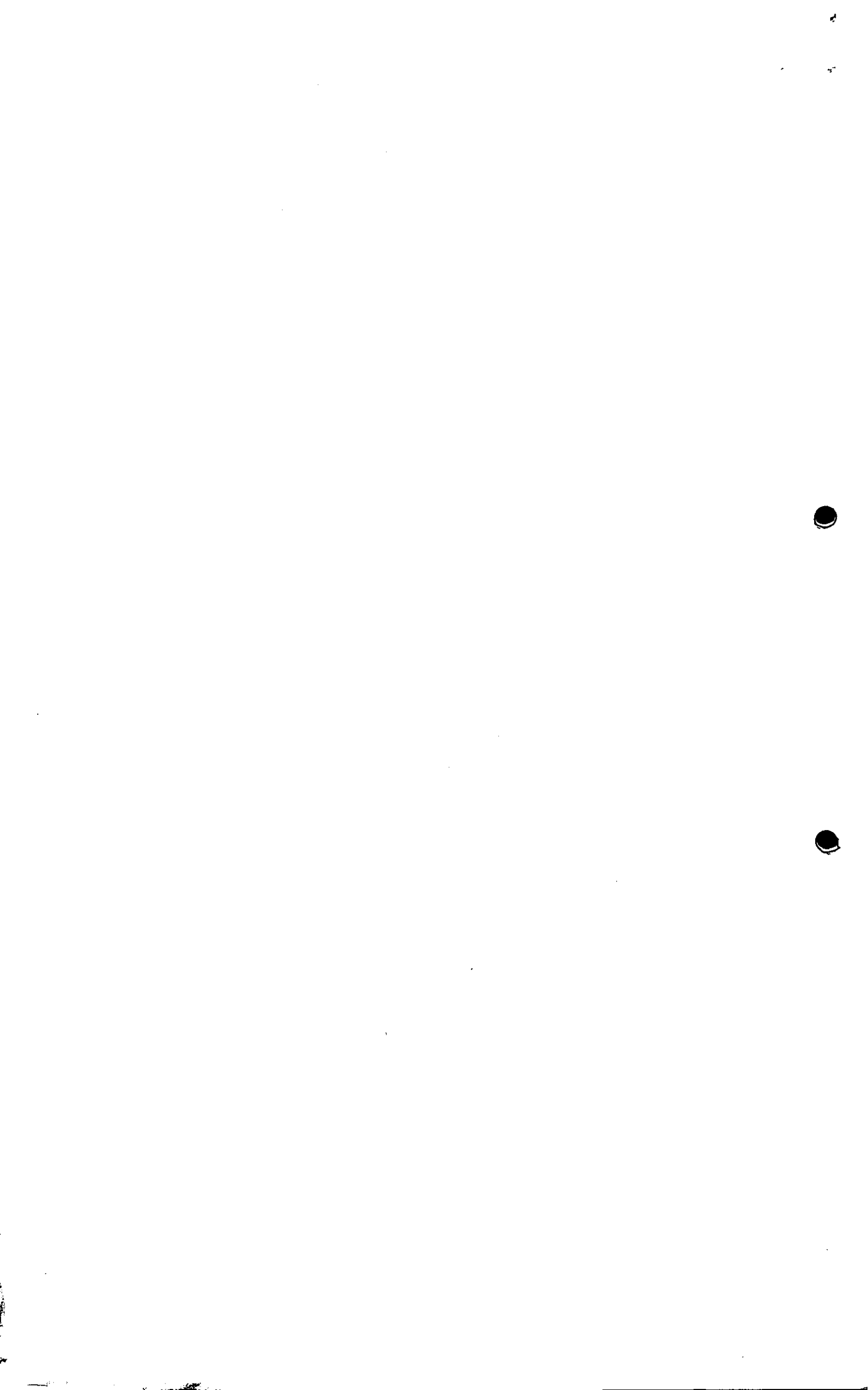
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय: कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. DGGI/AZU/Gr-A/36-102/2019-20 dated 19.10.2019 issued to M/s Karnavati Light and Sound, G-99/1177, Shivam Apartment, Near Vyasvadi, Nava Wadaj, Ahmedabad.





## FACTS AND GROUNDS

M/s Karnavati Light and Sound, G-99/1177, Shivam Apartment, Near Vyasvadi, Nava Wadaj, Ahmedabad (herein after referred to as "M/s. Karnavati" for the sake of brevity) are engaged in providing taxable services by way of providing theme based wedding lights, sound systems/ music arrangement in various events classified under the category of "Pandal or Shamiana Service" as defined under Sec. 65(105)(zzw) of the erstwhile Finance Act 1994. The said activities undertaken by M/s Karnavati also falls under the definition of "Service" as given under Section 65(B)(44) of the erstwhile Act, ibid. M/s. Karnavati are registered with the erstwhile Service Tax Commissionerate, Ahmedabad and they held valid Service Tax registration no. AFAPS3387KST001.

### 2. SUMMARY OF THE CASE:

2.1 M/s. Karnavati had provided theme based wedding lights, sound systems/ music arrangement in various events to their various customers/clients classified under the category of "Pandal or Shamiana Service" as defined under Sec. 65(105)(zzw) of the erstwhile Finance Act 1994 during the period from Financial Year 2014-15 to 2017-18 (up to June, 2017)

2.2 Intelligence developed by DGGI, AZU indicated that M/s Karnavati was evading payment of service tax at appropriate rate by resorting to suppression of taxable value of the services provided by them to their clients by way of collecting certain portion of such taxable value, of the services so provided, in Cash which was not accounted for in their books of accounts and was also not considered at the time of computing and discharging service tax by them.

2.3 Based on the intelligence, search was conducted at the registered office premises of the assessee. During the course of the search operation it was found the books of accounts maintained by M/s Karnavati do not reflect the total income received by them towards providing taxable services. The details of the total income were recorded in Excel files stored in the pen drive of the Proprietor Shri Ashish Sharma and maintained by their Accountant, Shri Daxesh Kadia. The printouts of relevant Excel files were taken on the spot and seized under panchanama dated 21-22.08.2019, along with the pendrive wherein such Excel files were stored.

2.4 Investigation revealed that the details of estimates/bills for providing taxable services to different clients at different event venues were stored in Excel files recovered from the pen drive. Out of the total amount mentioned in the said Excel files, certain amount which were paid in cheques were recorded in the books of accounts of M/s Karnavati and the same were considered for the purpose of calculation of Service Tax liability and Service Tax had been discharged on the same. But a portion of the remaining amount was received by M/s Karnavati in cash. The said cash amount was not reflected anywhere in their books of accounts and no Service Tax liability had been discharged on such un-accounted cash receipts. The non-consonance of the figures reported across different financial records maintained by M/s Karnavati during the period from FY 2014-15 to FY 2017-18 (upto June-17), as discussed above, established beyond doubt that M/s Karnavati had willfully suppressed and mis-stated their actual taxable income in the periodical ST-3 returns filed by them during the aforesaid period with the sole intention to evade payment of Service Tax.

2.5 Investigation in the case conclusively established that by resorting to such modus-operandi, M/s Karnavati had willfully mis-stated and suppressed the actual quantum of their taxable turnover during the period from FY 2014-15 to FY 2017-18 (up to June-17) with the sole intention to evade the payment of applicable Service Tax. M/s Karnavati have confessed/admitted that they have short-paid/not paid service tax on the above referred service provided by them. Investigation further revealed that M/s. Karnavati had evaded a net Service Tax liability of Rs.1,27,32,811/- (Rupees one crore twenty seven lakh thirty two thousand

eight hundred eleven only) by way of not including the un-accounted cash receipts towards providing taxable services in the ST-3 Returns filed by them and not discharging the service tax on such un-accounted cash receipts. During investigation, M/s Karnavati have agreed to the above modus adopted by them for evading payment of service tax and Shri Ashish Sharma, Proprietor of M/s Karnavati has admitted these facts in his voluntary statement recorded on 22.08.2019 and 16.10.2019.

3. **INTELLIGENCE DEVELOPED BY THE DEPARTMENT:**

Intelligence developed by the officers of the Directorate General of Goods & Services Tax Intelligence, Ahmedabad Zonal Unit (here-in-after referred to as DGGI for the sake of brevity) indicated that M/s. Karnavati had suppressed and under-reported their taxable income received towards providing taxable services under the category of "Pandal or Shamiana Service" to their various clients by way of collecting certain portion of such taxable income in Cash and not incorporating the said cash receipt in their books of accounts.. Thus, it appeared that M/s Karnavati have willfully and knowingly indulged in evasion of Service tax by way of suppressing and under-reporting their actual taxable income in the periodical ST-3 returns filed by them during the period from FY 2014-15 to 2017-18 (up to June-17)

4. **ACTION TAKEN ON THE INTELLIGENCE GATHERED: -**

4.1 Acting on the above intelligence, investigation was initiated against M/s Karnavati, under the provisions of Section 67 of the CGST Act, 2017 read with Section 174 of the CGST Act, 2017, and search was carried out in the presence of independent panchas at the office premises of M/s Karnavati situated at G-99/1177, Shivam Apartment, Near Vyasvadi, Nava Wadaj, Ahmedabad on 21-22/08/2019 under the reasonable belief that documents/records and data maintained in digital form relevant to the investigation are available at the said premises.

4.2. During panchnama proceedings, Shri Ashish Sharma, Proprietor of M/s Karnavati was present at the above premises. Shri Ashish Sharma explained to the officers that M/s. Karnavati, a proprietorship firm owned by him is engaged in providing theme based wedding lights, sound systems/ music arrangement in various events classified under the category of "Pandal or Shamiana Service" as defined under Sec. 65(105)(zzw) of the erstwhile Finance Act 1994.

4.3. During search proceedings, a pen drive was recovered from the possession of Shri Ashish Sharma, Proprietor of M/s Karnavati. On being asked about the data in the pendrive, Shri Ashish Sharma informed that the said pen drive contained the accounting data of their business for the F.Y. 2014-15 onwards. The data in the pen drive was entered and maintained by the Accountant of M/s Karnavati, Shri Daxesh Kadia on the directions of the proprietor of the firm Shri Ashish Sharma. The data contained in the pendrive included the details of estimates given to all the party for various functions organized by them, final settlement amount, details with the party, details of cheque as well as cash receipts from various parties and other miscellaneous files were stored in the pen drive. He also informed that the data available in the said pen drive contained the details of their total taxable income. Part of which was reflected in their books of accounts and Service Tax was discharged on the same. The pen drive also contained the details of un-accounted cash receipts on which no Service Tax was paid by them. Subsequently, the officers took the printouts of the relevant pages of the said pen drive and withdrew the same along with other relevant records and the said pen drive from the office premises of M/s. Karnavati under the reasonable belief that the same will aid in investigation of the case. The details of the documents withdrawn were mentioned in Form-GST-INS-02 annexed to Panchnama dated 21-22.08.2019 drawn at the above referred office premises of M/s Karnavati.

5. During the course of investigation statement of Ms. Hirva Vyas, Back Office Worker, Shri Daxes Kadia, Accountant and Shri Ashish Sharma, Proprietor of M/s Karnavati were recorded under the provisions of Section 14 of the Central Excise Act, 1944 read with Section 83

of the Finance Act, 1994 and Section 70 and 174 the CGST Act, 2017, on 22.08.2019. All these three statements are discussed hereinafter.

