

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

फा.सं./F.No. STC/15-43/OA/2019

आदेश की तारीख/Date of Order : - 26.03.2021

जारी करने की तारीख/Date of Issue :- 26.03.2021

DIN No:20210364WT0000318893

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / *Marut Tripathi*

संयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 66/JC/MT/2020-21

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

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से दो महिनों के अन्दर आयुक्त (अपील), केन्द्रीयजी.एस.टी., केन्द्रीयजी.एस.टी.भवन, अंबावाड़ी, अहमदाबाद - 380015 को प्रारूप संख्या एसटी-4 (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 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) उक्तअपीलकीप्रति।3

(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 रू. 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/ Show Cause Notice No.STC/15-43/OA/2019 dated 15.10.2019 issued to M/s. Saunak Films, 31, Rajami Complex, Nr. Sardar Patel Crossing, Naranpura Vistar, Ahmedabad.

Brief facts of the case

M/s. Saunak Films, 31, Raj ami Complex, Nr. Sardar Patel Crossing, Naranpura Vistar, Ahmedabad (hereinafter referred to as "the said assessee") is 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 ADIPR4223KST001 dated 12.03.2004. Subsequently on implementation of GST, the said assessee has migrated into GST and is now holding GST Registration No. 24ADIPR4223KIZG.

2. On the basis of specific information that the said assessee was not discharging their tax liability properly and also not filing the returns properly, a search was conducted at the office premises of M/s. Saunak Films, 31, Raj ami Complex, Nr. Sardar Patel Crossing, Naranpura Vistar, Ahmedabad on 14.09.2018 under panchnama proceedings. During the proceedings it was noticed that Shri Tusharsinh Dineshsinh Rajput is the proprietor of the firm and providing taxable service of Photography and Videography to various customers mostly Govt. departments. They were issuing two types of invoices i.e. standard invoices which were raised for City Election officer and other for Police department. It was further gathered that the said assessee has not paid any Service Tax on the photography /videography services provided to Election Commission. Certain documents such as sales invoices, ledger account, 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 was recorded on 14.09.2018, wherein he has accepted the fact narrated under panchnama dated 14.09.2018 and stated that they were providing videography services to Election Commissioner, Gujarat Police and other Govt. agencies. He further stated that for the videography services provided by their firm, M/s Saunak Films, they were preparing two types of invoices viz. standard invoices which were issued for City Election Commissioner and other for different Police stations. He further stated that they have issued invoices valued at 13,49,39,552/- for Election Commissioner and invoices valued at Rs. 63,01,836/- for various police departments during the period from 01.01.2015 to 13.09.2018. He admitted that they have not paid Service Tax on photography services provided to Election Commission as they felt that services provided to Election Commission are exempted from service tax and therefore, they generally do not mention tax in such invoices. He agreed to pay the tax liability along with interest and penalty.

4. In order to obtain further evidence in the matter, a summon was issued to the said assessee to appear on 20.09.2018 before the Superintendent (Prev.), GST & Cen. Excise, Ahmedabad-North. However, the assessee did not honor the Summon. Further summons were also issued to them vide summons dated 30.05.2019, 28.06.2019 and 11.07.2019. The said summons were also not honoured by them. Letters dated 24.09.2018, 08.10.2018, 14.02.2019, 10.04.2019 were also issued to them to provide details and to pay the duty. However, the assessee has not valued the communications made by the office.

5. The Service Tax regime had 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 as follows:

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

- (a) an activity which constitutes merely,-
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or
 - (iii) a transaction in money or actionable claim;
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.

For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.- For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include

- (i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;
- (ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out -

(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998;

(b) by a foreman of chit fund for conducting or organizing a chit in any manner.;

Explanation 3. For the purposes of this Chapter,-

- (a) *an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;*
- (b) *an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.*

Explanation 4. a person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

Further, Section 66D of the Finance Act, 1994 provide the Negative List of Services. As per the said Section, Negative List shall comprise of the following services namely:

