



<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 &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. STC/15-59/OA/2019

DIN-20240164WT0000274182

आदेश की तारीख/Date of Order: - 12.01.2024  
जारी करने की तारीख/Date of Issue :- 12.01.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 67/ADC/ LD /2023-24**

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर 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 EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

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

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

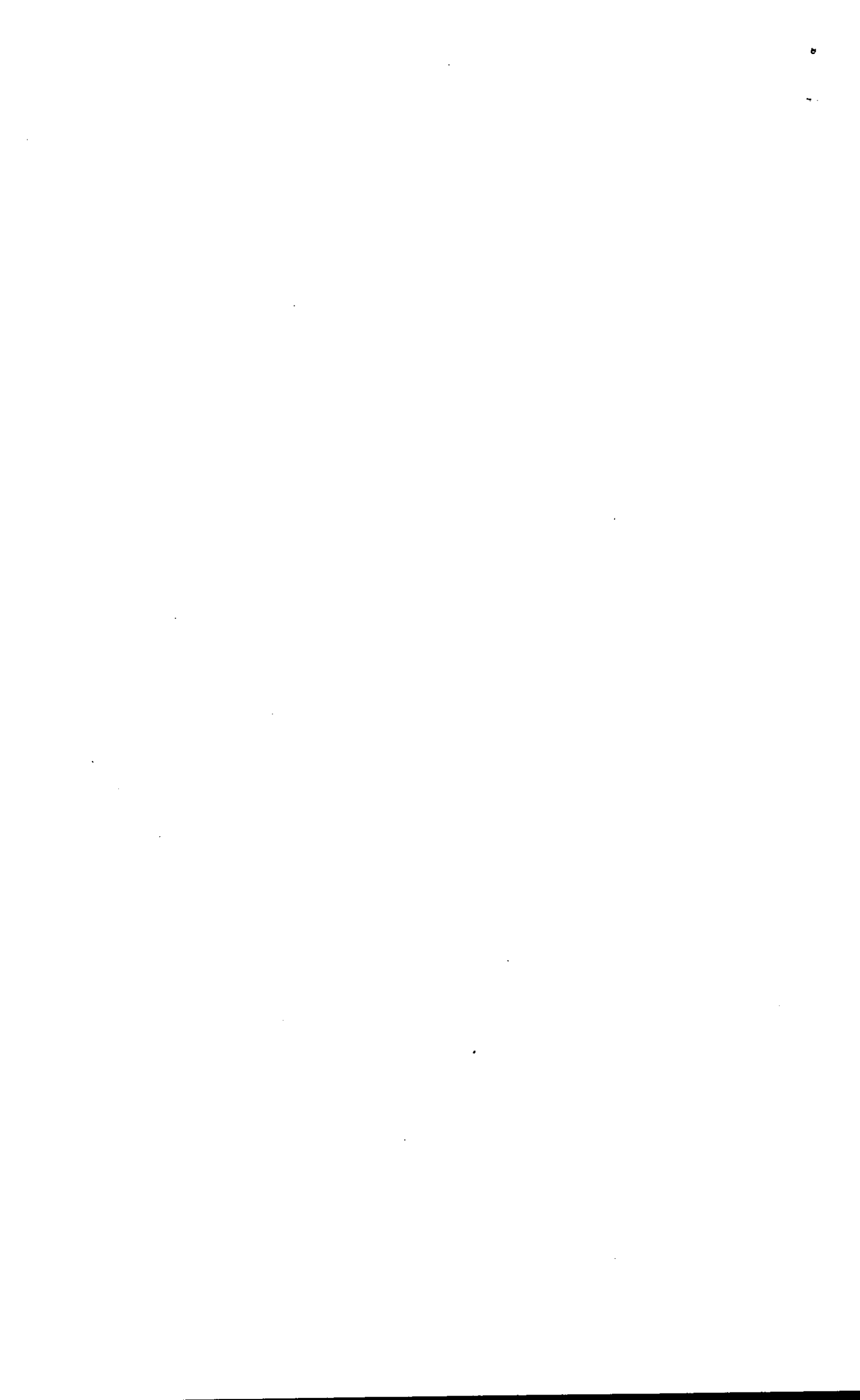
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएंगे।

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

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

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

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. DGGI/AZU/Gr-A/36-97/2019-20 dated 18.10.2019 issued to M/s Laxmi Security Service.,158/3, Omkar Nagar, Nr. Jaiguru Temple, B/h Laxmi Nagar Society, Meghaninagar, Ahmedabad, Gujarat.