**6. Statement dated 22.08.2019 of Ms. Hirva Vyas, Back Office Worker of M/s Karnavati :**

A Statement of Ms. Hirva Vyas, Back Office Worker of M/s Karnavati was recorded on 22.08.2019 for analysis of the records withdrawn under panchnama drawn at their office premises. In her statement, Ms. Hirva Vyas *inter-alia* stated that *her role in the firm was to prepare the bills/invoices on the directions of Shri Ashish Sharma. She used to hand over the printed Excel sheets to the Accountant of the firm, Shri Daxes Kadia. She was not aware of the final bill amount viz. cash amount and cheque amount and also not aware about taxation.*

**7. Statement dated 22.08.2019 of Shri Daxesh Kadia, Accountant of M/s Karnavati :**

A Statement of Shri Daxesh Kadia, Accountant of M/s Karnavati was recorded on 22.08.2019 for analysis of the records withdrawn under panchnama drawn at their office premises. In his statement, Shri Daxesh Kadia *inter-alia* stated the following :

(i) *He was the Accountant of the firm namely M/s Karnavati Light & Sound. His role was to prepare the bills/invoices containing the details of Service Tax/ GST and these bills are printed in the letter head of the firm. He was also responsible for maintaining the books of account of the firm and also responsible for handling the cash in the firm. He worked under the supervision and direction of the Proprietor of the firms, Shri Ashish G. Sharma.*

(ii) *On being asked, he stated that he entered and maintained the data contained in the excel sheets stored in the pen drive withdrawn under Panchnama dated 21-22.08.2019. The details contained therein reflect the actual value of services provided, details of payment received in cash and/or cheque by M/s Karnavati etc. He further stated that in the said pen drive, the excel workbooks were maintained year-wise as well as party wise and event wise. In each of the Excel Workbook, the worksheets were prepared showing the details of a particular party/client. The total amounts shown in the excel worksheet comprise of the Actual Amount, i.e. the total amount quoted by them. The Final Amount, i.e. the amount finally received by them after negotiation. The Bill amount, i.e. the amount for which invoices were to be raised and were to be considered for payment of Service Tax/GST and the Difference (cash) amount, i.e. the amount, which was received in cash and which was not taken into account for calculation of tax purpose. Such amount did not form part of the Balance Sheet and no Service Tax was paid against such amounts received in cash.*

(iii) *On being shown the data of Karnavati Light and Sound for 2017-18, as available in the pen drive seized under the Panchnama dated 21-22.08.2019 drawn at their office premises situated at G-99/1177, Shivam Apartments, Nr. Vyasvadi, 132 Feet Ring Road, Nava Vadaj, Ahmedabad, in a folder "KLS 2017-18", which had subfolder "(17-18) KLS Receipt Summary". The excel file "17-18 Receipt Summary Anand Montek", from said subfolder "(17-18) KLS Receipt Summary", which was reproduced as under :*

"Anand Decorators

Cash received

Mo	Actual Value	Final Value	Billed Amt.	S.Tax Amt.	Tot. Bill Amt.	Bill No.	Difference	Da	Vale
Monte	50,125.00	49,325.00		-	-		49325.00		
Monte	183,250.00	136,175.00							265,00
kristo	-17	0	50,000.00	7,500.00	57,500.00	2	86175.00		0.00

Monte kristo	Jun -17	88,250.00	87,250.00				87250.00		
Monte kristo	Jul-17	36,400.00	36,400.00				36400.00		
Monte kristo	Aug -17	5,800.00	5,800.00				5800.00		
TOTAL		363,825.00	314,950.00	50,000.00	7,500.00	57,500.00	264,950.00	To tal	265,000.00

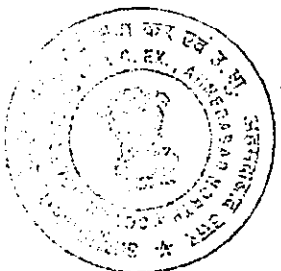
(iv) he explained the details contained in the above table which was reproduction of an excel sheet seized under Panchnama dated 21-22.08.2019 drawn at their office premises situated at G-99/1177, Shivam Apartments, Nr. Vyasvadi, 132 Feet Ring Road, Nava Vadaj, Ahmedabad as under :

(v) It was the summary of bills raised to and cash received from M/s Anand Decorators for certain functions organised by them in Montekristo banquet towards providing services in the year 2017-18. In the entry for the month of May 2017, the Actual value of services provided by them was shown as Rs. 1,83,250/-, it was the amount initially quoted by them for providing the said services to M/s Anand Decorators. The Final value of said service was Rs. 1,36,175/- and it was the amount, which was actually received from M/s Anand Decorators. Out of the same, the Billed Amount of Rs. 50,000/- indicated the amount for which invoice was raised and Service Tax of Rs. 7500/- was charged on the said invoice. Thus the total invoice value worked out to be Rs. 57500/-. The amount shown under the column "Difference" is the difference of the total amount received minus the amount for which invoice was raised and Service Tax on such invoice value was charged. In other terms, the amount shown under the column "Difference" is the cash amount received towards providing taxable services to M/s Anand Decorators. This cash amount was neither accounted for in their books of account nor Service Tax/ GST was paid on this amount;

(vi) Their firm has issued invoices to the clients only to the extent of the amounts which are shown as Bill Amount. No invoice is raised/issued towards the considerations received in cash and shown as Difference in the said excel sheets. The details of the invoices, i.e. the amount received through cheque and shown as Bill Amount are further recorded into the books of accounts of the firm and the same are consolidated for preparation of the Annual Audit Report/Balance Sheet;

(vii) Their firm is maintaining/recording the payment received through cheque and shown as Bill Amount in the said excel sheets in the books of account and discharge applicable Service Tax/ GST on such amount. The firm does not record the payments received in cash and shown as Difference Amount in the said excel sheets recovered from the pen drive. The reason for maintaining the details of payments received through cheque into the books of accounts is to present the said books of accounts to the Govt. authorities. Further, in order to evade Service Tax/GST, the cash amount received from the clients are not reflected in the accounted data of the firm, as the said cash transactions was not considered for payment of Service Tax/GST and no Service Tax/GST has been paid on such unaccounted cash receipts;

(viii) the details of total cash received by their firms namely M/s Karnavati Light & Sound, M/s LED Solutions and M/s Karnavati Power Generator for the period from April 2014 to till date was maintained by him in the excel sheets stored in the above mentioned pen drive, which was withdrawn under Panchnama dated 21-22.08.2019. Further in token of correctness of the printouts of summary sheets taken from the excel sheets recovered from their pendrive and withdrawn under Panchnama dated 21-22.08.2019, he put his dated signature on each of such printed sheets. With respect to cash receipt during the said period, it was stated by him that the summary of the same were contained in the printouts of the excel sheets from the pen drive mentioned above. He provided the summarized details of cash received year wise during the said period :



Year	Karnavati Light & Sound	Karnavati Power Generator	LED Solutions	Total Taxable Value	Service Tax /GST
2014-15	31424479	0	0	31424479	3884066
2015-16	9117881	0	0	9117881	1270577
2016-17	11205907	5971438	5747256	22924601	3438690
2017-18	28882161	3923967	4211239	37017367	6385496
2018-19	28695164	6073322	2526548	37295034	6713106
2019-20	3161148	481538	0	3642686	655683
<b>TOTAL</b>	<b>112486740</b>	<b>16450265</b>	<b>12485043</b>	<b>141422048</b>	<b>22347618</b>

(viii) He stated that in some of the cases, the amount was shown as cash receipt but after re-negotiation with the clients bills/invoices, bills for part amount was issued subsequently, wherein Service Tax/GST liability was discharged. Thus the above mentioned Service Tax/GST liability stated by him was tentative and he assured to calculate the exact Service Tax liability after due consideration of all the facts.

8. Statement dated 22.08.2019 of Shri Ashish Sharma, Proprietor of M/s Karnavati :

A Statement of Ashish Sharma, Proprietor of M/s Karnavati was recorded on 22.08.2019. In his statement, Shri Ashish Sharma *inter-alia* stated the following :

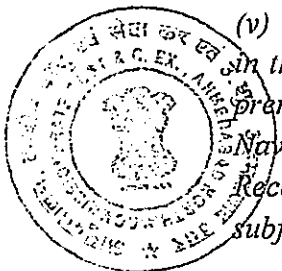
(i) He confirmed that whatsoever was recorded in the Panchnama dated 21-22.08.2019 drawn at the office premises of M/s Karnavati Light and Sound situated at G-99/1177, Shivam Apartment, Near Vyasvadi, Nava Wadaj, Ahmedabad recorded in his presence, was true and correct;

(ii) He further confirmed that whatsoever was stated by Ms. Harvi Vyas, Back Office Worker and Shri Daxes of M/s Karnavati in their statement dated 22.08.2019 recorded under Section 70 read with Section 174 of the CGST Act, 2017 were true and correct. In acceptance of the same, he put his dated signature on the same;

(iii) He stated that, he is the Proprietor of the firm namely M/s Karnavati Light and Sound. All the business operations of the firm including accounting and taxation is being done by him or by the staff members of the firm under his supervision and directions;

(iv) He stated that the entries recorded/maintained in the pen drive recovered during search on 21-22.08.2019 were recorded and maintained by their Accountant, Shri Daxesh Kadia, on his directions. The facts stated by Shri Daxes Kadia during his statement dated 22.08.2019 were absolutely true and correct and he agreed with the same. He further stated that the cash amount, i.e. the difference of Final amount and the Bill Amount received from the clients were intentionally not accounted for in order to evade Service Tax/ GST. As Shri Daxesh Kadia, had recorded and maintained the data in the pen drive on his directions, and also being the Proprietor of the firm, he (Shri Ashish Sharma) accepted his responsibility towards suppression of the facts to the extent that the gross amount received by their firm towards providing taxable services had not been accounted for and the Service Tax/GST was been properly discharged on the gross amount received towards providing such taxable services;

(v) On being shown the data of Karnavati Light and Sound for 2017-18, as available in the pen drive seized under the Panchnama dated 21-22.08.2019 drawn at their office premises situated at G-99/1177, Shivam Apartments, Nr. Vyasvadi, 132 Feet Ring Road, Nava Vadaj, Ahmedabad, in a folder "KLS 2017-18", which has subfolder "(17-18) KLS Receipt Summary". The excel file "17-18 Receipt Summary Bhavesh", from said subfolder "(17-18) KLS Receipt Summary", which was reproduced as under :



"Bhavesh Decorators

Green Leaves	Month	Actual Value	Final Value	Billed Amt.	GST	Tot. Bill Amt.	Bill No.	Difference	Date	Value
								381300.00		
Mangalya 1/2		811,300.00	811,300.00	430,000.00	77,400.00	507,400.00		0.00		265,000.00
Madhav Farm		-	-	-	-	-		0.00		
Out Door		165,538.00	165,538.00	-	-	-		165538.00		
LED Par		599,900.00	599,900.00	-	-	-		599900.00		
								0.00		
									<b>Total</b>	<b>265,000.00</b>

Cash

Date	Value
16.10.17	194,000.00
1.3.18	200,000.00
<b>TOTAL</b>	<b>394,000.00</b>

Cheque

Date	Value
	500,000.00
TDS	4,300.00
<b>Total</b>	<b>504,300.00</b>

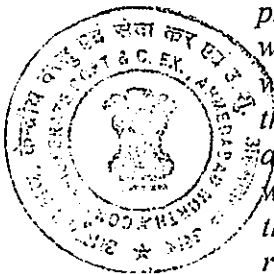
	Cash
Opening	-
Cash Bill	1,146,738.00
Cash Received	394,000.00
Receivable Cash	752,738.00

	Bill
Opening	-
Bill Amount	507,400.00
Cheque Received	504,300.00
Receivable by Book	3,100.00

<b>Net Outstanding</b>	<b>755,838.00</b>
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(vi) Shri Ashish Sharma explained the details contained in the above table which was reproduction of an excel sheet seized under Panchnama dated 21-22.08.2019 drawn at their office premises situated at G-99/1177, Shivam Apartments, Nr. Vyasvadi, 132 Feet Ring Road, Nava Vadaj, Ahmedabad as under:

(vii) He stated that, it was the summary of bills raised to and cash received from M/s Bhavesh Decorators for certain functions organized by them in Mangalya party plot and other party plots towards providing taxable services in the year 2017-18. Against the event organised at Mangalya 1/2 Party Plot, the Actual value of services provided by them was shown as Rs. 8,11,300/-, it was the amount initially quoted by them for providing the said services to M/s Bhavesh Decorators. The Final value of said service was also Rs. 8,11,300/-, which indicated that no further negotiation/reduction of rates were there and the clients had given the initially quoted rates to them. Out of the same, the Billed Amount of Rs. 4,30,000/- indicate the amount for which invoice were raised and GST of Rs. 77,400/- was charged on the said invoice. Thus the total invoice value worked out to be Rs. 5,07,400/-. The amount shown under the column "Difference" was the difference of the total amount received minus the amount for which invoice was raised and Service Tax on such invoice value was charged. In other terms, the amount shown under the column "Difference" was the cash amount received towards providing





taxable services to M/s Bhavesh Decorators. This cash amount had neither been accounted for in their books of account nor Service Tax/ GST had been paid on this amount;

(vi) With respect to the total cash received by their firm, M/s Karnavati and applicable service tax on the same, Shri Ashish Sharma showed his agreement with the figures stated by their Accountant Shri Daxesh Kadia in his statement dated 22.08.2019.

**9. OBSERVATIONS NOTICED UPON SCRUTINY OF THE DOCUMENTS WITHDRAWN DURING THE COURSE OF PANCHNAMA PROCEEDINGS DATED 21-22/08/2019 (GST-INS-02):**

9.1. The documents withdrawn during Search dated 21-22.08.2019 and listed under GST INS-02 of Panchnama dated 21-22.08.2019 drawn at the office premises of M/s. Karnavati were carefully scrutinized and consequent to such scrutiny, certain observations have been made which are summarized as under:

- i. M/s Karnavati is engaged in providing taxable service under the category of "Pandal or Shamiana Service" by way of providing theme based wedding lights, sound systems/ music arrangement in various events to their various customers/clients for various social occasions such as marriage etc. and for this they were registered under the provisions of Finance Act, 1944;
- ii. Shri Ashish Sharma, Proprietor of M/s Karnavati manages the entire business operations of M/s Karnavati;
- iii. M/s Karnavati had been bifurcating their total taxable income into two parts viz. cash and cheque. The amount received through cheques were recorded in their books of accounts and applicable Service Tax was being discharged on the same and corresponding ST-3 Returns have been filed by them duly incorporating the same. However, they were not taking into account the cash amount received by them towards providing taxable services and also not discharging Service Tax on such cash amount received by them;
- iv. The details of the service provided to a particular party for a particular functions organised by them was normally maintained in Excel sheets. A summary of all the functions of a particular party/ particular venue was also maintained in excel file.