- (a) *services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-*
 - (i) *services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;*
 - (ii) *services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;*
 - (iii) *transport of goods or passengers; or*
 - (iv) *Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;*
- (b) *services by the Reserve Bank of India;*
- (c) *services by a foreign diplomatic mission located in India;*
- (d) *services relating to agriculture or agricultural produce by way of (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;*
 - (ii) *supply of farm labour;*
 - (iii) *processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;*
 - (iv) *renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; (v) loading, unloading, packing, storage or warehousing of agricultural produce;*
 - (vi) *agricultural extension services;*
 - (vii) *services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;*
- (e) *trading of goods;*
 - [* * * *] ;
 - (g) *selling of space for advertisements in print media;*
 - (h) *service by way of access to a road or a bridge on payment of toll charges;*
 - (i) *betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation 2 to clause (44) of section 65B; (i) []*

(k) transmission or distribution of electricity by an electricity transmission or distribution utility; 10

(l) [* * * *]

(m) services by way of renting of residential dwelling for use as residence; (n) services by way of-

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers; (o) service of transportation of passengers, with or without accompanied belongings, by-

(i) []

(ii) railways in a class other than (A) first class; or

(BJ) an air-conditioned coach;

(iii) metro, monorail or tramway, (iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (vi) metered cabs or auto rickshaws

(p) services by way of transportation of goods (i) by road except the services of-

(A) a goods transportation agency; or

(BJ) a courier agency;

(ii) [* * *]

(iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

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. In other words, services that not covered in the Negative List are "taxable services" and liable to Service Tax. On a reading the provisions of the Act, as reproduced above and the nature of service provided by the said assessee, it appears that the service provided by them can be termed under '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. The assessee in his statement contended that the services provided to Election Commission is exempted and informed that they will submit the relevant exemption notification in this regard. However, the assessee failed to provide any evidence to substantiate their claim. They also failed to respond to the correspondence made by the Department. Further on verification of the respective ST-3 returns filed by the said assessee, they have not shown any exempted income or claimed any exemption there in. Factually there is no such exemption notification to exempt the taxable services provided to Election Commission. Further, the said activity does not find any place in the Negative List of services as per Section 66D of the Finance Act. Therefore, the services provided by the said assessee to the Election Commission 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. In view of the fact that the said assessee had not paid Service tax on the services

provided to Election Commission, a letter dated 14.02.2019 followed by reminder dated 10.04.2019 were issued and asked the assessee to discharge the tax liability. Further, several letters dated 24.09.2018, 08.10.2018 and summons dated 30.05.2019, 28.06.2019 and 11.07.2019 were also issued to the said assessee for his statement and for further evidence and confirmation. However the said assessee had neither honored the summons nor he respond to the letters of the Department.

8. Even after repeated pursuance, the said assessee did not turn up for letters / summons issued by the Department and also they have not cooperated with the investigation by the Department. Therefore, a worksheet showing the liability of their service tax has been prepared on the basis of figures of taxable income reflected in the Books of Accounts viz. Balance sheet/Profit & Loss Account, gathered during the Panchnama proceedings as well as the details of ST-3 returns filed by them for the period 2014-15 to 2017-18 (upto June-2017) which is attached with this notice as Annexure-B. As per the said worksheet, service tax liability has been worked out to an amount of Rs. 1,48,07,635/- for the period from 01.04.2014 to 30.06.2017. The said amount mostly attribute by the non-payment of Service Tax on the services provided to the Election Commission.

9. Whereas 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 received consideration and shown it as income under income heads of accounts in their books of Accounts,wherein they have not paid proper Service Tax in Government Account and thereby evaded payment of it.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 on the income shown in their Books of Accounts.

10. Whereas 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

11. 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.

12. As per the provisions of the Finance Act, 1994 and rules made thereunder, the service provider was 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 leviable 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, appears 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*.

13. 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 appears that the said assessee has not discharged Service Tax liability to the tune of Rs. 1,48,07,635/- on the taxable value. (differential) 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.

14. 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 appears 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

15. In view of above discussion it clearly came 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. 1,48,07,635/- worked out as per Annexure-B 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.

16. Whereas, from the foregoing paras and discussion made here in above, it appeared that from the said assessee, had 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. 1,48,07,635/- 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 wilful mis-statement and deliberately suppressed material facts from the department in order to evade payment of Service Tax.

17. Whereas 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 appears 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, as discussed in paras hereinabove.

18. 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. 1,48,07,635/- not paid thereon 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.

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

PENALTY PROVISIONS:

20. 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.

21. 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.

22. It appeared that the said assessee is liable for penalty under Section 78 of the Finance Act, 1994 inasmuch as they have wilfully 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 appears 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 herein above.