**BRIEF FACTS OF THE CASE :-**

M/s. Laxmi Security Service, 158/3, Omkar Nagar, Nr. Jaiguru Temple, B/H Laxmi Nagar Society, Meghaninagar, Ahmedabad, Gujarat (hereinafter referred to as "M/s. Laxmi" for the sake of brevity) are engaged in providing taxable services viz "Security /Detective Agency Service" [as defined under Sec. 65(94) read with Section 65(105)(w) of the erstwhile Finance Act 1994], "Cleaning Services" [as defined under Sec. 65(24b) read with Section 65(105)(zzzd) of the erstwhile Finance Act 1994] and "Manpower Recruitment or Supply Agency Service" [as defined under Sec. 65(68) read with Section 65(105)(k) of the erstwhile Finance Act, 1994]. The said activities undertaken by M/s Laxmi also qualify as taxable services in terms of Section 65B(51) read with the definition of 'Service' as given under Section 65B(44) of the erstwhile Act, ibid. M/s. Laxmi were registered with the erstwhile Service Tax Commissionerate, Ahmedabad and held valid Service Tax registration no. AGVPB9866ASD001. M/s Laxmi is not registered under GST regime.

**SUMMARY OF THE CASE:**

2.1 M/s. Laxmi had provided Security/Detective Agency Services, Cleaning Services and Manpower Recruitment/Supply Agency Services to various clients during the Financial Year 2014-15 to 2017-18 (up to June, 2017).

2.2. Investigation in the case revealed that M/s. Laxmi have short paid service tax on the taxable services viz. Security/Detective Agency Services, Cleaning Services and Manpower Recruitment or Supply Agency Services provided by them to various clients. The non/short payment of service tax has been done by way of deliberate suppression and mis-declaration of the actual value of the taxable receipts in the periodic ST-3 returns filed by them and as such there existed a substantial difference in the net revenue from aforesaid services as reported in the Balance Sheets (P&L Accounts), Form 26 AS and the gross income declared by M/s Laxmi in the periodical ST-3 Returns on which the service tax liability had been discharged by them for the period from FY 2014-15 to FY 2017-18 (up to June, 2017). Due to the non-consonance of the figures reported across different financial records maintained by M/s Laxmi during the period from FY 2014-15 to FY 2017-18 (up to June, 2017), it appeared that M/s Laxmi had willfully suppressed and mis-stated their actual taxable turnover in the periodical ST-3 returns filed by them during the aforesaid period with a sole intent to evade payment of service tax.

2.3. Further investigation revealed that M/s. Laxmi had evaded a net service tax amount of Rs. 1,34,21,535/- (Rupees One Crore Thirty Four Lakhs Twenty One Thousand Five Hundred Thirty Five only) by way of suppressing the actual turnover in the periodical ST-3 Returns filed by them during the period from April, 2014 to June, 2017.

**INTELLIGENCE GATHERED BY THE DEPARTMENT:-**

3.1 Information/intelligence received by the Officers of Directorate General of Goods & Service Tax Intelligence, Ahmedabad Zonal Unit (hereinafter referred to as "DGGI" for the sake of brevity), indicated that M/s Laxmi Security (Gujarat) Private Limited (here-in-after referred to as "M/s LSGPL" for the sake of brevity) was providing taxable services viz. Security/Detective Agency

Service, Manpower Recruitment/Supply Agency Service, Cleaning Services to Colleges, Sports Centers, Government Offices, Training Institutes etc. and they had wrongfully claimed exemption on services provided to their clients. It was also gathered that they had short paid their service tax liability by way of suppressing and mis-declaring that value of taxable receipts in their ST-3 returns.

