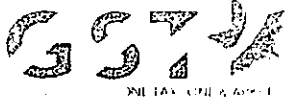


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN-20210364WT000000C61A

फा.सं./F.No. STC/15-49/OA/2019

आदेश की तारीख/Date of Order :- 17.03.2021

जारी करने की तारीख/Date of Issue :- 22.03.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 62/JC/ MT /2020-21

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या 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 केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु.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. STC/15-49/OA/2019 dated 15.10.2019 issued to M/s.3rd Eye Solutions, 54, Shree Sadguru Arvind Nagar, Opp: Sabarmati School, Chandkheda, Ahmedabad 380 019.



Brief Facts of the Case:

M/s. 3rd Eye Solutions, 54, Shree Sadguru Arvind Nagar, Opp. Sabarmati School, Chandkheda, Ahmedabad-38 019 (hereinafter referred to as "the said assessee") were engaged in providing taxable services as defined under Section 65B(44) of the Finance Act, 1994 in the category of 'Photography /Videography studio or agency service' and holding Service Tax registration number AILPK8454DSD002. Subsequently on implementation of GST, the said assessee has migrated into GST and is now holding GST Registration No. 24AAEHH7538GIZA.

2. On the basis of specific information that M/s.Saunak Films was not discharging their Service Tax liabilities properly, a search was conducted at the office premises of M/s. Saunak Films, 31, Rajami Complex, Nr. Sardar Patel Crossing, Naranpura Vistar, Ahmedabad on 14.09.2018 under panchnama proceedings. During the proceedings it was noticed that M/s 3rd Eye Solutions, registered with Service Tax with address at 54, Shree Sadguru Arvind Nagar, Opp. Sabarmati School, Chandkheda, Ahmedabad-38 019, holding Service Tax registration No. AILPK8454DSD002 is also operating from the office premises of M/s Saunak Films and providing the taxable service of "Photography /Videography Services". It was also noticed that they were providing taxable service of Photography and Videography to customers mostly Police Department. During the panchnama, Shri Tusharsinh Rajput, Proprietor of M/s Saunak Films informed that M/s 3rd Eye Solutions is also working from their premises and administration activities i.e. accounting, documentation, business transactions, issuance of sale invoices etc. are being maintained from the office premises of M/s Saunak Films. That they were filing Nil Service Tax returns during the period 2015-16 onwards. However, it is noticed that they were charging Service tax on the invoices issued by them. Certain documents such as sales invoices, contract copies were collected under Panchnama in presence of two independent panchas for further scrutiny.

3. A statement of Shri Tusharsinh Dineshsinh Rajput, Proprietor of M/s.Saunak Films 31, Rajami Complex, Nr.Sardar Patel Crossing, Naranpura Vistar, Ahmedabad, was recorded on 14.09.2018, wherein he has accepted the facts narrated under panchnama dated 14.09.2018 and stated that they are providing videography services to Election Commissioner, Gujarat Police and other Govt. agencies. He further stated that among the other videography firms, M/s 3rd Eye Solutions is also working from their premises, even though their registered premises was different. He further stated that they used to avail the service of Videography from M/s 3rd Eye Solutions in case they (Saunak Films) face shortage of staff. He further stated that his brother-in-law, Shri Hitesh Kantilal Kotak was the Proprietor of M/s 3rd Eye Solution.

4. Since M/s 3rd Eye Solutions was providing taxable service of Videography /photography and was charging and collecting Service Tax in their invoices however, they have not discharged their service tax liability. They were filing Nil ST-3 returns

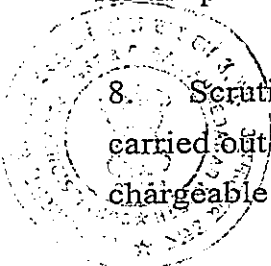
during the period and therefore, in order to obtain further details and evidence in the matter and to work out the quantum of Service Tax not paid by the said assessee, a letter dated 14.02.2019 was issued to them asking to pay up their service tax liability and to produce further details such as financial accounts, payment receipt details etc. vide letter F.No. V /18-25/34 Eye/Gr.III/Prev./2018-19 and subsequent reminder dated 10.04.2019. However, the assessee has not complied with the request and not paid any service tax or not given any documents as asked for. Since the said assessee has not responded to the correspondence made by this office, summons dated 30.05.2019, 28.06.2019 and 11.07.2019 were also issued to them to appear before the Superintendent (Prev.), GST & Cen. Excise, Ahmedabad-North. However, the assessee has not honored the Summons also. The assessee was not co-operating with the investigation carried out by the Department.