23. 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 appear to be punishable under the provisions of Section 77 & 78 of the Finance Act, 1994, as amended from time to time.

24. Therefore, M/s Saunak Films, 31, Rajami Complex, Nr. Sardar Patel Crossing, Naranpura Vistar, Ahmedabad were called upon to show cause to the Additional Commissioner, CGST & Central Excise, Ahmedabad-North, as to why:-

i) The Service Tax amounting to Rs. 1,48,07,635/- (inclusive of Cess) (**Rupees One Crore Forty Eight Lakhs Seven Thousands Six Hundred Thirty Five Only**) as worked out for 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 as per i) above 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.

Defence Reply and Personal Hearing-

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 21.10.2019 as per speed post 'track consignment' number EG223553436IN. It was clearly mentioned in para 26 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*".

26. Personal hearing in the matter was fixed on 21.07.2020, 21.09.2020 and 29.12.2020 but no one turned up, meanwhile the noticee vide letter dated 16.09.2020 and further vide letter dated 22.12.2020 submitted that they had not been returned non relied upon documents and they also wanted inspection of Relied upon documents. The DC(Anti Evasion) was requested for returning the documents which were withdrawn vide panchnama dated 14.09.2018. The Deputy Commissioner (Anti Evasion) vide his letter dated 06.01.2021 addressed to the proprietor had returned the required documents under intimation to this office. Further two more dates for PH were given to the noticee on 05.02.2021 and 10.03.2021 but no one appeared neither any communication regarding adjournment was received from them. 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-

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 and received by the assessee on 21.10.2019. 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, more than 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 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.

28. I find that on the basis of specific information that M/s.Saunak Films was not discharging their Service Tax liabilities properly and also not filing the returns 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 by the Departmental Preventive officials under panchnama proceedings. During the proceedings it was noticed that Shri Tusharsinh Dineshsinh Rajput is the proprietor of the firm and providing taxable service of Photography and Videography to various customers mostly Govt. departments. They were issuing two types of invoices i.e. standard invoices which were raised for City Election officer and other for Police department. It was further gathered that the said assessee has not paid any Service Tax on the photography /videography services provided to Election Commission. Certain documents such as sales invoices, ledger account, contract copies were collected under Panchnama in presence of two independent panchas for further scrutiny.

29. I find that 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 fact narrated under panchnama dated 14.09.2018 and stated that they were providing videography services to Election Commissioner, Gujarat Police and other Govt. agencies. He further stated that for the videography services provided by their firm, M/s Saunak Films, they were preparing two types of invoices viz. standard invoices which were issued for City Election Commissioner and other for different Police stations. He further stated that they have issued invoices valued at 13,49,39,552/- for Election Commissioner and invoices valued at Rs. 63,01,836/- for various police departments during the period from 01.01.2015 to 13.09.2018. He admitted that they have not paid Service Tax on photography services provided to Election Commission as they felt that services provided to Election Commission are exempted from service tax and therefore, they generally do not mention tax in such invoices. He agreed to pay the tax liability along with interest and penalty.

30. I find that for further evidence in the matter, a summon was issued to the said assessee to appear on 20.09.2018 before the Superintendent (Prev.), GST & Cen. Excise, Ahmedabad-North. However, the assessee did not honor the Summon. Further summons were also issued to them vide summons dated 30.05.2019, 28.06.2019 and 11.07.2019. The said summons were also not honoured by them. Letters dated 24.09.2018, 08.10.2018, 14.02.2019, 10.04.2019 were also issued to them to provide details and to pay the duty. However, the assessee had not valued the communications made by the office.

31. 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. In other words, services that not covered in the Negative List are "taxable services" and liable to Service Tax. On a reading the provisions of the Act, as reproduced above and the nature of service provided by the said assessee, it appears that the service provided by them can be termed under '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. The assessee in his statement contended that the services provided to Election Commission is exempted and informed that they will submit the relevant exemption notification in this regard. However, the assessee failed to provide any evidence to substantiate their claim. They also failed to respond to the correspondence made by the Department. Further on verification of the respective ST-3 returns filed by the said assessee, they have not shown any exempted income or claimed any exemption there in. Factually there is no such exemption notification to exempt the taxable services provided to Election Commission. Further, the said activity does not find any place in the Negative List of services as per Section 66D of the Finance Act. Therefore, the services provided by the said assessee to the Election Commission is a taxable service under Section 65B (44) of the Finance Act, 1994 and the consideration received by them are liable for Service Tax.