9.2 The scan copy of one printout of M/s Karnavati for the services provided by them to their client "M/s Green Leaves Management Pvt. Ltd." at the venue "Andaz Party Plot" is reproduced below and explained in detail for better appreciation of the evidence :



5

NAME : Green Leaves		Bill No. 1	
F. PLACE : Andaz Party Plot		FUN. DATE: 21/03/2015	
Days:		To:	
ITEM NAME	QTY.	RATE	AMOUNT
500wt Halogen	30	100.00	3,000.00
1000wt Halogen	12	150.00	1,800.00
400wt Metal White	135	400.00	54,000.00
Plug Point	60	120.00	7,200.00
VIP Fans	11	200.00	2,200.00
20" Pole	40	100.00	4,000.00
95mm Cabel 150mtr	150	30.00	4,500.00
10mm Cabel 400mtr	400	10.00	4,000.00
200 A Panel Board	3	1500.00	4,500.00
Total			85,200.00
Net Amount			85,200.00

*[Signature]*

9.3 In the above image, which is a reproduction of Excel Worksheet, the entries are described below ;

- (i) Name – It indicated the name of the clients. In the above scanned image sheet it is “Green Leaves”.
- (ii) F. Place – It indicated the venue of the function, where services are to be provided. In the above scanned image, it is “Andaz Party Plot”.
- (iii) Days – It indicated the duration of the functions. In the above scanned image, it is not mentioned indicating it to be a one day function.
- (iv) Bill No. – It was a temporary number assigned for the functions held at Andaz Party Plot in the F.Y. 2014-15 stored in that particular Excel File. These Bill Nos are temporary in nature and are not unique, these are used for reference purpose only.
- (v) Item Name, Qty, Rate, Amount – These indicated the description of the item required for the particular event/function alongwith their rates, quantity required and the amount (item wise). In the above scanned image, description of items like 500 Wt Halogen, 1000 Wt Halogen, 400 Wt Metal White etc. are given.
- (vi) Total – It indicated the total estimated bill raised to the client for the particular event.
- (vii) Net Amount – It is the same as Total described above.



9.4 Further, all such bills issued for a particular client was then consolidated in a summary sheet, which is as given below :

Sr. No.	Fun. Date:	Function Place	Amount	Total Amount
1	21/03/2015	Andaz Party Plot	85,200.00	85,200.00
2	21/03/2015	Andaz Party Plot	51,475.00	51,475.00
3	29/03/2015	Andaz Party Plot	1,280.00	1,280.00
4				-
<b>Total</b>			<b>137,955.00</b>	

9.5 In the above image, which is a reproduction of Excel Worksheet, the entries are described below ;

- (i) Sr. No. – It indicated temporary Bill No. assigned to each event organised by the clients.
- (ii) Fun. Date – It indicated the date on which the function is held.
- (iii) Function Place – It indicated the venue. Here the venue is “Andaz Party Plot”
- (iv) Amount – It indicated the estimated amount for providing services in the given function.
- (v) Total Amount – It is same as Amount.

9.6 The printouts of all such Excel files(except the duplicate ones) available in the pen drive were withdrawn under panchnama dated 21-22.08.2019 drawn at the office premises of M/s Karnavati Light and Sound located at G-99/1177, Shivam Apartment, Near Vyasvadi, Nava Wadaj, Ahmedabad. Year-wise summary worksheet for all such printouts containing details of the taxable income of M/s Karanavati were prepared for cross verification with them.

10. Statement dated 16.10.2019 of Shri Ashish Sharma, Proprietor of M/s Karnavati :

And another Statement of Ashish Sharma, Proprietor of M/s Karnavati was recorded on 16.10.2019. In his statement, Shri Ashish Sharma *inter-alia* stated the following :

(i) He certified and that the contents of the the pages numbered from 1 to 537 of the made-up file listed at Sr. no. A18, A19 and A20 of the INS-02 appended with the panchanama dated 21-22.08.2019 drawn at the premises of M/s Karnavati Light and Sound, G-99/1177, Shivam Apartment, Near Vyasvadi, Nava Wadaj, Ahmedabad containing printouts of relevant excel files taken out from his (i.e. Ashish Sharma's) pendrive seized during search under the said Panchnama are true and correct and the data contained in the pages pertain to his firm M/s Karnavati Light & Sound. This data was maintained by his Accountant Shri Daxesh Kadia, which give the details of all the transactions pertaining to the services provided my his firm M/s Karnavati Light and Sound. The entire data is prepared in .xls file format in pen drive by his Accountant, Shri Daxesh Kadia on his directions. He further stated that, the entire file contains two sort of documents, viz. bills and sales summary for each of their client. He explained each of the

documents one by one in the manner discussed below.

(ii) To illustrate the details available in the file, he referred to a printout placed page No. 35 of the said file, whose scanned image is placed below :



5

NAME : Green Leaves		Bill No. 1	
F.PLACE : Andaz Party Plot		FUN. DATE: 21/03/2015	
Days:		To:	
ITEM NAME	QTY.	RATE	AMOUNT
500wit Halogen	30	100.00	3,000.00
1000wit Halogen	12	150.00	1,800.00
400wit Metal White	135	400.00	54,000.00
Plug Point	60	120.00	7,200.00
VIP Fans	11	200.00	2,200.00
20" Pole	40	100.00	4,000.00
95mm Cabel 150mtr	150	30.00	4,500.00
10mm Cabel 400mtr	400	10.00	4,000.00
200 A Panel Board	3	1500.00	4,500.00
Total			85,200.00
Net Amount			85,200.00

*Green*

(iii) He stated that This was an estimate bill that they prepared to give to their client an idea about how much their services would cost for a particular occasion. This bill, as reproduced above was raised in favour of M/s Green Leaves Management Pvt. Ltd. in respect of a function organised by them at Andaz Party Plot on 21.03.2015 for their client. In this case, they had provided the services of light decoration and the estimate given to the client M/s Green Leaves Management Pvt. Ltd. was of Rs. 85,200/-.

(iv) All such estimate bills were issued for a particular client was then consolidated in a summary sheet, which is as given below :

7

Sr. No.	Fun. Date:	Function Place	Amount	Total Amount
1	21/03/2015	Andaz Party Plot	85,200.00	85,200.00
2	21/03/2015	Andaz Party Plot	51,475.00	51,475.00
3	29/03/2015	Andaz Party Plot	1,280.00	1,280.00
4				-
Total			137,955.00	

*Green*

(v) The above type of summary sheets contained details of services provided by them to a particular client / for a particular venue. As can be seen from the above summary sheet, they had provided services to M/s Green Leaves Management Pvt. Ltd. for some functions organised by them at Andaz Party Plot. He could relate the above sheet with M/s Green Leaves Management Pvt. Ltd., though their name did not appear on the above sheet, as this sheet was saved in .xls file name. They prepared the summary sheets because it gave them the details of the services provided to their clients on a particular date at a particular venue for the respective estimated value.

(vi) The bills as shown above did not give the actual consideration received by them towards providing the services. After the particular period, they used to send this

summary sheet to their clients and the amount to be received were finalised mutually with the clients.

(vii) With mutual consent of their clients, they received certain portion of the taxable income in cash for which they did not raise proper bill/invoice. They issued proper bill/invoice for the amount which was received by them through cheque only. The amount received through cheques were accounted for in their books of accounts and Service Tax was discharged on the same properly;

(viii) The details of estimates given to their clients, summary of bills, details of cash and cheque received, accounting details etc. were stored in the said Excel files.

(ix) He explained the process of managing details of cash as well as cheque as under :

(a) The excel sheets containing the details of events/functions were managed in the format mentioned above. The party-wise/venue-wise summary of individual functions were recorded in the excel sheets to get a consolidated details of the work done for a particular client. The detailed sheet and the summary sheet as explained above contain the estimated amount given by them to the party. It did not give the actual amount received by them from the parties.

(b) The final settlement with their clients were normally done on yearly basis and the details were recorded in Excel files as Receipt Summary. In the receipt summary the details of finally settled amount, i.e. the final amount to be received by them from the client was given. The amount which was to be received in cash and the amount which was to be received through cheques and for which proper bills were to be raised were also mentioned in these receipt summary sheets;

(x) In the Receipt Summary, the details of final settlements with their clients were recorded in Excel sheets. One such Receipt summary raised by them to M/s Green Leaves Management Pvt. Ltd. which was placed at page No. 391 in file A/19 of GST INS-02 of Panchnama dated 21-22.08.2019 drawn at their office premises, whose image is placed below was explained by him :



Green Leaves  
Amount Receivable

Green Leaves	Month	Value	Billed Amt.	S. Tax Amt.	Tot. Bill Amt.	Bill No	Difference
Green Leaves	Apr-15	447,870.00	107,711.00	15,080.00	122,791.00	8	340159.00
Andaz	Apr-15	95,020.00	52,200.00	7,308.00	59,508.00	8	42820.00
Red Earth	Apr-15	25,460.00	16,626.00	2,328.00	18,954.00	7	8834.00
YMCA Lawn	Apr-15	294,220.00	326,682.00	45,735.00	372,417.00	7	-32462.00
YMCA Banquet Big	Apr-15	98,960.00	71,007.00	9,941.00	80,948.00	6	27953.00
Red Earth	May-15	309,810.00	170,648.00	23,891.00	194,539.00	5	139162.00
YMCA Lawn	May-15	95,350.00	121,446.00	17,002.00	138,448.00	5	-26096.00
YMCA Banquet Big	Jun-15	1,860.00					3860.00
YMCA Lawn	Jun-15	247,980.00	255,118.00	35,717.00	290,835.00	21	-7138.00
YMCA Banquet Big	Jun-15	73,675.00	75,968.00	10,636.00	86,604.00	24	-2293.00
YMCA Banquet Big	Jul-15	146,620.00					146620.00
YMCA Banquet Big	Aug-15	97,975.00					97975.00
Red Earth	Sep-15	61,700.00	21,420.00	2,999.00	24,419.00	30	40280.00
Andaz	Oct-15	262,100.00	144,900.00	20,286.00	165,186.00	27	117200.00
YMCA Banquet Big	Oct-15	128,700.00	110,000.00	15,400.00	125,400.00	28	18700.00
YMCA Lawn	Oct-15	209,400.00	65,000.00	9,100.00	74,100.00	29	144400.00
Andaz	Nov-15	819,370.00	399,612.00	57,944.00	457,556.00	53	419758.00
Red Earth	Nov-15	149,520.00	42,535.00	6,168.00	48,703.00	52	106985.00
YMCA Banquet Big	Nov-15	158,400.00	55,000.00	7,975.00	62,975.00	50	103400.00
YMCA Lawn	Nov-15	64,360.00	32,000.00	4,640.00	36,640.00	51	52360.00
Andaz	Dec-15	1,164,680.00	330,000.00	47,850.00	377,850.00	57	834680.00
Red Earth	Dec-15	602,890.00	175,000.00	25,375.00	200,375.00	58	427890.00
YMCA Banquet Big	Dec-15	439,290.00	175,000.00	25,375.00	200,375.00	60	264290.00
YMCA Lawn	Dec-15	665,795.00	320,000.00	46,400.00	366,400.00	59	345795.00
Andaz	Jan-16	540,865.00	285,000.00	41,325.00	326,325.00	65	258865.00
Red Earth	Jan-16	538,560.00	165,000.00	23,925.00	188,925.00	65	373560.00
YMCA Banquet Big	Jan-16	116,865.00	251,000.00	36,395.00	287,395.00	62	-134135.00
YMCA Lawn	Jan-16	357,400.00	295,000.00	42,775.00	337,775.00	63	62400.00
Andaz	Feb-16	1,037,882.00	85,000.00	12,325.00	97,325.00	67	952882.00
Red Earth	Feb-16	341,370.00	55,000.00	7,975.00	62,975.00	68	286370.00
YMCA Banquet Big	Feb-16	244,950.00	95,000.00	13,775.00	108,775.00	70	149950.00
YMCA Lawn	Feb-16	244,470.00	75,000.00	10,875.00	85,875.00	69	169470.00
Andaz	Mar-16	425,720.00					425720.00
Red Earth	Mar-16	198,850.00					198850.00
YMCA Banquet Big	Mar-16	75,790.00					75790.00
YMCA Lawn	Mar-16	27,805.00					27805.00
TOTAL		10,813,532	4,373,873	626,520	5,000,393		6,439,659

Value GLM	Diff. Cash
401870	294,159.00
90650	38,450.00
24020	7,394.00
295660	(31,022.00)
83590	12,583.00
242260	71,612.00
90040	(31,406.00)
0	0
247980	(7,138.00)
73475	(2,493.00)
135780	135,780.00
88975	88,975.00
59200	37,780.00
205680	60,780.00
128700	18,700.00
150000	85,000.00
643936	244,318.00
84440	42,405.00
110400	55,400.00
35000	3,000.00
828120	498,126.00
581940	406,946.00
252545	77,545.00
629370	309,370.00
499675	214,675.00
526490	361,490.00
113425	(137,575.00)
357400	62,400.00
903,640.00	818,640.00
322010	267,010.00
269730	171,730.00
202290	127,290.00
410120	410,120.00
196750	196,750.00
72190	72,190.00
27805	27,805.00

5,011,777

*Duvel*

(xii) The content of the above was explained by him as under :

This was a Receipt Summary of M/s Green Leaves Management Pvt. Ltd. As per the said sheet, they had given estimated bills of Rs. 1,08,13,532/- for the services provided to M/s Green Leaves Management Pvt. Ltd. in various events/functions in the F.Y. 2015-16. Out of the same, proper bill/invoice for Rs. 43,73,873/- was raised by them and Service Tax of Rs. 6,26,520/- was charged on the said bills. Thus the total billed amount was Rs. 50,00,393/- . Out of the total outstanding amount of Rs. 64,39,659/-, the final settlement was made at Rs. 50,11,777/- and this was the amount received by M/s Karnavati in cash from M/s Green Leaves Management Pvt. Ltd.

