
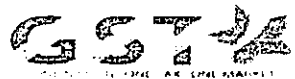


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009 E-mail:- qaahmedabad2@gmail.com</p>
फ़ोन नंबर/ PHONE No.: 079-27544557	फैक्स/ FAX : 079-27544463	E-mail:- qaahmedabad2@gmail.com

F.No:- STC/15-47/OA/2018

आदेश की तारीख/Date of Order : - 24.03.2021
जारी करने की तारीख/Date of Issue :- 24.03.2021

DIN No:20210364WT0000555A31

द्वारा पारित/Passed by:-

एम. एल. मीणा / *M.L.Meena*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 64/ADC/2020-21/MLM

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 दो महिनो के अन्दर आयुक्त (अपील), केन्द्रीय जी.एस.टी., केन्द्रीय जी.एस.टी. भवन, अंबावाड़ी, अहमदाबाद - 380015 को प्रारूप संख्या एसटी-4 (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 ST-4 to the Commissioner (Appeals), GST Bhawan, Ambawadi, Ahmedabad-380015 within two months 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 की धनराशि का प्रमाण देना आवश्यक है।

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

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एसटी-4 (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 जिस पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form 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/ The Show Cause Notice No. DGGI/AZU/36-44/2018-19 dated 08.08.2018 issued by the Additional Director, Directorate General of Goods & Service Tax Intelligence, Zonal Unit, Ahmedabad to M/s Secusafe Investigation Services Pvt. Ltd., Registered office at 11-A, Takshila Park, First Floor, Nr. Galaxy Cinema, N.H. No. 08, Naroda Road, Ahmedabad and Corporate office at A-1, Ajay Park Society, Waghodia Road, Vadodara.

Brief facts of the case-

M/s Secusafe Investigation Services Pvt. Ltd., Registered office at 11-A, Takshila Park, First Floor, Nr. Galaxy Cinema, N.H. No. 08, Naroda Road, Ahmedabad and Corporate office at A-1, Ajay Park Society, Waghodia Road, Vadodara (hereinafter referred to as M/s Secusafe for the sake of brevity) is a company engaged in providing "Security/Detective Agency Service" and "Manpower Recruitment and Supply Agency Service". They were registered with the erstwhile Service Tax provisions and holding Service Tax Registration No. AAFCS4217DST001.

2. Intelligence gathered by the officers of Directorate General of Goods and Services Tax Intelligence (Erstwhile Directorate General of Central Excise Intelligence), Ahmedabad Zonal Unit, Ahmedabad [herein after referred to as "DGGI" for the sake of brevity] indicated that M/s Secusafe was engaged in providing taxable services viz. "Security/Detective Agency Service" and "Manpower Recruitment and Supply Agency Service" and they were neither discharging their Service Tax liability properly nor were they filing their ST-3 Returns for the period from April 2016 onwards.

3. Acting on the above intelligence, inquiry against M/s. Secusafe was initiated under summons dated 02.02.2017 issued under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and documents relevant to the inquiry were called for. In response to the said summons and subsequent summons, M/s Secusafe submitted certain relevant documents viz. Balance Sheet, P&L Statement, Form 26AS, ST-3 Returns etc. in phases.

4. On scrutiny of the documents submitted by M/s Secusafe, it was observed that though the ST-3 Returns for the period upto March 2016 had been filed, significant variations were there in the figures shown in the 26AS, Profit & Loss Statement and the ST-3 Returns for the period from October 2012 to March 2016. Further it was observed that from April 2016 onwards, they had neither properly discharged their Service Tax liability nor had they filed the ST-3 Returns for the corresponding period. The reasons for the variations in the figures shown in the 26AS, Profit & Loss Statement and the ST-3 Returns for the period from October 2012 to March 2016 were not ascertainable on the basis of the documents submitted by M/s Secusafe and hence they were summoned to give their statement. They kept seeking extension without citing any concrete reasons. However, finally Statement of Shri Kiratsingh R. Tomar, Director of M/s Secusafe was recorded on 30.07.2018 by visiting their corporate office located at Vadodara.