5. The Service Tax regime has been shifted from the concept of service wise classification and levy of service tax on specified services (selective taxation) to comprehensive taxation on services (excluding services in negative list or exempted services) with effect from 01.07.2012. Accordingly, the term "service" was defined under clause (44) of Section 65B of the Finance Act, 1994.

6. With the introduction of Negative List of Services with effect from 01.07.2012, the service wise classification has been done away with and the services which are liable to Service Tax are termed as "taxable service" as per Section 65B(44) of the Finance Act, 1994. On a reading the provisions of the Act, and the nature of service provided by the said assessee, it appeared that the service provided by them can be termed as 'taxable service' as defined under Section 66B(44) of the Finance Act, 1994. Further, the said service neither covered in the Negative List nor exempted by any Notification and therefore, the said assessee is liable to pay Service Tax on the consideration received by them. They also failed to respond to the correspondence made by the Department. Therefore, the services provided by the said assessee is a taxable service under Section 65B (44) of the Finance Act, 1994 and the consideration received by them are liable for Service Tax.

7. Even after repeated pursuance, the said assessee has not turned up for letters/summons issued by the Department and also they have not cooperated with the investigation initiated by the Department. Therefore, a worksheet showing the liability of their service tax has been prepared on the basis of records i.e. invoices collected during the Panchnama proceedings from the premises of M/s Saunak Films, for the period 2014-15 to 2017-18 (upto June-2017) which was attached with the show cause notice. As per the said worksheet, service tax liability has been worked out to an amount of Rs. 77,21,999/- for the period from 01.04.2014 to 30.06.2017.

8. Scrutiny of the documents gathered from the said assessee and investigation carried out in the matter revealed that they had rendered "Photography Service" which is chargeable to Service Tax. For doing these activities they have charged and collected



consideration. It is also noticed that they have also charged and collected Service Tax from the invoices, but not deposited with the Govt. and thereby evaded duty payment. Therefore, the said assessee was liable to pay Service Tax on the gross income / amount received from their customers. Thus, it appeared that the said assessee had not properly discharged their Service Tax liability from the consideration received by them.

9. It appeared that the act of non-assessment of tax liability at their own, non-payment of Service Tax and non filing of Service Tax Returns properly was a deliberate act on the part of the said assessee. Thus, it can be said that the said assessee was fully aware of their legal obligations and which they did not fulfill with the mala fide intention of evading payment of Service Tax.

CONTRAVENTION OF PROVISIONS:

10. According to Section 67 of the Finance Act, 1994, as amended, where Service Tax is chargeable on any taxable service with reference to its value, such value shall be the gross amount charged by the service provider for such service provided or to be provided by him. The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. Thus, the value to be considered for calculation of service tax was the gross amount charged for providing the taxable services. In the present case, the said assessee, was not paying the service tax on the gross amount charged for the taxable services rendered by them. In other words, they have not paid Service Tax on the gross amount charged / received for the taxable services provided by them and thereby contravened the provisions of Section 67 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994.

11. As per the provisions of the Finance Act, 1994 and the rules made thereunder, the service provider is required to assess correct value of the services provided by them as well as to pay Service Tax on the actual amount of consideration received by them for services rendered/received in due course as prescribed and to follow all the procedure laid down in the Act and Rules. In this case, the said assessee has failed to pay due Service Tax payable on the taxable value charged. They have failed to file correct ST-3 Returns for the taxable services rendered by them and suppressed the facts for the period in question. It, therefore, appeared that they have failed to make payment of Service Tax timely, as provided in Section 68 of the Act read with Rule 6 of the Rules *ibid*.