(xiii) Shri Ashish Sharma further explained the corresponding final settlement data received from M/s Green Leaves Management Pvt. Ltd. which was also available in the same file withdrawn under panchnama dated 21-22.08.2019 at page No. 395. Scanned image of the same is placed below :



**Green Leaves Management Pvt. Ltd.**

**Ashishbani Lighting details from April 2015 to March 2016**

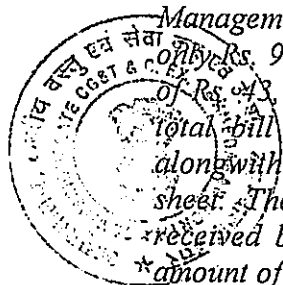
Dr: 22/04/2016

Month	Lighting Income	Lighting Expense	Bill Total	Service Tax	Total Bill	Payment Date	Cheque No.	Cheque Amount	TDS	Difference Exp. Bill
Apr-15 Banquet	4,27,371	2,95,660	3,25,682	45,735	3,72,417	03/09/2015	000888	3,27,145	6,534	-31,027
Apr-15 YMCA Lawn	34,314	24,020	16,625	2,328	18,954	20/01/2016	001139	10,00,000	332	7,394
Apr-15 Red Earth	1,29,500	90,650	52,200	7,308	59,508	10/02/2016	001166	10,00,000	1,044	38,450
Apr-15 Andaz	5,74,100	4,01,870	1,07,711	15,080	1,22,791	12/02/2016	001181	5,00,000	2,154	2,64,159
May-15 Banquet	1,28,629	90,040	1,21,446	17,002	1,38,448	07/03/2016	001208	5,00,000	2,428	-31,406
May-15 YMCA Lawn	3,46,068	2,42,280	1,70,646	23,891	1,94,539	07/04/2016	001241	5,00,000	3,413	71,612
May-15 Red Earth	1,19,414	83,590	71,007	9,541	80,548	21/04/2016	001273	5,00,000	1,420	12,583
Jun-15 Banquet	3,54,257	2,47,980	2,55,118	35,717	2,90,835				2,551	7,138
Jul-15 Banquet	1,04,964	73,475	75,958	10,630	86,604				760	-2,493
Aug-15 Banquet	1,03,971	1,35,780	0	0	0				0	1,35,780
Sept-15 Banquet	1,27,107	88,975	0	0	0				0	88,975
Oct-15 Andaz	2,93,829	2,05,650	1,44,900	20,286	1,65,186				1,449	60,780
Oct-15 Banquet	83,857	1,28,760	1,10,000	15,400	1,25,400				1,100	18,700
Oct-15 YMCA Lawn	2,14,266	1,50,000	65,300	9,100	74,400				650	65,000
Oct-15 Red Earth	84,571	59,200	77,420	2,999	24,419				214	37,780
Nov-15 Andaz	9,19,900	6,43,930	3,99,612	57,944	4,57,556				3,896	2,44,318
Nov-15 Banquet	1,57,714	1,10,400	55,000	7,975	62,975				550	55,400
Nov-15 YMCA	68,029	35,000	32,000	4,840	36,840				320	3,000
Nov-15 Red Earth	1,21,343	84,040	47,535	6,168	48,703				425	42,405
Dec-15 Andaz	11,83,029	8,78,120	4,30,000	47,850	3,77,850				3,300	4,98,120
Dec-15 Banquet	3,80,779	2,52,545	1,75,000	25,375	2,00,375				1,750	77,545
Dec-15 YMCA	8,95,100	6,29,370	3,20,300	45,400	3,66,400				3,200	3,09,370
Dec-15 Red Earth	8,31,343	5,81,940	1,75,300	25,375	2,00,375				1,750	4,36,940
Jan-16 Andaz	7,13,821	4,69,675	2,85,000	41,325	3,26,325				2,850	2,14,675
Jan-16 Banquet	1,67,036	1,13,425	2,51,000	36,395	2,87,395				2,510	-1,37,575
Jan-16 YMCA	5,10,571	3,57,400	2,95,000	42,775	3,37,775				2,950	62,400
Jan-16 Red Earth	7,52,129	5,26,490	1,65,000	23,925	1,88,925				1,650	3,61,490
Feb-16 Andaz	12,99,914	9,03,640	85,000	12,325	97,325				850	8,18,640
Feb-16 Banquet	3,85,329	2,69,730	95,000	13,775	1,08,775				950	1,74,730
Feb-16 YMCA	2,88,986	2,02,200	75,000	10,875	85,875				750	1,27,290
Feb-16 Red Earth	4,60,044	3,22,010	55,000	7,975	62,975				550	2,67,010
Mar-16 Andaz	5,85,880	4,10,120	0	0	0				0	4,10,120
Mar-16 Banquet	1,93,129	72,190	0	0	0				0	72,190
Mar-16 YMCA	39,721	27,805	0	0	0				0	27,805
Mar-16 Red Earth	2,81,071	1,95,750	0	0	0				0	1,95,750
<b>Total</b>	<b>1,34,57,000</b>	<b>93,85,650</b>	<b>43,73,873</b>	<b>6,26,520</b>	<b>50,00,393</b>			<b>43,27,145</b>	<b>52,401</b>	<b>50,11,777</b>

3,00,000	23/11/2015
5,00,000	10/12/2015
5,00,000	10/02/2016
10,000	05/03/2016
80,000	Wash-room
<b>15,90,000</b>	<b>Total</b>

Last Year Excess	-13,11,091
Outstanding by book	6,20,847
Cash Bill	50,11,777
Cash Advance	15,90,000

*Datta*



(xiv) He stated that in the first column under the head "Lighting Income", the amount charged by M/s Green Leaves Management Pvt. Ltd. (M/s GLM) was reflected, which was Rs. 1,34,57,000/-. The "Lighting Expense" column indicate their expense, i.e. income of M/s Karnavati, which was Rs. 93,85,650/-. This was the amount received by M/s Karnavati after final settlement. Though the initially quoted amount to M/s Green Leaves Management Pvt. Ltd. during the year was Rs. 1,08,13,532/-, M/s Karnavati had received only Rs. 93,85,650/- from them after final settlement. Out of this amount, proper invoices of Rs. 43,73,873/- was issued to them alongwith Service Tax of Rs. 6,26,520/-. Thus the total bill amount was Rs. 50,00,393/-. The details of payment received in cheque alongwith cheque No., Cheque amount and TDS details were also given in the above sheet. The figures under the column "Difference Exp. Bill" was the amount of cash to be received by M/s Karnavati from M/s Green Leaves Management Pvt. Ltd. The total amount of cash for the F.Y. in the above sheet was Rs. 50,11,777/-.

(xv) it was further stated that the receipt summary was made normally after the completion of the financial year and the total cash received during the year was reflected in the receipt summary only. Any amount shown less or outstanding in the receipt

summary was not received by them, as this was the final settlement with the party for that particular financial year

(xvi) M/s Karnavati used to give initial estimate to their clients on the basis of their requirement and based on the venue. However, during final settlement, deductions were made by the parties on account of deficiency in service or re-negotiation of rates and for various other reasons and hence they do not receive the total payment as quoted by them initially. That's why the total amount received by them was lesser than that of the initial total amount.

(xvii) Shri Ashish Sharma was shown the year-wise worksheet for the F.Y. 2014-15 to 2017-18 (Upto June 2017) prepared on the basis of the printouts kept in the file A/19 of GST INS-02 annexed to Panchnama dated 21-22.08.2019 drawn at the office premises of M/s Karnavati (Except the duplicate entries), wherein details of services provides by their firm at various venues on different dates were entered, Shri Ashish Sharma carefully verified each and every entry of the same and after being satisfied that the said worksheet reflects the exacts details (except the duplicate entries) of the services provided by them during the period from 2014-15 to 2017-18 (Upto June 2017) with the estimated values quoted by them. Based on the data available with them, he identified the name of the parties to whom the services were rendered and mentioned their name in the said workbook. Further after entering the said data, a printout of the same was taken and as a token of its correctness and genuineness he put his dated signature on each page of the printouts of the said worksheet.

(xviii) He further stated that, his firm M/s Karnavati raised invoices/bills for part amount received from the clients for which payment was received through cheques and the remaining amount as per final settlement was received by them in cash. The amount for which proper invoices/bills were raised and which were received through cheques were reflected in their books of accounts and applicable Service Tax had been paid on such amount and the same were reflected in their ST-3 Returns. The year-wise details of Service Tax paid by them for the F.Y. 2014-15 to 2017-18 (Upto June 2017) was given as by him under :

(Amt. in Rs.)

F.Y.	As per Sales Ledger		As per ST-3 Returns		Difference	
	Value	S Tax	Value	S Tax	Value	S Tax
2014-15	27946743	3454217	27946743	3454217	0	0
2015-16	20062377	2870166	20062377	2870161	0	5
2016-17	25013650	3747493	25013651	3747494	-1	-1
2017-18 (Apr-Jun)	7624210	1143631	7624210	1143631	0	0
<b>Total</b>	<b>80646980</b>	<b>11215508</b>	<b>80646981</b>	<b>11215503</b>	<b>-1</b>	<b>5</b>

(xix) He further stated that, with respect to the consideration received by them in cash, it was stated by him that the cash amount was not taken into their books of accounts and the same had not been considered for the purpose of calculation of Service Tax and Service Tax had not been discharged by them on the same.

(xx) On being asked, Shri Ashish Sharma stated that two of their major clients were M/s Green Leaves Management Pvt. Ltd. and M/s Poojan Decorators. They had received following amount of un-accounted cash from them, which was also reflected in their Receipt Summary on which Service Tax had not been discharged by them :

(Amt. in Rs.)





Name of the party	2014-15	2015-16	2016-17	2017-18 (Apr-Jun)	Total
Green Leaves Management Pvt. Ltd.	788909	5011777	1991103	303810	8095599
Poojan Decorators	6814694	2425000	3440000	650000	13329694
Total	7603603	7436777	5431103	953810	21425293

(xxi) On being asked, Shri Ashish Sharma stated that the un-accounted cash receipt by their firm M/s Karnavati Light and Sound during the F.Y. 2014-15 to 2017-18 (Upto June 2017) were reflected in the party-wise receipt summaries prepared for each financial year. These receipt summaries show the final settlement amount with the parties and the final amount received by them in cheque as well as in cash. In the cases, where no receipt summary was prepared by them, the amount quoted by them was the total consideration received by them from the clients inclusive of Service Tax. Out of which, the cash received was the difference of their estimated figures given to the party and the bill amount (inclusive of service tax) as per the invoices raised by them.

(xxii) Accordingly, Shri Ashish Sharma calculated the un-accounted cash receipt of his firm M/s Karnavati Light and Sound during the F.Y. 2014-15 to 2017-18 (Upto June 2017). Year-wise summary of the same was given by him as under :

(Amt. in Rs.)

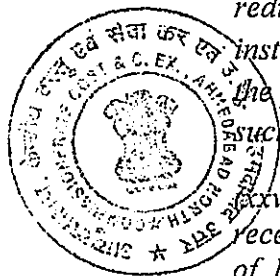
F.Y.	Amount as per Excel Sheet	Amount as per Sales Register	Cash received as per final settlement shown in receipt summary	Diff. of amount of Excel sheet and Sales Register (In case where receipt summary not available)	Unaccounted cash receipt
2014-15	34282544	8536376	788916	21061867	21850784
2015-16	36292830	7863873	10221405	10922389	21143794
2016-17	47839574	15856703	12921943	10025070	22947013
2017-18 (Upto Jun'17)	5845029	445600	2138909	2564622	4703531
TOTAL	124259976	32702552	26071173	44573948	70645122

(xxiii) He further accepted that the above amount of Rs. 7,06,45,122/- was the amount of un-accounted cash receipt by his firm M/s Karnavati Light & Sound for providing taxable services during the F.Y. 2014-15 to 2017-18 (Upto June 2017) on which no service tax had been paid by them.

(xxiv) He further stated that the initial estimate given to the party was not the total amount received by them. At the time of final settlement, reduced amount was received by them.

(xxv) On being asked about any Credit note or any other document evidencing the reduction by the party is maintained by him, Shri Ashish Sharma state that he had instructed the Accountant to maintain documents to keep track of the reduction made by the parties. But at the time of recording the statement he was unable to produce any of such documents. However, he assured to submit the same if found available.

(xxvi) On being asked about the Service Tax liability on the said un-accounted cash receipt, Shri Ashish Sharma stated that the above mentioned un-accounted cash amount of Rs. 7,06,45,122/- was the gross amount received by them and for the purpose of calculation of Service Tax the same should be treated as inclusive of Service Tax.