5. In order to ascertain the reasons for variations in the taxable income shown in the 26AS, P&L Statement and ST-3 Returns and to arrive at their actual Service Tax liability, the corporate office of M/s Secusafe was visited by the officers of DGGI, AZU on 30.07.2018 to record the statement of Shri Kiratsingh R. Tomar, Director, M/s Secusafe Investigation Services Pvt. Ltd., Ahmedabad under the provisions of Section-14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and Section 174 of the CGST Act, 2017

6. From statement of Shri Kiratsingh R. Tomar, Director, M/s Secusafe, the following inevitable facts on record emerged-

(i) M/s Secusafe was engaged in providing taxable services of "Security/Detective Agency Service" & "Manpower Recruitment & Supply Agency Service". Apart from these services they were not engaged in providing any other services. Also they were not providing any exempted or non-taxable services and hence they were neither eligible for nor availing any type of exemptions;

(ii) Shri Tomar could not establish the reasons for the differences in taxable income shown in 26AS, P&L Statement and ST-3 Returns. However, showing his inability to produce the sales ledger and invoices, Shri Tomar stated that as the entire income shown in the 26AS (Which is the highest among all) is their actual consideration received towards providing taxable services, the same may be taken into account for Service Tax calculation purpose.

(iii) Shri Tomar admitted suppression of the actual taxable income by showing lesser taxable income in the ST-3 Returns filed by their company for the period from October 2012 to March 2016. Thereafter, they had not filed ST-3 Returns, as the total ST liability for the period was not discharged by them.

(iv) On the basis of all the above aspects, Shri Tomar admitted the outstanding Service Tax liability of their company M/s Secusafe for the period from October 2012 to June 2017 to be Rs. 1,90,73,841/-. Out of which they had already paid Service Tax of Rs. 33,23,729/- and Interest of Rs. 4,73,703/- during investigation.

7. **The following observations were made during the investigation :**

7.1 It appeared that M/s Secusafe had been willfully suppressing their taxable income in the ST-3 Returns by showing lesser taxable receipts in the ST-3 Returns filed for the period from October 2012 to March 2016. Further they had not properly discharged their Service Tax liability for the period from April 2016 onwards upto June 2017.

7.2 In his statement dated 30.07.2018, Shri Kiratsingh R. Tomar admitted suppression of the actual taxable income by showing lesser taxable income in the ST-3 Returns filed by their company for the period from October 2012 to March 2016. Thereafter, they had not filed ST-3 Returns, as the total ST liability for the period was not discharged by them.

7.3 It was also observed that M/s Secusafe showed reluctance in co-operation in investigation. They kept on seeking extensions and resorted to delaying tactics by not submitting the Sales ledgers and copies of invoices. They were also reluctant to appear for giving their statement. In order to record their statement to ascertain their actual Service Tax liability, Summons dated 24.07.2018 was issued to them to give their statement on 27.07.2018. In response to the summons, M/s Secusafe sent a letter dated 26.07.2018 through courier received

by DGGI, AZU on 27.08.2018 seeking extension for giving statement after 08.08.2018 without assigning any concrete reason for the same.

7.4 To counter the delaying tactics adopted by M/s Secusafe and in order to complete the investigation the officers of AZU visited their corporate office situated at Vadodara on 30.07.2018 for recording their statement. During visit to their corporate office, it was noticed that the Director of the Company, Shri Kiratsingh R. Tomar was present in the office. His presence in the office on 30.07.2018 and at the same time seeking extension of time beyond 08.08.2018 to give statement clearly indicates their malafide intention of avoiding payment of outstanding Service Tax liability by adopting delaying tactics. Had the officers of DGGI, AZU not visited the premises of M/s Secusafe for recording their statement, they would have kept on delaying the investigation proceeding to evade Service Tax liabilities.

7.5 Looking at the pattern of their non-cooperation during investigation, It was an established fact that M/s Secusafe kept on delaying the investigation proceedings by regularly seeking extension of time for submission of documents as well as giving statement. It clearly established their '*mens-rea*' to hide the facts from the department and evade Service Tax thereon.