12. As per Section 68(1) of the Act, 'Every person providing taxable service to any person shall pay Service Tax at the rate specified in Section 66B in such manner and within such period as may be prescribed'. The manner and period of payment of Service Tax has been prescribed under Rule 6(1) of the Service Tax Rules, 1994. In this case, it appeared that the said assessee has not discharged Service Tax liability to the tune of Rs. 77,21,999 /- on the taxable value received during the period April -2014 to June-2017 and thereby, the said assessee has contravened the provisions of Section 68(1) of the Act, read with Rule 6 of the Service Tax Rules, 1994.

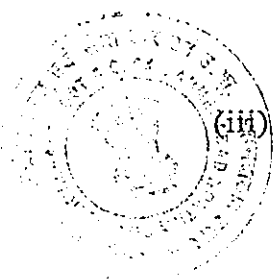
13. As per Section 70(1) of the Act, 'Every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed'. The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case it appeared that the said assessee has failed to file the ST-3 Returns properly by not including all the taxable value in the said return and thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994.

INVOCATION OF EXTENDED PERIOD

14. In view of the above discussion, it clearly comes out that all these material information and value of taxable services have been concealed from the department deliberately and consciously to evade payment of Service Tax by not declaring the amount received against the services rendered. Further, even repeated correspondence as well as Summon issued by the Department, the said assessee deliberately and conveniently refrained from tax compliance. All the above acts of contravention on the part of the service provider have been committed with an intention to evade the payment of Service Tax by suppressing the facts from the department. Therefore, service tax is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years time as the service provider has suppressed / not declared the nature and value of the taxable services. Thus, the total amount of Service Tax to the tune of Rs. 77,21,999/- on the differential taxable Income received and recorded in books of account by the said assessee is required to be recovered from them by applying the extended period of five years time.

15. From the foregoing paras and discussion made hereinabove, it appeared that from the said assessee, has contravened the following provisions:

- (i) Section 67 of the Finance Act, 1994 inasmuch as they have failed to assess and determine the correct value of Taxable Services provided by them, as explained in foregoing paras during the period from April-2014 to June-2017 as discussed in the paras hereinabove
- (ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch as they have failed to make the payment of Service Tax amounting to Rs. 77,21,999 /- on "Gross taxable Income" received and recorded in books of account by the said assessee under the taxable service category (Photography/Videography Service) as explained in foregoing paras during the period from April -2014 to June-2017 and failed to credit the tax in the Government Account within the stipulated time limit;
- (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they have failed to file their periodical ST-3



Returns properly;

- (iv) Proviso to Section 73(1) of the Finance Act, 1994 inasmuch as they have made willful mis-statement and deliberately suppressed material facts from the department in order to evade payment of Service Tax.

16. It appeared that the act of non-assessment of tax liability at their own and non-payment of Service Tax was a deliberate act on the part of the said assessee. It appeared that they have indulged in willful suppression of facts and not paid Service Tax. Thus, the said assessee has failed to self-assess the Service Tax payable correctly on the Taxable Value of income received. They have failed to file ST-3 Returns correctly as required under the Finance Act, 1994, and also failed to pay the Service Tax at the applicable rate on the Taxable Value. Thus, on going through the facts and circumstances of the instant case, it can be concluded that the said assessee has deliberately and willfully evaded payment of Service Tax on Taxable Income received.

17. Further, as non-payment of Service Tax is intentional and the material facts were deliberately suppressed from the department, the provisions of Section 73(1) are required to be invoked and accordingly, the amount of Service Tax of Rs.77,21,999/- not paid them is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994, as amended, by invoking extended period of five years time along with interest under Section 75 of the Finance Act, 1994.

18. As per Section 75 *ibid*, "Every person liable to pay tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest". Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the interest under Section 75 of the Finance Act, 1994.

PENALTY PROVISIONS:

19. It appeared that they are liable for penalty under Section 77(1) of the Finance Act, 1994 inasmuch as they have failed to appear before the Central Excise Officer in connection with the summons issued for appearance to give evidence or to produce a document during the course of the inquiry.