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

4.1 Acting on the above intelligence, an inquiry was initiated against M/s Laxmi Security (Gujarat) Private Limited, 214, Leelamani Corporate Heights, Opp. Ramdevpir Tekra BRTS Stand, Nava Vadaj, Ahmedabad, by way of inspection under section 67 of CGST Act, 2017 read with Section 174 of the CGST Act, 2017 on 15.07.2019.

4.2 During inspection, M/s Laxmi Security (Gujarat) Private Limited vide their letter dated 15.07.2019 submitted that at that time two firms namely M/s Laxmi Security (Gujarat) Private Limited and M/s Chirag Security Service were being operated from the premises situated at 214, Leelamani Corporate Heights, Opp. Ramdevpir Tekra BRTS Stand, Nava Vadaj, Ahmedabad. Further, they submitted that M/s Laxmi Security (Gujarat) Private Limited was incorporated towards the end of the Financial Year 2015-16 and prior to this, the firm was operating as a proprietorship concern as M/s Laxmi Security Service wherein Shri Bhanwarsingh D. Bholiyani was the proprietor. M/s Laxmi Security (Gujarat) Private Limited had submitted following documents in respect of M/s Laxmi:-

- (i) Balance Sheet and Profit & Loss Account for the period from FY 2014-15 to FY 2017-18;
- (ii) Form 26AS for FY 2014-15, FY 2015-16 and FY 2017-18;
- (iii) Sales Register /Journal Register for the period from FY 2014-15 to FY 2017-18;
- (iv) ST-3 Returns for the period from FY 2014-15 to FY 2017-18 (upto June, 2017).

**SUBMISSION OF RECORDS BY M/S. LAXMI:-**

5.1 Summons dated 03.10.2019 was issued to M/s Laxmi to submit the following documents:-

- (i) Attested copies of invoices issued during the period FY 2014-15 to FY 2017-18;
- (ii) Attested copies of work orders/agreements with service recipients for the period FY 2014-15 to FY 2017-18;
- (iii) Attested copies of 26AS for FY 2016-17;
- (iv) Attested copies of Tax Audit Report with all annexure for FY 2014-15 to 2017-18;
- (v) Attested Copies of ledger account of Security/Manpower Income for FY 2014-15 to FY 2017-18.

5.2 M/s Laxmi failed to submit the requisitioned documents called for vide summons dated 03.10.2019 and another summons dated 14.10.2019 was issued to them for submission of the required documents. With reference to summons dated 14.10.2019, M/s. Laxmi vide their letter dated 15.10.2019 submitted following documents:-

- (i) Attested copies of 26AS for FY 2016-17;
- (ii) Attested copies of Tax Audit Report with all annexure for FY 2014-15 to

2017-18;

- (iii) Attested Copies of ledger account of Security/Manpower Income for FY 2014-15 to FY 2017-18.

5.3 M/s Laxmi failed to submit copies of invoices issued during the period FY 2014-15 to FY 2017-18 and copies of work orders/agreements with service recipients for the period FY 2014-15 to FY 2017-18.

**OBSERVATIONS NOTICED UPON SCRUTINY OF THE DOCUMENTS SUBMITTED BY M/S. LAXMI:**

6.1 The documents submitted by M/s. Laxmi, were carefully scrutinized and consequent to such scrutiny, certain observations were made which are summarized as under:-

6.2 Variance noticed in the figures reported in the ST-3 Returns vis-a-vis the figures reported in the Balance Sheet and Form 26AS during the period from FY 2014-15 to FY 2017-18 (up to June-17) for Security/Detective Agency Services, Cleaning Services and Manpower Recruitment/Supply Agency Services:-

- (i) Comparison of the gross taxable income reported for Security/Detective Agency Services, Cleaning Services and Manpower Recruitment/Supply Agency Services in the ST-3 returns filed by M/s Laxmi for the period from FY 2014-15 to FY 2017-18 (up to June-17) vis-a-vis, the turnover figures of the Balance Sheet (Profit & Loss Account) and Form 26AS for the even period, revealed that there existed substantial variance in these figures. The detailed comparison between the taxable incomes reported in the ST-3 Returns [RUD-3] vis-a-vis the financial documents maintained by M/s Laxmi is shown below in table below:

(Figures in Rs.)