However, he assured to pay the applicable Service Tax liability on the above mentioned un-accounted cash receipt at the earliest along with applicable interest and penalty.

## 11. ANALYSIS OF THE STATEMENTS OF SHRI ASHISH SHARMA DATED 16.10.2019 IN CONSONANCE OF DOCUMENTS AVAILABLE ON RECORD :

11.1 On the basis of the statement of Shri Ashish Sharma and on scrutiny of the documents withdrawn during search, it is observed that M/s Karnavati used to record all their business transactions in the following form :

- (i) In the excel sheets they used to record the estimated bills of services to be provided to a party at a particular venue on a particular date along with the requirement of the clients, viz. no. of light, sound system etc. with corresponding quantity, rate and amount.
- (ii) Such excel sheets were further summarized in another excel sheets venue-wise or party-wise. The summary sheets thus prepared gave the summarized details of the services provided by M/s Karnavati to its clients on a particular Financial year.
- (iii) Final settlement with the parties were recorded in another excel sheets, wherein the details of amount quoted, function wise/month wise were mentioned along with the details amount to be received in cash or cheque. The details of finally settled amount was also mentioned in some of these sheets. These sheets also contained the details of outstanding payment after final settlement.

## 12. Investigation at clients' end of M/s Karnavati Light and Sound :

With a view to confirm the modus operandi adopted by M/s Karnavati to evade the payment of service tax the investigation was extended to their major service recipients, viz. M/s Green Leaves Management Pvt. Ltd and M/s Poojan Décor by way of issuance of summons to them for recording their statements. A statement of Shri Pinkal Dandwala, Director of M/s Green Leaves Management Pvt. Ltd and Partner of M/s Poojan Décor was recorded on 16.10.2019. In his statement Shri Pinkal Dandwala confirmed the content of the statement dated 16.10.2019 of Shri Ashish Sharma in respect to the references made by him about M/s Green Leaves Management Pvt. Ltd. and M/s Poojan Decorators.

## 13. OBSERVATION

13.1 The worksheet prepared on the basis of the printouts of the excel sheets withdrawn under panchnama dated 21-22.08.2019 were got verified from Shri Ashish Sharma, Proprietor of M/s Karnavati during his statement dated 16.10.2019.

13.2. In his statement, Shri Ashish Sharma stated that at the time of final settlement certain deductions were made by the party. He also stated that the outstanding amount shown in such final settlement sheets were never received by them. However, he failed to produce documents with respect to any such reduction in the billed amount.

13.3 In this regard, as per Sr. No. 3(a) of Point of Taxation Rules, 2011, the Point of taxation would be "the time when the invoice for the service provided or agreed to be provided is issued". In the instant case, the initial estimated bills raised by M/s Karnavati to their clients showing the details of services to be rendered, are issued for the taxable services to be provided by them. Though proper invoices for all the amount shown in these estimated bills were not issued but since these bills reflected the total amount of taxable services to be provided by M/s Karnavati to their clients and contain all the details as required in proper invoice, except the tax component, they may be considered as invoices towards providing taxable services by M/s Karnavati and service tax is leviable on all such bills.

13.4 Further, Shri Ashish Sharma stated that they had not received the outstanding amount shown in the final settlement sheets. In this regard, it is observed that no credit note was

available on record or was recovered during search on 21-22.08.2019 at their office premises towards reduction of such amount. Also at the time of recording his statement on 16.10.2019, he failed to produce any such document. Hence the contention of Shri Ashish Sharma, Proprietor of M/s Karnavati towards lesser receipt amount on final settlement did not appear to be justified and they were liable to pay Service Tax on the total amount for which the estimated bills were raised by them after allowing the deductions to the extent of service tax already paid by them and reflected in their ST-3 Returns.

13.5 During his statement dated 16.10.2019, Shri Ashish Sharma had stated that they have discharged the service tax liability as shown in their books of account/sales registers and have filed the periodical ST-3 Returns duly incorporating the same. The same was verified from the records and found to be correct.

#### 14. LEGAL PROVISIONS

It would be prudent to discuss some important legal provisions relevant to the case before coming to a conclusion in the extant matter:

14.1 Section 65B (44) of the Finance Act, 1944 defines 'service' as any activity carried out by a person for another person for a consideration, and not falling under the categories of activities stipulated under Section 66D of the Finance Act, 1994. The term 'service' also includes declared services stipulated under the provisions of Section 66E of the Finance Act, 1994.

From the above provision it is clear that services provided in this case are taxable services as the same are not covered under Negative List of activities as stipulated under Section 66D of the Finance Act, 1994.

14.2 Section 67 of the Finance Act, 1994 lays down the provisions for valuation of any taxable services and the same is as given below:

#### SECTION 67: Valuation of taxable services for charging service tax. —

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —

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

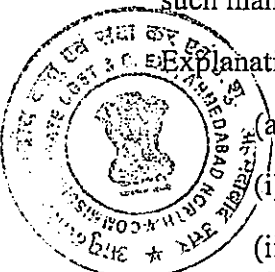
(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

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

Explanation. — For the purposes of this section, —

(a) "consideration" includes —

- (i) any amount that is payable for the taxable services provided or to be provided;
- (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;



(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

(b) [ \* \* \* \* ]

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

In view of the above provisions, the total consideration received by the noticee in cash from their clients for providing taxable services is required to be added to the consideration they received through cheque to arrive at the actual taxable value.

14.3 Section 68 of the Finance Act, 1994 stipulates that every person providing taxable service to any person shall pay service tax at the specified rate within prescribed period.

14.4 Section 70 of the Finance Act 1994 read with Rule 7 of the service Tax Rules, 1994 specify that every person liable to pay the service tax should himself assess the tax due on the services provided by him and file correct and proper prescribed returns.

14.5 As per Sr. No. 3 (a) of "The Point of Taxation Rules, 2011", the point of taxation in the instant case is the date of issuance of the estimated bills raised by M/s Karnavati towards providing taxable services to their clients, which covers the details of the total taxable income of M/s Karnavati.

14.6. Thus, from the documents, statements and legal provisions mentioned here-in-above, it appeared that M/s. Karnavati is liable to pay Service Tax on the entire income received by them as per the estimated bills raised by them, which also include the income shown in their Sales Ledger during the period from April, 2014 to June, 2017 after deducting the Service Tax liability already discharged by them and reflected in the periodical ST-3 Returns filed by them.

14.7. Relevant provisions under 'The Central Goods and Service Tax Act, 2017:

#### Repeal and Saving

##### *Section 174.*

(1) ----

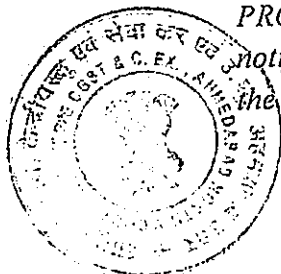
(2) *The repeal of the said Acts and the amendment of the Finance Act, 1994(32 of 1994) (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—*

*(a) revive anything not in force or existing at the time of such amendment or repeal; or*

*(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or*

*(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:*

*PROVIDED that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or*



(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

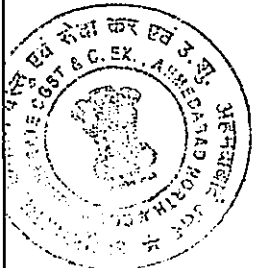
#### 14.8 Miscellaneous Transitional Provisions

Section 142 (8) (a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

#### 15. Outcome of the Investigations/Conclusion:

15.1. In view of discussions made in the foregoing paras, the evidences recovered and brought on record, statements dated 22.08.2019 of Shri Daxes Kadia, Accountant and statement dated 22.08.2019 and 16.10.2019 of Shri Ashish Sharma, Proprietor of M/s Karnavati, it appeared that:

- (i) M/s. Karnavati are engaged in providing taxable services of theme based wedding lights, sound systems/ music arrangement in various events classified under the category of "Pandal or Shamiana Service" as defined under Sec. 65(105)(zzw) of the erstwhile Finance Act 1994.
- (ii) In order to show their compliance towards Service Tax, M/s Karnavati have been discharging their regular Service Tax liability and have filed their ST-3 Returns upto June 2017.
- (iii) They have been evading service tax by way of receiving part payment towards providing taxable services in cash and part payment in cheque. The amount received through cheques were reflected in their books of account and service tax liability was discharged on the same and corresponding ST-3 Returns were filed. the amount received in cash were not reflected in their books of account. They have evaded service tax by way of not paying service tax on such un-accounted cash receipt.
- (iv) Merely comparing their Service Tax compliance in comparison to their regular Service Tax liability would not have revealed the modus adopted by them for evasion of Service Tax. It is due to the search operation carried out by DGGI, AZU on 21-22.08.2019 at the premises of M/s Karnavati and withdrawing the details of unaccounted cash from the pen drive of the proprietor, Shri Ashish Sharma, then only their modus for evasion of Service Tax were revealed.



- (v) As they have failed to discharge their total Service Tax liability on their entire service income (Regular Service Tax liability as well as the additional liability detected during investigations), the same is required to be demanded and recovered from them.
- (vi) In his statements dated 22.08.2019 and 16.10.2019 Shri Ashish Sharma, proprietor of M/s Karnavati has confirmed and admitted the suppression made by them by way of not including the unaccounted cash received towards providing taxable services into their regular Service Tax liability and thereby evasion of Service Tax during the period from April 2014 to June 2017.
- (vii) M/s Karnavati have neither assessed their actual Service Tax liability nor have they reflected the same in their ST-3 Returns already filed with the department. As per the provisions of Section 70 of the Finance Act, 1994, M/s Karnavati were required to make self-assessment of the Service Tax payable on the services provided by them, to deposit Service Tax and to file properly all the Service Tax Returns with the department. However, M/s Karnavati have failed to do so to the extent of not discharging their Service Tax liability on the unaccounted billed amount for the period from April 2015 to June 2017.
- (viii) From the discussions made here-in-above, it is clearly established that M/s Karnavati have deliberately suppressed the facts by suppressing their income received in cash towards providing taxable services. From the ongoing discussions, it clearly transpires that they are willfully suppressing their taxable income in their books of account as well as in their ST-3 Returns in order to evade Service Tax. It is seen that in every ST-3 Returns they have followed the same practice of evasion by not including the unaccounted cash amount received by them while discharging their Service Tax liabilities. This shows that despite having knowledge of Service Tax Acts & Procedures, the act of mis-declaration by the service provider shows the suppression of facts and contravention of provisions with intent to evade Service Tax payment on the part of M/s Karnavati. Had the investigation not taken place, the issue would have gone undetected. Thus, the action of M/s Karnavati was not bonafide in as much as they have wilfully attempted to evade Service Tax. Thus, proviso to Section 73(1) of the Finance Act, 1994, for the extended period of limitation, appears to be invocable to demand and recover Service Tax payable.

#### 15.2. Quantification and demand of Service Tax :

For quantification of Service Tax liability, the unaccounted cash receipt by M/s Karnavati was calculated first. For calculating the same, the party wise total income received by them as per the estimated bills shown in the printouts of the excel sheets withdrawn under panchnama dated 21-22.08.2019 at their office premises was calculated year-wise. The income of these parties in the corresponding years were taken from the sales registers. The difference of the total billed amount as per excel sheet and as per the sales ledger was considered to be their unaccounted cash receipts. By adopting this method, the difference of the outstanding Service Tax liability of M/s Karnavati is calculated and the summary of the same as under :

(Amt. in Rs.)				
F.Y.	Amount as per Excel Sheet	Amount as per Sales Register of matching parties	Unaccounted cash receipt (Diff. of amount of Excel sheet and Sales Register)	Applicable Service Tax
2014-15	34282544	8536376	26034133	3217819
2015-16	38330268	11194205	27198763	3943821
2016-17	49447292	17705579	31741713	4761257
2017-18 (Upto Jun'17)	5845029	445600	5399429	809914
<b>TOTAL</b>	<b>127905132</b>	<b>37881760</b>	<b>90374038</b>	<b>12732811</b>



15.3 The periodical ST-3 Returns filed by M/s Karnavati have been verified from their books of accounts and it is observed that the taxable receipts recorded in their books of accounts have been reflected in the corresponding ST-3 Returns. In view of the above, in order to arrive at the total taxable income of M/s Karnavati, their year-wise unaccounted taxable income were added with the corresponding taxable income shown in the periodical ST-3 Returns. The total taxable income of M/s Karnavati thus arrived at is given as under :

(Amt. in Rs.)

F.Y.	Taxable receipt as per ST-3 Returns.	Service Tax paid as per ST-3 Returns	Unaccounted cash receipt (Diff. of amount of Excel sheet and Sales Register)	Service Tax liability on unaccounted cash receipt	Total Taxable Receipt	Total Service Tax liability
2014-15	27946743	3454217	26034133	3217819	53980876	6672036
2015-16	20062377	2870161	27198763	3943821	47261140	6813982
2016-17	25013651	3747494	31741713	4761257	56755364.1	8508751
2017-18 (Upto Jun'17)	7624210	1143631	5399429	809914	13023639	1953545
<b>TOTAL</b>	<b>80646981</b>	<b>11215503</b>	<b>90374038</b>	<b>12732811</b>	<b>171021019</b>	<b>23948314</b>

15.4 From the above table, it can be observed that M/s. Karnavati, during the period from April 2014 to June 2017 have provided total taxable services to the tune of Rs. 17,10,21,019/- on which Service Tax liability of Rs. 2,39,48,314/- was to be paid by them. Out of the total taxable income of Rs. 17,10,21,019/-, they have shown only Rs. 8,06,46,981/- in their periodical ST-3 Returns on which Service Tax of Rs. 1,12,15,503/- was paid by them. Thus, they have evaded payment of Service Tax including cess to the tune of Rs. 1,27,32,811/- (Rupees one crore twenty seven lakh thirty two thousand eight hundred eleven only) on the unaccounted cash receipt of Rs. 9,03,74,038/-. The said amount stood recoverable from them under the proviso to sub-section (1) of Section 73 of Chapter V of the Finance Act, 1994 alongwith the applicable interest and penalty.