32. I find that in view of the fact that the said assessee has not paid Service tax on the services provided to Election Commission, a letter dated 14.02.2019 followed by reminder dated 10.04.2019 were issued and asked the assessee to discharge the tax liability. Further, several letters dated 24.09.2018, 08.10.2018 and summons dated 30.05.2019, 28.06.2019 and 11.07.2019 were also issued to the said assessee for his statement and for further evidence and confirmation. However the said assessee had neither honored the summons nor he respond to the letters of the Department. 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 by the Department. Therefore, a worksheet showing the liability of their service tax has been prepared on the basis of figures of taxable income reflected in the Books of Accounts viz. Balance sheet/Profit & Loss Account, gathered during the Panchnama proceedings as well as the details of ST-3 returns filed by them for the period 2014-15 to 2017-18 (upto June-2017) which is attached with this notice as Annexure-B. As per the said worksheet, service tax liability has been worked out to an amount of Rs. 1,48,07,635/- for the period from 01.04.2014 to 30.06.2017. The said amount mostly attribute by the non-payment of Service Tax on the services provided to the Election Commission.

33. I find that the 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 received consideration and shown it as income under income heads of accounts in their books of Accounts, wherein they have not paid proper Service Tax in Government Account and thereby evaded payment of it. 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 on the income shown in their Books of Accounts.

34. Further 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.

35. I find in view of above and facts and grounds of the notice that the said assessee,

has contravened the following provisions:

- (i) Section 67 of the Finance Act, 1994 inasmuch as they failed to assess and determine the correct value of Taxable Services provided by them, during the period from April-2014 to June-2017.
- (ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch as they failed to make the payment of Service Tax amounting to Rs. 1,48,07,635/- 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 wilful mis-statement and deliberately suppressed material facts from the department in order to evade payment of Service Tax.

36. I find 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.

37. I find 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.

38. I find that 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 appear to be punishable under the provisions of Section 77 & 78 of the Finance Act, 1994, as amended from time to time.

39. Therefore, I find all the charges levied 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. I also find that from the beginning of the case the noticee has not given cooperation to the department either be it not honouring the summons or not attending the personal hearings or not replying to the SCN. 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. 1,48,07,635/- (inclusive of Cess) **(Rupees One Crore Forty Eight Lakhs Seven Thousands Six Hundred Thirty Five 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 Saunak Films to pay interest on Service Tax amount confirmed above under Section 75 of the Finance Act, 1994.

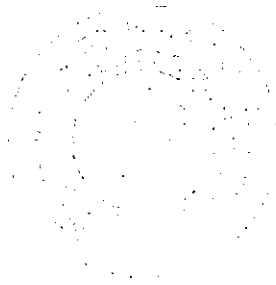
(iii) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s Saunak Films, Ahmedabad under Section 77(1) of the Finance Act, 1994.

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

(v) I impose a penalty of Rs. 1,48,07,635/- (inclusive of Cess) **(Rupees One Crore Forty Eight Lakhs Seven Thousands Six Hundred Thirty Five Only)** on M/s Saunak Films, Ahmedabad, under Section 78 of the Finance Act, 1994, as amended.

40. 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.

The Show Cause Notice No.STC/15-43/OA/2019 dated 15.10.2019 issued to M/s. Saunak Films, 31, Rajami Complex, Nr. Sardar Patel Crossing, Naranpura Vistar, Ahmedabad is disposed-of in the above manner.



(M. Anil Mishra)
Joint Commissioner
CGST & CEx., Ahmedabad-North.

F.No.STC/15-43/OA/2019

By Regd Post A.D.

Date: 26/03/2021.

To,

M/s Saunak Films,
31, Rajami Complex,
Nr. Sardar Patel Crossing,
Naranpura Vistar, Ahmedabad

Copy to :

- 1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
- 2) The Deputy / Assistant Commissioner, CSGT & C.Ex, Division-VII, Ahmedabad-North.
- 3) The Superintendent, CSGT & C.Ex, Range-V, Division-VII, Ahmedabad North.
- 4) Guard File.