20. It appeared that they are liable for penalty under Section 77(2) of the Finance Act, 1994 inasmuch as they have failed to assess their actual Service Tax liability and also failed to file their correct ST-3 Returns from time to time, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

21. It appeared that the said assessee is liable for penalty under Section 78 of the Finance Act, 1994 inasmuch as they have willfully and intentionally suppressed the figures of taxable income and did not assess their Service Tax liability and had not paid

the required service tax and had suppressed the same. In doing so, the said assessee had not paid/ short paid service tax for the period April- 2014 to June-2017. It transpires that non- payment of Service Tax was deliberate and intentional. It is evident that they were aware of provisions of Finance Act 1994 and rules framed thereunder and that non compliances of provisions of Finance Act, 1994 and rules framed thereunder was deliberately intended. This appeared to leading to an impression beyond doubt that the act of non-payment of service tax was with the sole intent to evade payment of Service Tax. The above contraventions have been in total defiance of greater faith reposed under Service Tax provisions in the assessee, where it was expected that a tax payer would discharge their liability with due diligence. The said assessee has thus failed in honoring the liberalized provisions of Service Tax, by not honoring their liabilities during the course of rendition of taxable service under Photography /Videography service as discussed in above paras.

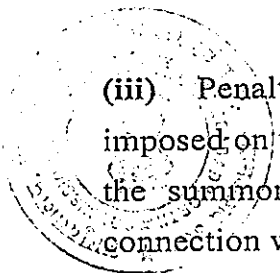
22. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed thereunder, on the part of the said assessee, have been committed by way of suppression of facts with the sole intention to evade payment of Service Tax and therefore, the said Service Tax not paid by them is required to be demanded and recovered under the proviso to Section 73(1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years time. All these acts of contravention of the provisions of Section 67, 68, 69 & 70 of the Finance Act, 1994, as amended, read with Rules 4, 6 and 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 77 & 78 of the Finance Act, 1994, as amended from time to time.

23. Therefore, M/s 3rd Eye Solutions, 54, Shree Sadguru Arvind Nagar, Opp. Sabarmati School, Chandkheda, Ahmedabad-38 019 were called upon to show cause to the Additional Commissioner, CGST & Central Excise, Ahmedabad-North, Ahmedabad, vide show cause notice F.No.STC/15-49/OA/2019 dated 15.10.2019 as to why:-

(i) The Service Tax amounting to Rs. 77,21,999/- (inclusive of Cess) (**Rupees Seventy Seven Lakhs Twenty One Thousands Nine Hundred Ninety Nine Only**) on the Taxable Service received during the period from April-2014 to June-2017 should not be demanded and recovered from them under proviso to Section 73(1) read with Section 68 of the Finance Act, 1994.

(ii) Interest on Service Tax liability at the prescribed rate should not be charged and recovered in terms of the provisions of Section 75 of the Finance Act, 1994 as amended from time to time;

(iii) Penalty under sub-Section (1) of Section 77 of the Finance Act, 1994 should not be imposed on them in as much as they failed to appear before the Central Excise Officer for the summons issued for appearance to give evidence or to produce a document in connection with the inquiry.



(iv) Penalty under sub-Section (2) of Section 77 of the Finance Act, 1994 should not be imposed on them in as much as they failed to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994;

v) Penalty under Section 78 of the Finance Act, 1994, as amended should not be imposed on them for suppressing the material facts of providing / receiving of Taxable Service from the department and for not disclosing the value of the said taxable service from the department with sole intention to evade payment of applicable Service Tax.

24. The show cause notice was issued under the purview of Section 38A of the Central Excise Act, 1944. Proceedings under the above mentioned provisions are saved by Section 174(2) of the Central Goods and Service Tax Act, 2017.

DEFENCE REPLY:

25. No reply has been submitted by the assessee to the show cause notice nor any request for extension has been received from them so far even though considerable time has been elapsed. Further, it is pertinent to mention here that the show cause notice in question has been delivered to the assessee on 22.10.2019 as per speed post 'track consignment' number EG191586529IN. It was clearly mentioned in para 25 of the show cause notice that "*if no cause is shown by them against the action proposed to be taken against them within 30 days on receipt of this show cause notice or if they do not appear before the adjudicating authority when the case is posted for personal hearing, the same would be liable to be adjudicated on the basis of evidences on records without any further communication to them*". The assessee not cared to submit reply/explanation to the show cause notice, it is presumed that they agreed with the charges leveled in the show cause notice and they have nothing to defend the case. Therefore, I am proceeding to adjudicate the case.