7.6 Had the investigation not been initiated by DGGI, AZU, the assessee would have continued their practice of suppressing the taxable income in their ST-3 Returns causing short payment of Service Tax. On scrutiny of the documents submitted by M/s Secusafe, the delaying tactics adopted by them and from the statement dated 30.07.2018 of Shri Kiratsingh R Tomar, Director of M/s Secusafe, it clearly transpired that they were willfully suppressing their taxable income in the ST-3 Returns in order to evade Service Tax. It was seen that in every ST-3 Returns they had shown the lesser taxable value in comparison to the actual one. This showed their malafide intention by way of suppression of the facts thereby causing revenue loss to the Govt. exchequer.

8. M/s Secusafe had shown lesser taxable income in their ST-3 Returns for the period from October 2012 to March 2016 thereby making short payment of Service Tax. Thereafter from April 2016 to June 2017 they had not discharged their appropriate service tax liability and also not filed their ST-3 Returns. The outstanding Service Tax liability of M/s Secusafe was calculated by the DGGI officers and year-wise summary is given as under :

(Amt. in Rs.)

Sr. No.	F.Y.	As per 26AS		As per ST Return		Difference/Short payment	
		Basic	ST	Basic	ST	Basic	ST
1	2012-13 (Oct-Mar)	51256764	6335336	47577002	5880401	3679762	454935
2	2013-14	105175170	12999651	93165051	11515201	12010119	1484450
3	2014-15	109781000	13568932	97179340	12009394	12601660	1559537
4	2015-16	102304245	14382201	91151997	12794543	11152248	1587657

5	2016-17	81084960	12116723	0	0	81084960	12116722	
6	2017-18 (Apr-Jun)	15569954	2335493	0	0	15569954	2335493	
		465172093	61738335	329073390	42199539	136098703	19538796	
		ST Paid before initiation of investigation by DGGI					464955	
		Outstanding ST liability					19073841	

8.1 From the above table, it appeared that M/s. Secusafe, during the period from October 2012 to June 2017 provided the taxable services and have evaded Service Tax to the tune of Rs. 1,90,73,841/- (S. Tax - Rs. 1,80,02,832/- + Ed. Cess -Rs. 74,329/- + SHEC - Rs.37,163/- + SBC - Rs. 5,37,763/- + KKC - Rs. 4,21,754/-) [Rupees One Crore Ninety Lakh Seventy Three Thousand Eight Hundred Forty One only]. 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.

8.2 The Service Tax amount of Rs. 38,18,729/- (S. Tax - Rs. 36,00,688/- + SBC - Rs. 1,28,620/- + KKC - Rs. 89,421/-) alongwith Interest of Rs. 4,73,703/- paid by M/s Secusafe during investigation, needs to be appropriated against their outstanding Service Tax and Interest liability.

8.3 The material evidences available on records, it was further revealed that M/s. Secusafe had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of the consideration received towards providing taxable services provided by them. They had:

- (i) failed to assess, declare and pay the service tax due on the taxable services, to maintain records, and to furnish proper returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994, read with Rule 4 and 7 of the Service Tax Rules, 1994.
- (ii) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above.
- (iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have failed to pay the Service Tax at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provisions.

9. Service Tax liabilities of M/s. Secusafe, for the period from October 2012 to June 2017, had been worked out on the basis of data/information received from M/s. Secusafe. Thus, the present notice related exclusively to the information submitted by M/s. Secusafe.