S. No.	Period	Turnover as per Profit & Loss account	Receipts as per 26AS	Gross taxable value as per ST-3 Return
1	2014-15	15030534	5635250	819519
2	2015-16	35064190	27024604	2857022
3	2016-17	46012871	38536242	1587831
4	2017-18 (up to Jun-17)	2448707*	2448707	0
	Total	98556302	73644803	5264372

\* Figures as per 26AS has been taken as Profit & Loss account for the period April- 2017 to June-2017 is not available.

6.3 Comparison of the Taxable Turnover as reflected in the periodical ST-3 Returns filed by M/s Laxmi for the period from FY 2014-15 to FY 2017-18 (up to June-17) vis-a-vis the actual taxable turnover emanating from the Profit & Loss account:-

- (i) On comparing the net taxable turnover reflected in the Profit & Loss account vis-a-vis the net taxable turnover reported in the periodical ST-3 Returns filed by M/s Laxmi during the period from FY 2014-15 to FY 2017-18 (up to June-17), it was noticed that a sizeable quantum of taxable turnover had been deliberately under-reported in the ST-3 Returns to evade the payment of service tax. The total figures reported in the Profit & Loss account of M/s Laxmi for FY 2014-15 to FY 2017-18 (upto June-2017) were amounting to Rs. 9,85,56,302/-, whereas total

gross taxable value reported by M/s Laxmi in ST-3 returns filed with the department for aforesaid period was Rs. 52,64,372/- which was merely 5.34% of total turnover as reported in Profit & Loss account for FY 2014-15 to FY 2017-18 (upto June-2017). Thereby, it was evident that M/s Laxmi had under-reported their income to the tune of Rs. 9,32,91,930/- in the ST-3 returns filed by them with a sole intent to evade payment of service tax.

6.4. Scrutiny of Form 26AS & ST-3 Returns for the period from FY 2014-15 to FY 2017-18 (upto June, 2017):-

6.4.1 Shri Ashok Dulichand Dinodiya, Authorised Signatory of M/s Laxmi in his statement dated 15.10.2019 inter-alia stated that the variations noticed in the figures mentioned in 26AS, P&L Statement of Balance Sheet and the ST-3 Returns filed during the period from 2014-15 to 2017-18 (Up to June, 2017) were due to the reason that certain quantum of taxable income had not been reported in the periodical ST-3 returns filed by their firm as the said income was received for providing Security Services, Cleaning Services and Manpower Services to educational institutions and various Government offices and in their view the same were exempt from levy of service tax by virtue of mega exemption Notification No. 25/2012 dated 20.06.2012.

6.3.2 Vide Notification No. 25/2012 dated 20.06.2012, exemption is available to certain specific services provided to educational institutions. The definition of "Educational Institution" as defined in clause (oa) of Para 2 of Notification No. 25/2012 (inserted vide Notification No. 06/2014-ST dated 11.07.2014) is as under:-

***"(oa) "educational institution" means an institution providing services specified in clause(l) of section 66D of the Finance Act, 1994(32 of 1994)"***

Further, clause(l) of section 66D of the Finance Act, 1994 read as under:

***(I) "services by way of -***

- (i) pre-school education and education upto higher secondary school or equivalent;***
- (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;***
- (iii) education as a part of an approved vocational education course;"***

6.4.3 Further, clause (oa) of the Notification No. ST-25/2012 dated 20.06.2012 was amended by Notification No. 09/2016-ST dated 01.03.2016 w.e.f. 14.05.2016 wherein the definition of "Educational Institution" was amended and read as under:-

***"(oa) "educational institution" means an institution providing services by way of:***

- a) pre-school education and education up to higher secondary school or equivalent;***
- b) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;***
- c) education as a part of an approved vocational education course;"***



6.4.4 On perusal of Form 26AS for the period FY 2014-15 to FY 2017-18, it was observed that many of the service recipients of M/s Laxmi do not fall under the definition of educational institutions. The year-wise amount of services provided to some of these service recipients on the basis of data available in Form 26AS is tabulated herein below:-

(figures in Rs.)