PERSONAL HEARING:

26. Personal hearing in this case was fixed on 05.01.2021, 08.02.2021 and 10.03.2021. The assessee did not turn up for the personal hearing even though virtual hearing was offered to them. Further, no communication has been received from them to postpone the hearing. Almost one and half years has been passed after the issue of the show cause notice. The assessee has neither submitted any reply to the show cause notice nor did they attend the personal including virtual hearing. Under the circumstances, I am taking up the matter for adjudication without wasting any further time.

DISCUSSION AND FINDINGS:

27. I have carefully gone through the case papers available on record. I find that show cause notice has been issued in this case on 15.10.2019 and dispatched through speed post. As per the speed post 'track consignment' number EG191586529IN, the said show

cause notice had been delivered the noticee on 22.10.2019. In the said show cause notice, it was clearly mentioned that "*if no cause is shown by them against the action proposed to be taken against them within 30 days on receipt of this show cause notice or if they do not appear before the adjudicating authority when the case is posted for personal hearing, the same would be liable to be adjudicated on the basis of evidences on records without any further communication to them*". Neither the assessee replied to the show cause notice nor any request for extension for submission of reply to the show cause notice has been received from them. Further, mandatory three chances for personal hearing were offered to them including virtual hearing. They did not avail the said opportunities. Since considerable time has been elapsed after issue of the show cause, I can not keep the case pending for decision for a longer period as substantial revenue is involved in the case. Therefore, due to the lack of co-operation on the part of the assessee, I have no option but to proceed with the adjudication ex-parte.

28. I find that the non payment of Service Tax by M/s.3rd Eye Solutions was booked on the basis of specific information that M/s.Saunak Films was not discharging their Service Tax liabilities properly. Therefore, a search was conducted at the office premises of M/s. Saunak Films, 31, Rajami Complex, Nr. Sardar Patel Crossing, Naranpura Vistar, Ahmedabad on 14.09.2018 by the Departmental Preventive officials under panchnama proceedings. During the proceedings it was noticed that M/s 3rd Eye Solutions, registered with Service Tax with address at 54, Shree Sadguru Arvind Nagar, Opp. Sabarmati School, Chandkheda, Ahmedabad-380 019, having Service Tax registration No. AILPK8454DSD002 is also operating from the office premises of M/s Saunak Films and providing the taxable service of "Photography /Videography Services". It was also noticed that they were providing taxable service of Photography and Videography to customers mostly Police Department. During the panchnama, Shri Tusharsinh Rajput, Proprietor of M/s Saunak Films informed that M/s 3rd Eye Solutions is also working from their premises and administration activities i.e. accounting, documentation, business transactions, issuance of sale invoices etc. are being maintained from the office premises of M/s Saunak Films. That they were filing Nil Service Tax returns during the period 2015-16 onwards. However, it is noticed that they were charging Service tax on the invoices issued by them. Documents such as sales invoices, contract copies were collected under Panchnama in presence of two independent panchas for further scrutiny.

29. Further, a statement of Shri Tusharsinh Dineshsinh Rajput, Proprietor of M/s.Saunak Films 31, Rajami Complex, Nr.Sardar Patel Crossing, Naranpura Vistar, Ahmedabad, was recorded on 14.09.2018, wherein he has accepted the facts narrated under panchnama dated 14.09.2018 and stated that they are providing videography services to Election Commissioner, Gujarat Police and other Govt. agencies. He further stated that among the other videography firms, M/s 3rd Eye Solutions is also working from their premises, even though their registered premises was different. He further stated that they used to avail the service of Videography from M/s 3rd Eye Solutions in

case they (Saunak Films) face shortage of staff. He further stated that his brother-in-law, Shri Hitesh Kantilal Kotak was the Proprietor of M/s 3rd Eye Solution.

30. M/s 3rd Eye Solutions was providing taxable service of Videography /photography and was charging and collecting Service Tax in their invoices however, they have not discharged their service tax liability.