10. Therefore, M/s Secusafe Investigation Services Pvt. Ltd., Registered office at 11-A, Takshila Park, First Floor, Nr. Galaxy Cinema, N.H. No. 08, Naroda Road, Ahmedabad and Corporate office at A-1, Ajay Park Society, Waghodia Road, Vadodara were called

upon to show cause to the Additional Commissioner, CGST, Ahmedabad North, having his office at Custom House, Navrangpura, Ahmedabad as to why:-

- (i) The Service Tax of Rs. 1,90,73,841/- (S. Tax - Rs. 1,80,02,832/- + Ed. Cess -Rs. 74,329/- + SHEC - Rs.37,163/- + SBC - Rs. 5,37,763/- + KKC - Rs. 4,21,754/-) [Rupees One Crore Ninety Lakh Seventy Three Thousand Eight Hundred Forty One only], as detailed in Annexure-'A' to this notice, evaded on providing such taxable services during the period from October 2012 to June 2017 should not be demanded and recovered from them under 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 amount of Rs. 38,18,729/- (S. Tax - Rs. 36,00,688/- + SBC - Rs. 1,28,620/- + KKC - Rs. 89,421/-) paid by M/s Secusafe during investigation, should not be appropriated against their outstanding Service Tax liability;
- (iii) 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 amount at (i) above;
- (iv) The Interest amount of Rs. 4,73,703/- paid by M/s Secusafe during investigation, should not be appropriated against their outstanding Interest liability;
- (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) for their contravention of different provisions of the Finance Act, 1994 and the Service Tax Rules, 1994, why penalty should not be imposed upon them under Section 77 of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017; and
- (vii) 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.

Defence Reply and Personal Hearing-

11. No reply has been submitted by the assessee to the show cause notice so far even though considerable time has been elapsed. Further, it is pertinent to mention here that the show cause notice in question had been delivered to the assessee on 10.08.2018 and acknowledgement received from the noticee is on record. It was clearly mentioned in para 19 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”.

12. Personal hearing in the matter was fixed on 12.06.2019, 27.06.2019, 23.07.2019, 27.08.2019, 01.10.2019, 16.03.2020, 31.12.2020, 02.02.2021 and 22.03.2021 but no one turned up. First six hearing dates upto 16.03.2020 was given by previous adjudicating authority and out of six dates, two letters of personal hearing were returned with remark undelivered so more than three chances were given by the adjudicating authority. Due to change of adjudicating authority, further, I have also given three more opportunities of personal hearing to the noticee on 31.12.2020, 02.02.2021 and 22.03.2021. But the noticee has submitted adjournment letter on each hearing date and not attended the hearing in person. Hence, It is clear that fair chances of hearing were given to the noticee and a large span of time was available to them to submit reply/explanation to the show cause notice but neither they submitted any reply to the SCN nor they attended any hearing. It is presumed that they agreed with the charges levied in the show cause notice and they have nothing to defend the case. Therefore, having no other option I am proceeding to adjudicate the case ex-parte.

Discussion and findings-

13. I have carefully gone through the case papers available on record. I find that show cause notice has been issued in this case on 08.08.2019 and received by the assessee on 10.08.2019. Neither the assessee replied to the show cause notice nor attended any personal hearing which was offered to him more than three times including virtual mode of hearing. They did not avail the said opportunities. Since considerable time has been elapsed after issue of the show cause, I cannot 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.

14. I find that Intelligence gathered by the officers of Directorate General of Goods and Services Tax Intelligence (Erstwhile Directorate General of Central Excise Intelligence), Ahmedabad Zonal Unit, Ahmedabad indicated that M/s Secusafe was engaged in providing taxable services viz. “Security/Detective Agency Service” and “Manpower Recruitment and Supply Agency Service” and they were neither discharging their Service Tax liability properly nor were they filing their ST-3 Returns for the period from April 2016 onwards and acting on this intelligence, inquiry against M/s. Secusafe was initiated under summons dated 02.02.2017 issued under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and documents relevant to the inquiry were called for. In response to the said summons and subsequent summons, M/s Secusafe submitted certain relevant documents viz. Balance Sheet, P&L Statement, Form 26AS, ST-3 Returns etc. in phases.