## 16. INVOCATION OF EXTENDED PERIOD AND PENALTY UPON M/S KARNAVATI:

16.1 M/s Karnavati, despite having knowledge of the various provisions of service tax and having service tax Registration for payment of service tax as a provider for "Pandal or Shamiana service". They were aware of such provisions relating to service tax. However, they deliberately recovered certain part of taxable value of the taxable services provided to their clients, in cash over and above the invoice value of such service. M/s Karnavati knowingly and intentionally did not consider such cash income while computing their service tax liability, with very clear intention of evading payment of appropriate service tax.

16.2 In this case, the period to reckon for demand of service tax is from April-2014 to June-2017. M/s Karnavati have filed ST-3 returns for this period but they have never disclosed the true taxable turnover of their services to the Department. Instead, they chose to suppress the true details in the ST-3 returns filed by them with the malafide intention to evade payment of service tax. Had the department not noticed the fact of suppression of the actual turnover of the services, the service tax amount, so evaded would have remained uncollected.

16.3 It is pertinent to mention here that the system of self-assessment is in vogue in respect of Service Tax. 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 party/assessee to comply with higher standards of disclosure of information in the statutory returns. It is seen from the facts emerged during the investigation of the instant case that M/s Karnavati has suppressed their actual taxable income by not including some of their considerations received in cash towards providing taxable services in their books of account and thereby not paying Service Tax on such amount. Thus, M/s Karnavati

have suppressed the material facts from the Department by not disclosing their actual taxable income to the departments in the ST-3 Returns filed for the period from April 2014 to June 2017. M/s Karnavati continued to apply their modus of not including their certain income received in cash in the books of accounts on a regular basis. This clearly appeared to be done intentionally in order to suppress their actual income to the department and thereby evading Service Tax. 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 behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s Karnavati, it shows intent to evade payment of service tax by an act of omission in as much as M/s Karnavati though being well aware of the unambiguous provisions of the erstwhile Finance Act, 1994 and Rules made there under, failed to disclose to the department at any point of time, regarding non-declaration of their actual taxable income to the department and thereby not making payment of service tax to that extent by way of suppression of facts by showing lesser taxable income in the ST-3 Returns for the period from April 2014 to June 2017. Had the investigation proceedings not conducted by DGGI, Zonal Unit, Ahmedabad, these facts would not have come to light.

16.4 It may be mentioned here that M/s Karnavati had failed to declare their actual taxable income towards providing taxable services by not including their total income towards providing taxable services in their books of account. They had filed their ST-3 Returns for the period from April 2014 to June 2017 against the taxable income reflected in their books of accounts, but in addition to the same, they had received unaccounted cash income towards providing taxable services and the Service Tax liabilities towards such unaccounted cash income were neither paid by them nor were reflected in the ST-3 Returns filed by them from April 2014 to June 2017. In view of the specific omissions and commissions as elaborated earlier, it is apparent, that M/s Karnavati had deliberately suppressed the facts by way of not discharging their Service Tax liability towards the unaccounted cash for the period from April 2014 to June 2017. This amounts to wilful suppression of facts with the deliberate intent to evade payment of Service Tax. The non-payment of Service Tax on the entire income received towards providing taxable services by M/s Karnavati which came to the knowledge of the DGGI only due to specific investigations carried out as spelt out earlier. Therefore, the extended period of limitation as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 appears to be invocable to demand Service Tax for the period from April 2014 to June 2017.

16.5 In this regard, it may not be out of place to highlight here the observations of the Hon'ble Apex Court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 regarding applicability of the extended period in different situations.

*"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.*

*12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.*

*13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.*

*14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for*



recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.

15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

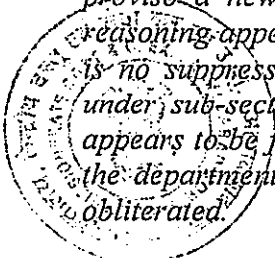
16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.



21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :

"From sub-section 1 read with its proviso it is clear that in case the short payment, nonpayment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priori the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

16.6 Therefore, it appeared that M/s Karnavati have wilfully suppressed the above facts with intent to evade payment of Service Tax and the extended period of limitation of five years as envisaged under proviso to sub-section (1) of Section 73 of Chapter V of the erstwhile Finance Act, 1994 (as it existed up to 30/06/2017) read with Section 174 of Central Goods and Services Tax Act, 2017, for the demand and recovery of service tax (including Cess) as quantified in the subsequent paras is applicable in the instant case. Consequently, M/s Karnavati are also liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of aforesaid amount of service tax.

16.7 Further, all the above acts of omission coupled with the contravention of the Act/Rules made thereunder, constitutes an offence of the nature as described under the provisions of Section 77 and 78 of the Finance Act, 1994, rendering themselves liable to penalty under Section 77, ibid separately for not furnishing the correct information in respect of turnover of the taxable services provided by them in prescribed periodical ST-3 returns as well as under Section 78 of the Finance Act, 1994 for failure to pay service tax and suppression of actual value of taxable services provided to their clients with clear intent to evade payment of service tax leviable thereon.

#### 17. CONTRAVENTION OF PROVISIONS OF FINANCE ACT, 1994 AND RULES FRAMED THERE UNDER:-

17.1 In light of the facts discussed hereinabove and the material evidences available on records, it is revealed that M/s. Karnavati have contravened the following provisions of Chapter V of the Finance Act, 1994 and the Rules made thereunder read with Section 174 of the CGST Act, 2017 with an intent to evade payment of Service Tax in respect of the consideration received towards providing taxable services provided by them. They have:

(a) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable services viz. "Pandal or Shamiana service" by not considering the taxable value of services, so provided, that was received in cash while computing their service tax liability.

(b) Section 68 of the Finance Act, 1994 in as much as they failed to make payment of service tax liability of Rs. 1,27,32,811/- on the services provided by them during the period April-14 to June-17, in such manner and within the period prescribed;

(c). 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 furnish proper periodical returns mentioning the particulars of the aforesaid taxable service provided by them;

(d) Rule 4A of Service Tax Rules, 1994, in as much as they failed to issue invoice giving correct details of the taxable value of the service provided by them by not including the cash portion of taxable value recovered by them from their clients

(e) Rule 5 of the Service Tax Rules, 1994, in as much as they failed to maintain proper records regarding actual taxable value of the services provided by them.

18. And whereas M/s. Karnavati, have failed to discharge the applicable Service Tax on the unaccounted cash amount towards providing taxable services during the period from April 2014 to June 2017. By their willful act of suppression and mis-declaration of facts with sole intention to evade Service Tax, the extended period of five years, as provided in proviso of sub-section (1) of Section 73 of Finance Act, 1994 is invocable for demanding the Service Tax for the period from April 2014 to June 2017 in the subject matter. Accordingly, the Service Tax including Cess of Rs. 1,27,32,811/- (Rupees one crore twenty seven lakh thirty two thousand eight hundred eleven only) evaded by M/s. Karnavati, during the period from April 2014 to June 2017, on the aforesaid taxable services, is required to be recovered from M/s. Karnavati by invoking extended period of five years, under proviso to sub-section (1) of Section 73 of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994. Consequently, M/s. Karnavati also appeared to be liable to pay interest as per Section 75 of the Finance Act, 1994 on the aforesaid evaded service tax.

19. The Service Tax including cess amount of Rs. 25,00,000/- paid in cash vide various DRC-03 challans by M/s Karnavati during investigation, needs to be appropriated against their outstanding Service Tax liability.

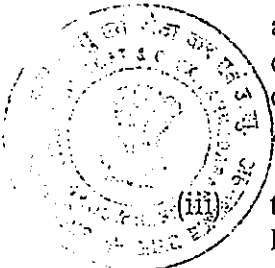
20. The above said Service Tax liabilities of M/s. Karnavati, for the period from April 2014 to June 2017, have been worked out on the basis of data/information withdrawn during search and received from M/s. Karnavati. Thus, the present notice relates exclusively to the information available on record.

21. Therefore, M/s Karnavati Light and Sound, G-99/1177, Shivam Apartment, Near Vyasvadi, Nava Wadaj, Ahmedabad were called upon to show cause to the Additional/Joint Commissioner, CGST, Ahmedabad North, as to why:-

(i) The total amount of Rs. 17,10,21,019/- received by them during the F.Y. 2014-15 to 2017-18 (upto June 2017) should not be treated as their total taxable income out of which the amount of Rs. 9,03,74,038/- after deduction of the taxable income already reflected in their ST-3 Returns should not be treated as their unaccounted cash receipt towards providing taxable services and applicable service tax should not be demanded and recovered from them under the proviso to Section 73(1) of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994, read with Section 174 of CGST Act, 2017;

(ii) The service tax amounting to 1,27,32,811/- (Rupees one crore twenty seven lakh thirty two thousand eight hundred eleven only) evaded by M/s. Karnavati Light and Sound short/non paid corresponding to the un-accounted cash income received during the period from April-2014 to June-2017 as shown above, should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994;

(iii) the Service Tax including cess amount of Rs. 25,00,000/- voluntarily paid in cash vide DRC-03 challans by M/s Karnavati during investigation, should not be appropriated against their outstanding Service Tax liability;



- (iv) interest should not be demanded and recovered from them under Section 75 of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 on the Service Tax liability mentioned at Sr. No. (ii) above;
- (v) penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for non-payment of Service Tax by due dates in contravention of the provisions of Section 68 of the Act and the Rules made thereunder read with Section 174 of CGST Act, 2017;
- (vi) penalty should not be imposed upon them under the provisions of Section 77 (1) (b) on account of failure to keep, maintain or retain proper books of accounts and other documents as required in accordance with the provisions of this chapter of the rules;
- (vii) Section 77(1)(e) of the Finance Act, 1994 for issuance of incorrect invoices by way of not reflecting the total amount charged (including the cash amount) and also for failing to account for the total income received towards providing taxable services in their books of accounts as required in accordance with the provisions of this chapter of the rules;
- (viii) penalty for suppression and mis-declaration of correct taxable value and evasion of Service Tax with deliberate intention to evade Service Tax on the aforesaid taxable services should not be imposed upon them under Section 78 of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017.

22. The Noticee were also given option to pay the Service Tax along with applicable interest within 30 days from the date of service of the Show Cause Notice, the amount of penalty shall be 15% of the tax demanded and proceedings in respect of such Service Tax, interest and penalty shall be deemed to be concluded in terms of clause (i) of the second proviso to Section 78(1) of the Finance Act, 1994 provided amount of reduced penalty is also paid within 30 days of service of this Show Cause Notice.

### DEFENCE REPLY:

23. M/s. Karnavati Light and Sound vide letter dated January 05, 2021, have submitted their reply to the Show cause notice. In their reply first they have given facts of the case in 5 points and then given their submissions under heading "submissions by the noticee". In first 10 points of this heading they have given their reply and thereafter they have discussed the applicability of interest and penalty with a number of case laws and requested to drop the proceedings. The first 10 points are reproduced here as this forms the core contention of the noticee against the SCN and it is compulsory to deal with it in light of provisions of Finance Act-1994 and relevant rules-

#### " SUBMISSIONS BY THE NOTICEE

1. Workflow of the services provided by the noticee can be understood as under:
  - (i) Prospective customer approaches to the noticee to receive the services.
  - (ii) Noticee provides with the estimates. Such estimates are prepared in excel sheets and it is quite logical that such estimates do not form part of accounting till the service provision and consideration is finalized.
  - (iii) The rates are negotiated by the prospective customers and then rates are finalized depending upon the date on which such services are proposed to be provided.
  - (iv) After the provision of services, Mr. Ashish Sharma instructs the back office worker Ms. Hirva Vyas for raising invoice and invoice is prepared by Ms. Hirva Vyas according to instructions received from the proprietor, Mr. Ashish Sharma.
  - (v) After the invoice is raised, such invoice is received by Mr. Daxesh Kadia, the accountant for booking such invoice in books of accounts.