31. I find that the assessee was asked to pay up the Service Tax liabilities vide letter dated 14.02.2019 and to produce further details such as financial accounts, payment receipt details etc. and subsequent reminder dated 10.04.2019. The assessee had not complied with the request and not paid any service tax or not given any documents as asked for. As they have not responded to the communications of the Department, summons dated 30.05.2019, 28.06.2019 and 11.07.2019 were also issued to them to appear before the Superintendent (Prev.), GST & Cen. Excise, Ahmedabad-North. However, they had not honored the Summons also. The assessee had not co-operated with the investigation carried out by the Department. Therefore, I find that the assessee, was directly involved in the evasion of Service Tax and the Department's finding that they were evading Service Tax got further evidence by their action of non-cooperation with the Department in the investigation.

32. I find that with the introduction of Negative List of Services with effect from 01.07.2012, the service wise classification has been done away with and the services which are liable to Service Tax are termed as "taxable service" as per Section 65B(44) of the Finance Act, 1994. As per the said provisions of the Act, and the nature of service provided by the said assessee, the service provided by them can be considered as 'taxable service' as defined under Section 66B(44) of the Finance Act, 1994. I also find that the services provided by the noticee have not covered in the Negative List nor exempted by any Notification. Therefore, I hold that the said assessee is liable to pay Service Tax on the consideration received by them. The assessee also failed to respond to the correspondence made by the Department. Therefore, I am of the view that the services provided by the said assessee is a taxable service under Section 65B (44) of the Finance Act, 1994 and the consideration received by them are liable for Service Tax.

33. I find that the said assessee has not turned up even after repeated letters/summons issued by the Department and also not cooperated with the investigation initiated by the Department. Accordingly, a worksheet showing the liability of their service tax was prepared by the Department on the basis of records i.e. invoices collected during the Panchnama proceedings from the premises of M/s Saunak Films, for the period 2014-15 to 2017-18 (upto June-2017) which relied in the show cause notice. The taxability has been worked out come to Rs. 77,21,999/- for the period from 01.04.2014 to 30.06.2017.

34. I find that on the basis of scrutiny of the documents retrieved from the said assessee and based on investigation carried out by the Department, it revealed that they had rendered "Photography Service" which is chargeable to Service Tax. For rendering

these services, they have charged and collected consideration. It also noticed during the investigation that they have also charged and collected Service Tax from the invoices, but not deposited with the Govt. and thereby evaded duty payment. Therefore, the said assessee was liable to pay Service Tax on the gross income / amount received from their customers as it appeared that the said assessee had not properly discharged their Service Tax obligation from the consideration received by them.

35. The act of non-assessment of tax liability at their own, non-payment of Service Tax and non filing of Service Tax Returns was a deliberate act on the part of the said assessee. The said assessee was fully aware of their legal obligations and which they did not fulfill with the mala fide intention of evading payment of Service Tax.

36. As per Section 67 of the Finance Act, 1994, as amended, where Service Tax is chargeable on any taxable service with reference to its value, such value shall be the gross amount charged by the service provider for such service provided or to be provided by him. The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. The value to be considered for calculation of service tax was the gross amount charged for providing the taxable services. In this case, the said assessee, was not paying the service tax on the gross amount charged for the taxable services rendered by them. In other words, they have not discharged the Service Tax obligation on the gross amount charged / received for the taxable services rendered by them and contravened the provisions of Section 67 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994.

37. As per Finance Act, 1994 and the rules made thereunder, the service provider is required to assess correct value of the services provided by them as well as to pay Service Tax on the actual amount of consideration received by them for services rendered/received in due course as prescribed and to follow all the procedure laid down in the Act and Rules. In this case, the said assessee failed to pay due Service Tax payable on the taxable value charged. They have also failed to file correct ST-3 Returns for the taxable services rendered by them and suppressed the facts for the period in question. Therefore, they have failed to make payment of Service Tax timely, as provided in Section 68 of the Act read with Rule 6 of the Rules *ibid*.

38. Section 68(1) of the Finance Act states that 'Every person providing taxable service to any person shall pay Service Tax at the rate specified in Section 66B in such manner and within such period as may be prescribed'. The manner and period of payment of Service Tax has been prescribed under Rule 6(1) of the Service Tax Rules, 1994. In the present case, the said assessee has not discharged Service Tax liability to the tune of Rs.77,21,999 /- on the taxable value received during the period April - 2014 to June-2017 and the said assessee had contravened the provisions of Section 68(1) of the Act, read with Rule 6 of the Service Tax Rules, 1994.