15. On scrutiny of the documents submitted by M/s Secusafe by DGGI officers, it was observed that though the ST-3 Returns for the period upto March 2016 had been filed, significant variations were there in the figures shown in the 26AS, Profit & Loss Statement and the ST-3 Returns for the period from October 2012 to March 2016. Further it was observed that from

April 2016 onwards, they had neither properly discharged their Service Tax liability nor had they filed the ST-3 Returns for the corresponding period. The reasons for the variations in the figures shown in the 26AS, Profit & Loss Statement and the ST-3 Returns for the period from October 2012 to March 2016 were not ascertainable on the basis of the documents submitted by M/s Secusafe and hence they were summoned to give their statement. They kept seeking extension without citing any concrete reasons. However, finally Statement of Shri Kiratsingh R. Tomar, Director of M/s Secusafe was recorded on 30.07.2018 by visiting their corporate office located at Vadodara.

16. In order to ascertain the reasons for variations in the taxable income shown in the 26AS, P&L Statement and ST-3 Returns and to arrive at their actual Service Tax liability, the corporate office of M/s Secusafe was visited by the officers of DGGI, AZU on 30.07.2018 to record the statement of Shri Kiratsingh R. Tomar, Director, M/s Secusafe Investigation Services Pvt. Ltd., Ahmedabad under the provisions of Section-14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and Section 174 of the CGST Act, 2017

17. From the statement of Shri Kiratsingh R. Tomar, Director, M/s Secusafe, the following inevitable facts on record emerged-

(i) M/s Secusafe was engaged in providing taxable services of "Security/Detective Agency Service" & "Manpower Recruitment & Supply Agency Service". Apart from these services they were not engaged in providing any other services. Also they were not providing any exempted or non-taxable services and hence they were neither eligible for nor availing any type of exemptions;

(ii) Shri Tomar could not establish the reasons for the differences in taxable income shown in 26AS, P&L Statement and ST-3 Returns. However, showing his inability to produce the sales ledger and invoices, Shri Tomar stated that as the entire income shown in the 26AS (Which is the highest among all) is their actual consideration received towards providing taxable services, the same may be taken into account for Service Tax calculation purpose.

(iii) Shri Tomar admitted suppression of the actual taxable income by showing lesser taxable income in the ST-3 Returns filed by their company for the period from October 2012 to March 2016. Thereafter, they had not filed ST-3 Returns, as the total ST liability for the period was not discharged by them.

(iv) On the basis of all the above aspects, Shri Tomar admitted the outstanding Service Tax liability of their company M/s Secusafe for the period from October 2012 to June 2017 to be Rs. 1,90,73,841/-. Out of which they had already paid Service Tax of Rs. 33,23,729/- and Interest of Rs. 4,73,703/- during investigation.

18. I find that M/s Secusafe had been willfully suppressing their taxable income in the ST-3 Returns by showing lesser taxable receipts in the ST-3 Returns filed for the period from October 2012 to March 2016. Further they have not disclosed their correct taxable value in their ST-3

returns filed upto March 2016 and also not disclosed their taxable income to the department by way of not filing ST-3 Returns from April 2016 to June 2017.

19. In his statement dated 30.07.2018, Shri Kiratsingh R. Tomar admitted suppression of the actual taxable income by showing lesser taxable income in the ST-3 Returns filed by their company for the period from October 2012 to March 2016. Thereafter, they had not filed ST-3 Returns, as the total ST liability for the period was not discharged by them.

20. I find that M/s Secusafe showed reluctance in co-operation in investigation. They kept on seeking extensions and resorted to delaying tactics by not submitting the Sales ledgers and copies of invoices. They were also reluctant to appear for giving their statement. In order to record their statement to ascertain their actual Service Tax liability, Summons dated 24.07.2018 was issued to them to give their statement on 27.07.2018. In response to the summons, M/s Secusafe sent a letter dated 26.07.2018 through courier received by DGGI, AZU on 27.08.2018 seeking extension for giving statement after 08.08.2018 without assigning any concrete reason for the same.