2. It is submitted that upon raising of invoice, no further reduction is done, and consideration is received according to the invoice raised upon the customer.
3. The excel working that is relied upon by the Ld. Officers of DGGI is merely the file in which estimates are prepared for prospective customers of the noticee

**A. Two different statement from two different employees:**

4. During investigation done by DGGI, statements were recorded of Mr. Daxesh Kadia, Accountant of the noticee and Ms. Hirva Vyas, back office worker of the noticee on 22.08.2019. In statement of Ms. Hirva Vyas, she stated that she prepared the invoices as per instructions from Mr. Ashish Sharma, proprietor of the firm and there was not mention of cash being collected. She also stated that she was not aware of any cash dealings but the invoice made by her was finally booked in books of accounts and she denied about the concept of cash amount and cheque amount. While in statement of Mr. Daxesh Shah, who was merely an accountant and used to account for the invoices prepared by Ms. Hirva Shah, stated that 'difference' mentioned in the excel sheets are the amount collected in cash. It is submitted that both, Ms. Hirva Vyas and Mr. Daxesh Kadia are having different roles in the firm and both the roles are related to invoicing and its accounting. In Ms. Hirva Vyas statement, it was stated that she raised invoices and handed over them to Mr. Ashish Sharma and she also stated in her statement that she was not aware about any cash transaction happening. Hence, in the investigation carried out by DGGI, there are two contradictory statements of two different employees of the noticee; wherein one employee states that difference column mentioned in the excel sheet is for the cash amount while another employee who prepares final invoices is unaware about any such cash amount collected over and above the final invoice prepared by her. Hence, such statement of accountant Mr. Daxesh Kadia cannot be relied upon. The noticee shall be filing affidavit regarding denial of the statement recorded of the proprietor Mr. Ashish Sharma and stating that there was no amount received over and above the receipts that are shown in books of accounts.

**B. Except the excel sheet there is no corroborative evidence**

5. It is submitted that except the statements of the accountant Mr. Daxesh Kadia and of the proprietor Mr. Ashish Sharma recorded during the search proceedings there is no further corroborative evidence with the Ld. Officers regarding suppression of the value of services provided.
6. It is submitted that for confirming demand of service tax there must be some corroborative evidence like statement of service recipient who agrees that such cash payment was made to the noticee. However, there is no such corroborative evidence except the statement of accountant which was forcibly confirmed by the proprietor. Hence, it can be said in investigation done by DGGI, if we do not take into consideration the statements of accountant and proprietor then there is no evidence produced by the officers wherein it can be said that the noticee has collected such extra amount from the recipient of service. Merely on the basis of an excel working which is used for giving estimates to the prospective customers, service tax cannot be demanded.
7. Similar issue was dealt by Bombay High Court in case of Godavari Khore Cane Transport Co. Vs. Commr. of Central Excise 2013 (29) STR 31 (Bom) wherein, it was held by Bombay High Court as under:

*"2. Admittedly the service tax demand confirmed by the adjudicating authority has now been collected by the appellant-assessee and paid to the Revenue. Counsel for the appellant-assessee states that the assessee is agitating the issue of leviability of service tax not with a view to seek refund of the tax paid but with a view to agitate the levy of interest and penalty. Counsel for the appellant-assessee, on instructions, states that if on merits levy of service tax is held not leviable and consequently it is held that interest and penalty is not leviable, then, the assessee would not claim refund of service tax already collected and paid to the Revenue. The statement is accepted.*

**3. It is not in dispute that although the employee of the assessee during the course of recording statement had admitted and expressed willingness to pay service tax, in the affidavit-**

*in-reply to the show-cause notice, the liability to pay service tax was specifically denied and even before the adjudicating authority it was contended that service tax was not leviable. Though documentary evidence in that behalf were not produced before the adjudicating authority, the same was produced before the CESTAT and argued that the levy of service tax for the period involved herein is unjustified.*

*However, the CESTAT based on the statement of the employee of the assessee has upheld the levy of service tax without considering the merits of the case and without considering the documents furnished by the assessee. It is well established in law that it is open to the assessee to demonstrate on the basis of the documentary evidence that the statement recorded is erroneous. In these circumstances, in our opinion, it would be just and proper to set aside the impugned order of the CESTAT dated 28<sup>th</sup> April 2011 [2012 (26) S.T.R. 310 (T)] and restore the appeals to the file of the CESTAT for fresh decision on merits. Accordingly, the impugned order of CESTAT in so far as it relates to confirming the duty, interest and penalty is quashed and set aside and the matter is restored to the file of CESTAT for fresh decision on merits.*

*4. It is made clear that if on remand the CESTAT comes to the conclusion that the service tax is not leviable for the disputed period and consequently interest and penalty is not leviable, then and in that event the assessee shall not claim refund of service tax already collected and paid to the Revenue. It is further made clear that the order of the Tribunal in deleting the penalty in one appeal being not disturbed, the same would attain finality. All contentions of both the parties are kept open and the Tribunal shall not confirm the interest and penalty in the remaining two appeals merely because the assessee has subsequent to the initiation of proceedings collected and paid the service tax to the Revenue."*

Hence, it submitted that the demand of service tax should not be based merely upon the excel workings and statement recorded but there also need to be some other corroborative evidence. Mere allegation based on estimates prepared by the noticee should not be the only basis for demanding service tax.

**C. No Cash was found at the premises of the noticee**

8. Notwithstanding anything submitted above, it is submitted that in show cause notice, it is alleged everywhere that the noticee is in receipt of cash from its customers. However, during search proceedings by DGGI at the premises of the noticee, no cash was found based on which such allegation of nonpayment of service tax is made.
9. Hence, it can be deduced that the amount received in cash as alleged by the officers based on statement recorded and excel working should not be accepted.

**D. No recipient of service is mention in Show Cause Notice**

10. Service Tax is levied by charging section 66B of Finance Act, 1994, reproduced as under:

*"66B Charge of service tax on and after Finance Act, 2012 There shall be levied a tax (hereinafter referred to as the service tax) at the rate of 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."*

As per section 66B, service tax can be levied where activity is done by one person for another person. However, in the show cause notice it is alleged that services are provided by for the difference amount mentioned in the excel sheets but there is no mention about the person who has received such services. Without mention of the person who has received services, there can be no levy of service tax. And it is again submitted that there is no further corroborative evidence or statement of person receiving services or any other proof of noticee receiving the cash amount in excess of invoices raised. "

**PERSONAL HEARING:**

24. Personal hearing in this case was fixed on a number of dates and Shri Amish Khandhar, CA along with Shri Rashmin Vaja, CA appeared for the personal hearing fixed on 22.02.2021. They reiterated their submission dated 05.01.2021 in reply to the show cause notice and requested to drop the case.

**DISCUSSION AND FINDINGS:**

25. I have carefully gone through the records of the case, submissions made by M/s. Karnavati in reply to the show cause notice and personal hearing.

26. It was alleged in the Show Cause Notice that M/s Karnavati was evading payment of Service Tax by resorting to suppression of taxable value of the services provided by them to their clients by way of collecting certain portion of such taxable value, of the services so provided, in cash which was not accounted for in their books of accounts and was also not considered at the time of computing and discharging service tax by them.

27. In reply to the Show Cause Notice, the assessee has contented that two different statement from two different employees should not be the basis for demanding Service Tax. They stated that during investigation done by DGGI, statements were recorded of Mr. Daxesh Kadia, Accountant of the noticee and Ms. Hirva Vyas, back office worker of the noticee on 22.08.2019. In statement of Ms. Hirva Vyas, she stated that she prepared the invoices as per instructions from Mr. Ashish Sharma, proprietor of the firm and there was no mention of cash being collected. She also stated that she was not aware of any cash dealings but the invoice made by her was finally booked in books of accounts and she denied about the concept of cash amount and cheque amount. In the statement of Mr. Daxesh, who was merely an accountant and used to account for the invoices prepared by Ms. Hirva, stated that 'difference' mentioned in the excel sheets are the amount collected in cash. M/s Karnavati submitted that both, Ms. Hirva Vyas and Mr. Daxesh Kadia are having different roles in the firm and both the roles are related to invoicing and its accounting. In Ms. Hirva Vyas statement, it was stated that she raised invoices and handed over them to Mr. Ashish Sharma and she also stated in her statement that she was not aware about any cash transaction happening. Hence, in the investigation carried out by DGGI, there are two contradictory statements of two different employees of the noticee; wherein one employee states that difference column mentioned in the excel sheet is for the cash amount while another employee who prepares final invoices is unaware about any such cash amount collected over and above the final invoice prepared by her. Hence, such statement of accountant Mr. Daxesh Kadia cannot be relied upon.

28. M/s Karnavati submitted that except the statements of the accountant Mr. Daxesh Kadia and of the proprietor Mr. Ashish Sharma recorded during the search proceedings there is no further corroborative evidence with the Department regarding suppression of the value of services provided. The assessee has also stated that except the excel sheet, there is no corroborative evidence against them and the present show cause notice is not sustainable. They submitted that for confirming demand of service tax there must be some corroborative evidence like statement of service recipient who agrees that such cash payment was made to the noticee. However, there is no such corroborative evidence except the statement of accountant which was forcibly confirmed by the proprietor. Merely on the basis of an excel working which is used for giving estimates to the prospective customers, service tax cannot be demanded.

M/s. Karnavati relied the case of Bombay High Court in case of Godavari Khore Cane Transport Co. Vs. Commr. of Central Excise 2013 (29) STR 31 (Bom) and stated that the demand of service tax should not be based merely upon the excel workings and statement

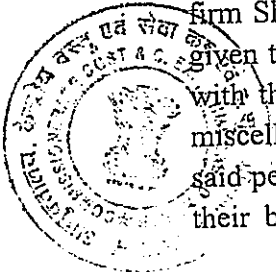
recorded but there also need to be some other corroborative evidence. Mere allegation based on estimates prepared by the noticee should not be the only basis for demanding service tax.

30. M/s. Karnavati further stated that no cash was found at their premises during the search operations. Therefore, statements recorded and excel working sheet found should not be accepted and should not be relied for demanding the Service Tax. They also stated that no recipient of Service is mentioned in Show Cause Notice. They further stated that as per section 66B, service tax can be levied where activity is done by one person for another person. However, in the show cause notice it was alleged that services are provided by for the difference amount mentioned in the excel sheets but there is no mention about the person who has received such services. Without mention of the person who has received services, there can be no levy of service tax. They reiterated that there was no further corroborative evidence or statement of person receiving services or any other proof of noticee receiving the cash amount in excess of invoices raised.

31. I find that during the course of investigation it was revealed that the details of estimates/bills for providing taxable services to different clients at different event venues were stored in Excel files recovered from the pen drive. Out of the total amount mentioned in the said Excel files, certain amount which were paid in cheques were recorded in the books of accounts of M/s Karnavati. The same were considered for the purpose of calculation of Service Tax liability and Service Tax had been discharged on the same. But a portion of the remaining amount was received by M/s Karnavati in cash. The said cash amount was not reflected anywhere in their books of accounts and no Service Tax liability had been discharged on such un-accounted cash receipts. The non-consonance of the figures reported across different financial records maintained by M/s Karnavati during the period from FY 2014-15 to FY 2017-18 (upto June-17), revealed that M/s Karnavati had willfully suppressed and mis-stated their actual taxable income in the periodical ST-3 returns filed by them during the aforesaid period with the sole intention to evade payment of Service Tax. Storing of separate data in Excel sheet and recovering the same during the search operation was not denied by M/s. Karnavati .

32. The DGGI officers during the course of investigation in the case conclusively established that by resorting to such modus-operandi, M/s Karnavati had willfully mis-stated and suppressed the actual quantum of their taxable turnover during the period from FY 2014-15 to FY 2017-18 (up to June-17) with the sole intention to evade the payment of applicable Service Tax. M/s Karnavati have confessed/admitted that they have short-paid/not paid service tax on the above referred service provided by them. Investigation further revealed that M/s. Karnavati had evaded a net Service Tax liability of Rs. 1,27,32,811/- (Rupees one crore twenty seven lakh thirty two thousand eight hundred eleven only) by way of not including the un-accounted cash receipts towards providing taxable services in the ST-3 Returns filed by them and not discharging the service tax on such un-accounted cash receipts. During investigation, M/s Karnavati had agreed to the above modus adopted by them for evading payment of service tax and Shri Ashish Sharma, Proprietor of M/s Karnavati admitted these facts in his voluntary statement recorded on 22.08.2019 and 16.10.2019.

33. Further, Shri Ashish Sharma, Proprietor of M/s Karnavati, informed that the pen drive which was recovered from him during search proceedings contained the accounting data of their business for the F.Y. 2014-15 onwards. The data in the pen drive was entered and maintained by the Accountant of M/s Karnavati, Shri Daxesh Kadia on the directions of the proprietor of the firm Shri Ashish Sharma. The data contained in the pen drive included the details of estimates given to all the parties for various functions organized by them, final settlement amount, details with the party, details of cheque as well as cash receipts from various parties and also other miscellaneous files were stored in the pen drive. He also informed that the data available in the said pen drive contained the details of their total taxable income. Part of which was reflected in their books of accounts and Service Tax was discharged on the same. The pen drive also





contained the details of un-accounted cash receipts on which no Service Tax was paid by them. Subsequently, the officers took the printouts of the relevant pages of the said pen drive and withdrew the same along with other relevant records and the said pen drive from the office premises of M/s. Karnavati under the reasonable belief that the same will aid in investigation of the case.

34. Moreover, in the statement of Ms. Hirva Vyas, Back Office Worker, Shri Daxesh Kadia, Accountant and Shri Ashish Sharma, Proprietor of M/s Karnavati recorded under the provisions of Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and Section 70 and 174 the CGST Act, 2017, on 22.08.2019, admitted that her role in the firm was to prepare the bills/invoices on the directions of Shri Ashish Sharma. She used to hand over the printed Excel sheets to the Accountant of the firm, Shri Daxesh Kadia.