39. Further, as per Section 70(1) of the Act, 'Every person liable to pay the Service

Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed'. The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case the said assessee has failed to file the ST-3 Returns properly by not including all the taxable value in the said return and thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994.

40. In view of the above facts, it is obvious that all these material information and value of taxable services have been concealed from the department deliberately and consciously to evade payment of Service Tax by not declaring the amount received against the services rendered. Further, even repeated correspondence as well as Summons issued by the Department, the said assessee deliberately and conveniently refrained from tax compliance. All the above acts of contravention on the part of the service provider have been committed with an intention to evade the payment of Service Tax by suppressing the facts from the department. Therefore, service tax is to be recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years time as the service provider has suppressed / not declared the nature and value of the taxable services. The total amount of Service Tax to the tune of Rs. 77,21,999/- worked out on the differential taxable Income received and recorded in books of account by the said assessee is required to be recovered from them by applying the extended period of five years time.

41. In view of the discussion above, it is obvious that the said assessee, has contravened the following provisions:

(i) Section 67 of the Finance Act, 1994 inasmuch as they have failed to assess and determine the correct value of Taxable Services provided by them.

(ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch as they have failed to make the payment of Service Tax amounting to Rs. 77,21,999 /- on "Gross taxable Income" received and recorded in books of account by the said assessee under the taxable service category (Photography /Videography Service) during the period from April -2014 to June-2017 and failed to credit the tax in the Government Account within the stipulated time limit;

(iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they have failed to file their periodical ST-3 Returns properly;

(iv) Proviso to Section 73(1) of the Finance Act, 1994 inasmuch as they have made willful mis-statement and deliberately suppressed material facts from the department in order to evade payment of Service Tax.

42. The act of non-assessment of tax liability at their own and non-payment of Service Tax was a deliberate act on the part of the said assessee. They have indulged in

willful suppression of facts and not paid Service Tax. The said assessee failed to self-assess the Service Tax payable correctly on the Taxable Value of income received. They have failed to file ST-3 Returns correctly as required under the Finance Act, 1994, and also failed to pay the Service Tax at the applicable rate on the Taxable Value. On going through the facts and circumstances of the present case, it can be concluded that the said assessee has deliberately and willfully evaded payment of Service Tax on Taxable Income received.

43. Non-payment of Service Tax is intentional and the material facts were deliberately suppressed from the department, the provisions of Section 73(1) are required to be invoked and the amount of Service Tax of Rs. 77,21,999/- not paid them is to be recovered from them under the proviso to Section 73(1) of the Finance Act, 1994, as amended, by invoking extended period of five years time along with interest under Section 75 of the Finance Act, 1994.

44. The said assessee are liable for penalty under Section 77(1) of the Finance Act, 1994 inasmuch as they have failed to appear before the Central Excise Officer in connection with the summons issued for appearance to give evidence or to produce a document during the course of the inquiry.

45. They are liable for penalty under Section 77(2) of the Finance Act, 1994 inasmuch as they have failed to assess their actual Service Tax liability and also failed to file their correct ST-3 Returns from time to time, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

46. The said assessee is also liable for penalty under Section 78 of the Finance Act, 1994 inasmuch as they have willfully and intentionally suppressed the figures of taxable income and did not assess their Service Tax liability and had not paid the required service tax and had suppressed the same. The said assessee had not paid/ short paid service tax for the period April- 2014 to June-2017. The non- payment of Service Tax was deliberate and intentional. The said assessee were aware of provisions of Finance Act 1994 and rules framed thereunder and that non compliances of provisions of Finance Act, 1994 and rules framed thereunder was deliberately intended. It is beyond doubt that the act of non-payment of service tax was with the sole intent to evade payment of Service Tax. The above contraventions have been in total defiance of greater faith reposed under Service Tax provisions in the assessee, where it was expected that a tax payer would discharge their liability with due diligence. The said assessee has thus failed in honoring the liberalized provisions of Service Tax, by not honoring their liabilities during the course of rendition of taxable service under Photography /Videography service.