21. To counter the delaying tactics adopted by M/s Secusafe and in order to complete the investigation the officers of AZU visited their corporate office situated at Vadodara on 30.07.2018 for recording their statement. During visit to their corporate office, it was noticed that the Director of the Company, Shri Kiratsingh R. Tomar was present in the office. His presence in the office on 30.07.2018 and at the same time seeking extension of time beyond 08.08.2018 to give statement clearly indicates their malafide intention of avoiding payment of outstanding Service Tax liability by adopting delaying tactics. Had the officers of DGGI, AZU not visited the premises of M/s Secusafe for recording their statement, they would have kept on delaying the investigation proceeding to evade Service Tax liabilities.

22. I find that looking at the pattern of their non-cooperation during investigation, It was an established fact that M/s Secusafe kept on delaying the investigation proceedings by regularly seeking extension of time for submission of documents as well as giving statement. It clearly established their '*mens-rea*' to hide the facts from the department and evade Service Tax thereon.

23. If the investigation had not been initiated by DGGI, AZU, the assessee would have continued their practice of suppressing the taxable income in their ST-3 Returns causing short payment of Service Tax. On scrutiny of the documents submitted by M/s Secusafe, the delaying tactics adopted by them and from the statement dated 30.07.2018 of Shri Kiratsingh R Tomar, Director of M/s Secusafe, it clearly transpired that they were willfully suppressing their taxable income in the ST-3 Returns in order to evade Service Tax. It was seen that in every ST-3 Returns they had shown the lesser taxable value in comparison to the actual one. This showed their malafide intention by way of suppression of the facts thereby causing revenue loss to the Govt. exchequer.

24. I find that M/s Secusafe had shown lesser taxable income in their ST-3 Returns for the period from October 2012 to March 2016 thereby making short payment of Service Tax. Thereafter from April 2016 to June 2017 they had not discharged their appropriate service tax liability and also not filed their ST-3 Returns. The outstanding Service Tax liability of M/s Secusafe was calculated by the DGGI officers and year-wise summary is given as under :

(Amt. in Rs.)

Sr. No.	F.Y.	As per 26AS		As per ST Return		Difference/Short payment		
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5	2016-17	81084960	12116723	0	0	81084960	12116722	
6	2017-18 (Apr-Jun)	15569954	2335493	0	0	15569954	2335493	
		465172093	61738335	329073390	42199539	136098703	19538796	
		ST Paid before initiation of investigation by DGGI					464955	
		Outstanding ST liability					19073841	

25. From the above table, it is apparent that M/s. Secusafe, during the period from October 2012 to June 2017 provided the taxable services and have evaded Service Tax to the tune of Rs. 1,90,73,841/- (S. Tax - Rs. 1,80,02,832/- + Ed. Cess -Rs. 74,329/- + SHEC - Rs.37,163/- + SBC - Rs. 5,37,763/- + KKC - Rs. 4,21,754/-) [Rupees One Crore Ninety Lakh Seventy Three Thousand Eight Hundred Forty One only]. 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.

26. I find that investigation has been done by DGGI, AZU under the following legal provisions:

(i) Section 65(B)(44) of Finance Act, 1994 reads :-

“Service means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(a) to (c)

(ii) Section 65B(51) of Finance Act, 1994:-

“Taxable Service” means any service on which service tax is leviable under Section 66B”.

- (iii) Valuation of Taxable services provided by M/s. Secusafe is to be done as per Section 67 of Finance Act, 1994 and accordingly, they are required to pay Service Tax on the gross receipt.
- (iv) In view of Section 66, 66B and 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, M/s. Secusafe are liable to pay Service Tax at the specified rate by the due dates on the taxable services given by them.
- (v) As per the provisions of Section 70 of the Finance Act, 1994, M/s. Secusafe were required to correctly assess their service tax liability and file the ST-3 Returns duly incorporating the same.