35. In his statement Shri Daxesh Kadia, Accountant of M/s Karnavati recorded on 22.08.2019 for analysis of the records withdrawn under panchnama drawn at their office premises stated that he was the Accountant of M/s Karnavati Light & Sound. His role was to prepare the bills/invoices containing the details of Service Tax/ GST and these bills are printed in the letter head of the firm. He was also responsible for maintaining the books of account of the firm and also responsible for handling the cash in the firm. He worked under the supervision and direction of the Proprietor of the firms, Shri Ashish G. Sharma. He further stated that he entered and maintained the data contained in the excel sheets stored in the pen drive withdrawn under Panchnama dated 21-22.08.2019. The details contained therein reflect the actual value of services provided, details of payment received in cash and/or cheque by M/s Karnavati. He also stated that in the said pen drive, the excel work books were maintained year-wise as well as party wise and event wise. In each of the Excel Workbook, the worksheets were prepared showing the details of a particular party/client. The total amounts shown in the excel worksheet comprise of the Actual Amount, i.e. the total amount quoted by them. The Final Amount, i.e. the amount finally received by them after negotiation. The Bill amount, i.e. the amount for which invoices were to be raised and were to be considered for payment of Service Tax/GST and the Difference (cash) amount, i.e. the amount, which was received in cash and which was not taken into account for calculation of tax purpose. Such amount did not form part of the Balance Sheet and no Service Tax was paid against such amounts received in cash.

36. As per the statement of Shri Ashish Sharma and on scrutiny of the documents withdrawn during search, it is noticed that M/s Karnavati used to record all their business transactions in the following form :

- (i) In the excel sheets they used to record the estimated bills of services to be provided to a party at a particular venue on a particular date along with the requirement of the clients, viz. no. of light, sound system etc. with corresponding quantity, rate and amount.
- (ii) Such excel sheets were further summarized in another excel sheets venue-wise or party-wise. The summary sheets thus prepared gave the summarized details of the services provided by M/s Karnavati to its clients on a particular Financial year.
- (iii) Final settlement with the parties were recorded in another excel sheets, wherein the details of amount quoted, function wise/month wise were mentioned along with the details amount to be received in cash or cheque. The details of finally settled amount was also mentioned in some of these sheets. These sheets also contained the details of outstanding payment after final settlement.

It was revealed that the modus operandi adopted by M/s Karnavati to evade the payment of service/tax, the investigation was carried out to their major service recipients, viz. M/s Green Leaves Management Pvt. Ltd and M/s Poojan Décor by way of issuance of summons to them for recording their statements. A statement of Shri Pinkal Dandwala, Director of M/s Green Leaves Management Pvt. Ltd and Partner of M/s Poojan Décor was recorded on 16.10.2019. In his

statement Shri Pinkal Dandwala confirmed the content of the statement dated 16.10.2019 of Shri Ashish Sharma in respect to the references made by him about M/s Green Leaves Management Pvt. Ltd. and M/s Poojan Decorators.

38. The worksheet prepared on the basis of the printouts of the excel sheets withdrawn under panchnama dated 21-22.08.2019 were got verified from Shri Ashish Sharma, Proprietor of M/s Karnavati during his statement dated 16.10.2019. In his statement, Shri Ashish Sharma stated that at the time of final settlement certain deductions were made by the party. He also stated that the outstanding amount shown in such final settlement sheets were never received by them. However, he failed to produce documents with respect to any such reduction in the billed amount.

39. As per Sr. No. 3(a) of Point of Taxation Rules, 2011, the Point of taxation would be "the time when the invoice for the service provided or agreed to be provided is issued". In the instant case, the initial estimated bills raised by M/s Karnavati to their clients showing the details of services to be rendered, are issued for the taxable services to be provided by them. Though proper invoices for all the amount shown in these estimated bills were not issued but since these bills reflected the total amount of taxable services to be provided by M/s Karnavati to their clients and contain all the details as required in proper invoice, except the tax component, they may be considered as invoices towards providing taxable services by M/s Karnavati and Service tax is leviable on all such bills.

40. As per Section 65B (44) of the Finance Act, 1994 defines 'service' as any activity carried out by a person for another person for a consideration, and not falling under the categories of activities stipulated under Section 66D of the Finance Act, 1994. The term 'service' also includes declared services stipulated under the provisions of Section 66E of the Finance Act, 1994. From the above provision it is clear that services provided in this case are taxable services as the same are not covered under Negative List of activities as stipulated under Section 66D of the Finance Act, 1994.

Section 67 of the Finance Act, 1994 lays down the provisions for valuation of any taxable services and the same is as given below;

**SECTION 67. Valuation of taxable services for charging service tax. —**

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —

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

(ii) 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.

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

Explanation. — For the purposes of this section, —

(a) "consideration" includes —

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

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

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

(b) [ \* \* \* \* ]

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

In view of the above provisions, the total consideration received by the noticee in cash from their clients for providing taxable services is required to be added to the consideration they received through cheque to arrive at the actual taxable value.

Section 68 of the Finance Act, 1994 stipulates that every person providing taxable service to any person shall pay service tax at the specified rate within prescribed period.

Section 70 of the Finance Act 1994 read with Rule 7 of the service Tax Rules, 1994 specify that every person liable to pay the service tax should himself assess the tax due on the services provided by him and file correct and proper prescribed returns.

41. In view of the investigation carried out by the DGGI Officials and the outcome of the investigation arrived at from the documents, statements and legal provisions mentioned above, it is clear that M/s. Karnavati is liable to pay Service Tax on the entire income received by them as per the estimated bills raised by them, which also include the income shown in their Sales Ledger during the period from April, 2014 to June, 2017 after deducting the Service Tax liability already discharged by them and reflected in the periodical ST-3 Returns filed by them.

42. I find that M/s Karnavati has denied the charges leveled in the show cause notice on the ground that merely admitting in the statement of two persons should not be the basis for issuing Show Cause Notice. I find the statement of their employees and Partner was recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1944 and Section 70 and 174 of the CGST Act, 2017 is a valid statement before a Court of law. Further, contents of their statement has been confirmed by their service recipients M/s. Green Leaves Management Pvt. Ltd and M/s. Poojan Décor. Under the circumstances, I find that their contention is baseless and an act of after-thought.

43. M/s Karnavati has submitted that when no Service Tax is payable, the question of interest does not arise. I find that this is a clear cut case of evasion of Service Tax. Therefore, they are liable to pay Service Tax to the tune of Rs.1,27,32,811/- along with interest. They also stated that penalty under Section 76,77 and 78 of the Finance Act, 1994, is not imposable on them and also extended period can not be imposed on them. I find that based on investigation conducted by the DGGI officers, documentary evidences, statements of their employees and the legal provision, the Service Tax to the tune of Rs.1,27,32,811/- has been evaded by M/s Karnavati . The said amount of Service Tax is required to be recovered from them along with interest and penalty. Therefore, I find that the Department has rightly issued the show cause notice. Had the DGGI officers not conducted the investigation, the evasion of Service Tax to the tune of Rs.1,27,32,811/- would have gone unnoticed thereby causing huge loss to the Government exchequer.

44. In view of the facts discussed hereinabove and the material evidences available on records, it is evident that M/s Karnavati have contravened the following provisions of Chapter V of the Finance Act, 1994 and the Rules made there under read with Section 174 of the CGST Act, 2017 with an intent to evade payment of Service Tax in respect of the consideration received towards providing taxable services provided by them. They have contravened:

- (a) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable services viz. "Pandal or Shamiana service" by not considering the taxable value of services, so provided, that was received in cash while computing their service tax liability.
- (b) Section 68 of the Finance Act, 1994 in as much as they failed to make payment of service tax liability of Rs. 1,27,32,811/- on the services provided by them during the period April-14 to June-17, in such manner and within the period prescribed;
- (c) 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 furnish proper periodical returns mentioning the particulars of the aforesaid taxable service provided by them;
- (d) Rule 4A of Service Tax Rules, 1994, in as much as they failed to issue invoice giving correct details of the taxable value of the service provided by them by not including the cash portion of taxable value recovered by them from their clients
- (e) Rule 5 of the Service Tax Rules, 1994, in as much as they failed to maintain proper records regarding actual taxable value of the services provided by them.

45. M/s Karnavati, have failed to discharge the applicable Service Tax on the unaccounted cash amount towards providing taxable services during the period from April 2014 to June 2017. By their willful act of suppression and mis-declaration of facts with sole intention to evade Service Tax, the extended period of five years, as provided in proviso of sub-section (1) of Section 73 of Finance Act, 1994 is invocable for demanding the Service Tax for the period from April 2014 to June 2017 in the subject matter. Accordingly, the Service Tax including Cess of Rs. 1,27,32,811/- (Rupees one crore twenty seven lakh thirty two thousand eight hundred eleven only) evaded by M/s. Karnavati, during the period from April 2014 to June 2017, on the aforesaid taxable services, is required to be recovered from M/s. Karnavati by invoking extended period of five years, under proviso to sub-section (1) of Section 73 of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994. Consequently, M/s Karnavati also appeared to be liable to pay interest as per Section 75 of the Finance Act, 1994 on the aforesaid evaded service tax.

46. The Service Tax including cess amount of Rs. 25,00,000/- paid in cash vide various DRC-03 challans by M/s Karnavati during investigation, needs to be appropriated against their outstanding Service Tax liability.

47. As regards the issue of imposition of penalty under Section 76 of the Finance Act, 1994, I observe that penalty under Section 76 and 78 of the Finance Act, 1994 are mutually exclusive and once penalty under Section 78 is imposed, no penalty under Section 76 can be imposed in terms of the proviso inserted in Section 78 w.e.f 10.5.2008 in this regard.

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

#### ORDER

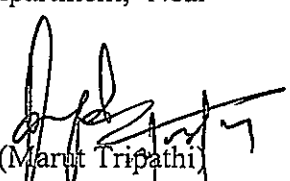
- (i) I order that the total amount of Rs. 17,10,21,019/- received by them during the F.Y. 2014-15 to 2017-18 (upto June 2017) be treated as their total taxable income out of which the amount of Rs. 9,03,74,038/- after deduction of the taxable income already reflected in their ST-3 Returns be treated as their unaccounted cash receipt towards providing taxable services and applicable service tax should be demanded and recovered from them under the proviso to Section 73(1) of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994, and Section 174 of CGST Act, 2017;



- (ii) I confirm the demand of service tax amounting to 1,27,32,811/- (Rupees one crore twenty seven lakh thirty two thousand eight hundred eleven only) under the proviso to Section 73(1) of the Finance Act, 1994;
- (iii) The Service Tax including cess amount of Rs. 25,00,000/- voluntarily paid in cash vide DRC-03 challans by M/s Karnavati during investigation, is appropriated and adjusted against their outstanding Service Tax liability;
- (iv) I order M/s. Karnavati to pay the interest on the amount confirmed under Section 75 of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 on the Service Tax liability mentioned at Sr. No. (ii) above;
- (v) I do not impose any penalty under Section 76 of the Finance Act, 1994 on M/s Karnavati.
- (vi) I impose a penalty of Rs.10,000/- on M/s Karnavati under Section 77 (1) (b) of the Finance Act, 1994.
- (vii) I impose a penalty of Rs.10,000/- on M/s Karnavati under Section 77(1)(e) of the Finance Act, 1994.
- (viii) I impose a penalty of Rs. 1,27,32,811/- upon M/s Karnavati under Section 78 of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017.

48. It is further clarified that in terms of Section 78 (1) of the Finance Act, 1994 if M/s Karnavati 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 shall be twenty-five per cent of the penalty imposed at Sr.No.(viii) above, subject to the condition that such reduced penalty is also paid within the period so specified.

49. The Show Cause Notice No. DGGI/AZU/Gr-A/36-102/2019-20 dated 19.10.2019 issued by the Joint Commissioner, Directorate General of Goods & Service Tax Intelligence, Zonal Unit, Ahmedabad to M/s. Karnavati Light & Sound, G-99/1177, Shivam Apartment, Near Vyaswadi, Nava Wadaj, Ahmedabad is disposed of in the above manner.

  
(Marut Tripathi)  
Joint Commissioner,  
Central GST & Central Excise,  
Ahmedabad North

F.No. STC/15-55/OA/2019

Date: 05.03.2021

By Regd. Post/A.D

To,

M/s Karnavati Light and Sound,  
G-99/1177, Shivam Apartment,  
Near Vyasvadi, Nava Wadaj,  
Ahmedabad.

Copy to:-

- (1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
- (2) The Joint Director, Directorate General of Goods & Service Tax Intelligence, Zonal Unit, Ahmedabad, 6<sup>th</sup> & 7<sup>th</sup> Floor, I-The Address, Near Sola Fly Over, Science City Road, Off : SG Highway, Ahmedabad -380060 .
- (3) The Deputy/Assistant Commissioner, Division-VII, CGST Ahmedabad North Commissionerate.
- (4) The Superintendent, CGST, Range-5, Division-VII, CGST Ahmedabad North Commissionerate.
- (5) Guard file.