47. All the above acts of contravention by the assessee of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed thereunder, on the part of the said assessee, have been committed by way of suppression of facts with the

sole intention to evade payment of Service Tax and therefore, the said Service Tax not paid by them is required to be demanded and recovered under the proviso to Section 73(1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years time. All these acts of contravention of the provisions of Section 67, 68, 69 & 70 of the Finance Act, 1994, as amended, read with Rules 4, 6 and 7 of the Service Tax Rules, 1994 are punishable under the provisions of Section 77 & 78 of the Finance Act, 1994, as amended from time to time.

48. In the present case, I find that deliberate attempt has been made on the part of the assessee for evasion of Service Tax to the tune of Rs.77,21,999/- as is evident from the following incidents.

- i) The assessee operated their business from the premises of M/s.Saunak Films, in spite of the fact, they had their own registered premises.
- ii) They collected the Service Tax and not deposited with the Government
- iii) They have not filed the ST-3 Returns and not fulfilled the Service Tax liabilities.
- iv) The assessee has not provided the data requested by the investigating officers of the Department.
- v) They did not turned up/responded in spite of the fact that a number of letters and summons were issued to them.
- vi) They have not replied to the Show Cause Notice.
- vii) They did not turn-up for the personal hearing (including virtual hearing) on all three occasions.

49. Therefore, I find all the charges leveled in the Show Cause Notice are sustainable in the present case and the amount of Service Tax, interest are recoverable from them. They are also liable to pay penalty as discussed above. In view of the above facts discussed above and my findings, I pass the following orders:-

ORDER

(i) I confirm the Service Tax amounting to Rs. 77,21,999/- (inclusive of Cess) **(Rupees Seventy Seven Lakhs Twenty One Thousands Nine Hundred and Ninety Nine Only)** under Section 73(1) read with Section 68 of the Finance Act, 1994 and order the assessee to pay up the said amount immediately.

ii) I order M/s.3rd Eye Solutions to pay interest on Service Tax amount confirmed above under Section 75 of the Finance Act, 1994.

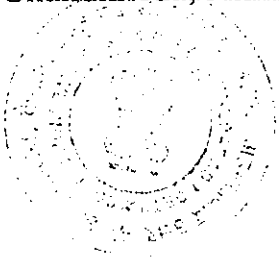
iii) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s.3rd Eye Solutions, Ahmedabad under Section 77(1) of the Finance Act, 1994.

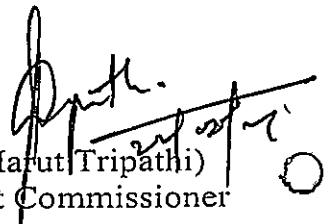
iv) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s.3rd Eye Solutions, Ahmedabad under Section 77(2) of the Finance Act, 1994.

v) I impose a penalty of Rs.77,21,999/- (inclusive of Cess) (Rupees Seventy Seven Lakhs Twenty One Thousands Nine Hundred and Ninety Nine only) on M/s.3rd Eye Solutions, Ahmedabad, under Section 78 of the Finance Act, 1994, as amended.

(vi) I further Order that in the event the entire amount confirmed as above is paid within thirty days from the receipt of this Order along with applicable interest, the amount of penalty liable to be paid by them shall be 25% (twenty five per cent) of the penalty imposed at Sr. No.(v) above, subject to the condition that such reduced penalty is also paid within the period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

50. The Show Cause Notice No.STC/15-49/OA/2019 dated 15.10.2019 issued to M/s.3rd Eye Solutions, 54, Shree Sadguru Arvind Nagar, Opp: Sabarmati School, Chandkheda, Ahmedabad 380 019 is disposed-of in the above manner.




(Marut Tripathi)
Joint Commissioner

F.No.STC/15-49/OA/2019

Date : 22/03/2021.

By Regd Post A.D.

To
M/s 3rd Eye Solutions,
54, Shree Sadguru Arvind Nagar,
Opp. Sabarmati School,
Chandkheda,
Ahmedabad-380 019

Copy to :

- (i) The Commissioner, Central GST & Central Excise, Ahmedabad North.
- (ii) The Deputy / Assistant Commissioner, CSGT & C.Ex, Division-VII, Ahmedabad-North.
- (iii) The Superintendent, CSGT & C.Ex, Range-V, Division-VII, Ahmedabad North.
- (iv) Guard File.