27. 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 of the emerged during the investigation of the instant case that M/s Secusafe has not declared their actual taxable income in the ST-3 Returns and also not paid appropriate Service Tax and file the corresponding ST-3 Returns in due time despite the fact that they were engaged in providing taxable services. Thus, M/s Secusafe have suppressed the material facts from the Department by not showing their actual taxable income in the ST-3 Returns and also not paying the Service Tax due to them and also not filing the ST-3 Returns. This appears to be done intentionally so as not to bring their taxable activities to the notice of the Department, though they were engaged in providing taxable services, as discussed here-in-above. 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 Secusafe, it shows intent to evade payment of service tax by an act of omission in as much as M/s Secusafe 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 short payment of service tax by way of suppression of facts by showing lesser taxable income in the ST-3 Returns for the period from October 2012 to March 2016 and thereafter upto June 2017 by not disclosing their actual Service Tax liability by way of not filing the ST-3 Returns and also not paying the actual Service Tax. Had the investigation proceedings not conducted by DGGI, Zonal Unit, Ahmedabad, these facts would not have come to light.

28. Further M/s Secusafe had failed to declare their actual taxable income towards providing taxable services of "Security/Detective Agency Service" and "Manpower Recruitment and Supply Agency Service" in their ST-3 Returns filed for the period from October 2012 to March 2016 and thereafter upto June 2017 they have not disclosed their taxable income before the department by way of not filing the ST-3 Returns and also not paying the appropriate Service Tax. In view of the specific omissions and commissions as elaborated earlier, it is apparent, that M/s Secusafe had deliberately suppressed the facts by way of showing lesser taxable value in the

ST-3 Returns for the period from October 2012 to March 2016 and from April 2016 to June 2017 not disclosing their Service income by way of not filing ST-3 Returns and not paying appropriate Service Tax. This amounts to wilful suppression of facts with the deliberate intent to evade payment of Service Tax. The non/short-payment of Service Tax on the entire income received towards providing taxable services by M/s Secusafe 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 October 2012 to June 2017. 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."

In view of the above it is obvious that M/s Secusafe 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 Service 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.

29. On the basis of material evidences available on records, it is evident that M/s. Secusafe have contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of the consideration received towards providing taxable services provided by them. They have:

- (i) failed to assess, declare and pay the service tax due on the taxable services, to maintain records, and to furnish proper returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994, read with Rule 4 and 7 of the Service Tax Rules, 1994.
- (ii) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above.
- (iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have failed to pay the Service Tax at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provisions.
- (iv) M/s. Secusafe, have failed to pay the applicable Service Tax on their taxable income from October 2012 to June 2017. Further, they have not disclosed their correct taxable income in their ST-3 Returns filed upto March 2016 and also not disclosed their taxable income to the Department by way of not filing their ST-3 Returns from April 2016 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 October 2012 to June 2017 in the subject matter. Accordingly, the Service Tax amount of Rs. 1,90,73,841/- (S. Tax - Rs. 1,80,02,832/- + Ed. Cess -Rs. 74,329/- + SHEC - Rs.37,163/- + SBC - Rs. 5,37,763/- + KKC - Rs. 4,21,754/-) [Rupees One Crore Ninety Lakh Seventy Three Thousand Eight Hundred Forty One only) evaded by M/s. Secusafe, during the period from October 2012 to June 2017, on the aforesaid taxable services, as detailed in Annexure-'A' to this show cause notice, is required to be recovered from M/s. Secusafe 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. Secusafe also appears to be liable to pay interest as per Section 75 of the Finance Act, 1994 on the aforesaid evaded service tax.
- (v) Further, all above acts of contravention constitute an offence of the nature as described under the provisions of Section 77 & 78 of the Finance Act, 1994, rendering themselves

liable to penalty under Section 77 for failure to pay Service Tax by due dates and not furnishing the information in respect of above taxable service provided by them and taxable value thereof in prescribed periodical ST-3 returns as well as under Section 78 of the Finance Act, 1994 for suppression of taxable value of said taxable services provided by them.

30. I find that above actions initiated against the noticee under Finance Act, 1994 are saved by Section 174 of the Central Goods and Service Tax Act, 2017.

31. I find that the Service Tax amount of Rs. 38,18,729/- (S. Tax - Rs. 36,00,688/- + SBC - Rs. 1,28,620/- + KKC - Rs. 89,421/-) alongwith Interest of Rs. 4,73,703/- paid by M/s Secusafe during investigation, needs to be appropriated against their outstanding Service Tax and Interest liability.

32. 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 10.05.2008 in this regard.

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

ORDER

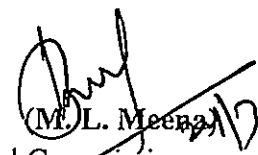
- (i) I confirm the Service Tax of Rs. 1,90,73,841/- (S. Tax - Rs. 1,80,02,832/- + Ed. Cess -Rs. 74,329/- + SHEC - Rs.37,163/- + SBC - Rs. 5,37,763/- + KKC - Rs. 4,21,754/-) [Rupees One Crore Ninety Lakh Seventy Three Thousand Eight Hundred Forty One only], under Section 73(1) of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 and order M/s Secusafe to pay the said Service tax forthwith;
- (ii) The Service Tax amount of Rs. 38,18,729/- (S. Tax - Rs. 36,00,688/- + SBC - Rs. 1,28,620/- + KKC - Rs. 89,421/-) paid by M/s Secusafe during investigation, is appropriated against their outstanding Service Tax liability;
- (iii) I order M/s. Secusafe to pay the interest on the amount confirmed under Section 75 of Chapter V of the Finance Act, 1994, on the Service Tax amount confirmed at Sr. No. (i) above;
- (iv) The Interest amount of Rs. 4,73,703/- paid by M/s Secusafe during investigation, is appropriated against their outstanding Interest liability;
- (v) I do not impose any penalty under Section 76 of the Finance Act, 1994 on M/s Secusafe.
- (vi) I impose a penalty of Rs.10,000/- on M/s Secusafe under Section 77 of the Finance Act, 1994.
- (vii) I impose a penalty of Rs. 1,90,73,841/- (Rupees One Crore Ninety Lakh Seventy Three Thousand Eight Hundred Forty One only) upon M/s Secusafe under

Section 78 of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017.

33. It is further clarified that in terms of Section 78 (1) of the Finance Act, 1994 if M/s M/s Secusafe Investigation Services Pvt. Ltd., pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (iii) 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.(vii) above, subject to the condition that such reduced penalty is also paid within the period so specified.

34. The Show Cause Notice No. DGGI/AZU/36-44/2018-19 dated 08.08.2018 issued by the Additional Director, Directorate General of Goods & Service Tax Intelligence, Zonal Unit, Ahmedabad to M/s Secusafe Investigation Services Pvt. Ltd., Registered office at 11-A, Takshila Park, First Floor, Nr. Galaxy Cinema, N.H. No. 08, Naroda Road, Ahmedabad and Corporate office at A-1, Ajay Park Society, Waghodia Road, Vadodara is disposed-of in the above manner.




 (M.L. Meena)
 Additional Commissioner,
 CGST & Central Excise,
 Ahmedabad North.

BY REGISTERED AD/HAND DELIVERY

F. No. STC/15-47/OA/2018

Date :24.03.2021.

To,

M/s Secusafe Investigation Services Pvt. Ltd.
 11-A, Takshila Park, First Floor,
 Nr. Galaxy Cinema, N.H. No. 08
 Naroda Road, Ahmedabad.

M/s Secusafe Investigation Services Pvt. Ltd.
 A-1, Ajay Park Society, Waghodia Road, Vadodara
 Gujarat-390019.

Copy to:

- (i) The Commissioner, Central GST, Ahmedabad North, Ahmedabad.
- (ii) The Additional/Joint Director, Directorate General of Goods & Service Tax Tax Intelligence, Zonal Unit, Ahmedabad, 6th & 7th Floor, I-The Address, Near Sola Fly Over, Science City Road, Off : SG Highway, Ahmedabad -380060 .
- (iii) The Deputy Commissioner, Central GST, Division I, Ahmedabad North.
- (iv) The Superintendent, Central GST, Range-I, Division-I, Ahmedabad North.
- (v) Guard File.