Figures from 26AS for FY 2014-15		
S. No.	Name	Amount Credited
1	AHMEDABAD ELECTRICAL DNN02	74500
2	ADDITIONAL DIRECTOR	1083152
3	CAPITAL PROJECT DIVISION NO 3 GANDHINAGAR	1554923
4	AHMEDABAD ELECTRICAL DIVISION NO 1	186480
5	EXECUTIVE ENGINEER ROAD & BUILDING DIVISION MEHSANA	203280
6	GUJARAT LALIT KALA ACADEMY	121437
7	REGIONAL COACHING CENTRE	65980
8	SECONDARY TEACHERS TRAINING INSTITUTE	215478
9	EXECUTIVE ENGINEER (R&B) DISTRICT DIVISION	772348
10	OFFICE OF THE SENIOR SURGEON	612384
	Total	4889962

(figures in Rs.)

Figures from 26AS for FY 2015-16		
S.No.	Name	Amount Credited
1	AHMEDABAD ELECTRICAL DNN02	462700
2	ADDITIONAL DIRECTOR	2485773
3	CANTEEN STORES DEPARTMENT	227004
4	CAPITAL PROJECT DIVISION NO 3 GANDHINAGAR	1214638
5	DEBTS RECOVERY TRIBUNAL	48000
6	AHMEDABAD ELECTRICAL DIVISION NO 1	811440
7	EXECUTIVE ENGG CAPITAL PROJECT DIVISION NO 2	299200
8	GUJARAT LALIT KALA ACADEMY	133268
9	GUJARAT EDUCATIONAL INNOVATIONS COMMISSION	203511
10	KNOWLEDGE CONSORTIUM OF GUJARAT	5813932
11	OFFICE OF THE D D G V T M GUJARAT	756378
12	SACHIVALAY COMPLEX ELECTRICAL DIVISION-GANDHINAGAR	574751
13	SOCIETY FOR CREATION OPPERTUNITIES THROUGH PROFICIENCY IN ENGLISH G NAGA	62627
14	SECONDARY TEACHERS TRAINING INSTITUTE	275724
15	EXECUTIVE ENGINEER (R&B) DISTRICT DIVISION	217493
16	EXECUTIVE ENGINEER	400431
17	OFFICE OF THE SENIOR SURGEON	1820495
	Total	15807365

(figures in Rs.)

Figures from 26AS for FY 2016-17		
S.No.	Name	Amount Credited
1	AHMEDABAD ELECTRICAL DNN02	115800
2	ADDITIONAL DIRECTOR	2501912
3	CANTEEN STORES DEPARTMENT	62500
4	DEBTS RECOVERY TRIBUNAL	303186
5	AHMEDABAD ELECTRICAL DIVISION NO 1	1510544
6	EXECUTIVE ENGG CAPITAL PROJECT DIVISION NO 2	799463
7	GUJARAT LALIT KALA ACADEMY	58485
8	GUJARAT EDUCATIONAL INNOVATIONS COMMISSION	186024
9	KNOWLEDGE CONSORTIUM OF GUJARAT	5746694

10	OFFICE OF THE D D G V T M GUJARAT	874234
11	SACHIVALAY COMPLEX ELECTRICAL DIVISION-GANDHINAGAR	554541
12	SOCIETY FOR CREATION OPPERTUNITIES THROUGH PROFICIENCY IN ENGLISH G NAGA	251699
13	SECONDARY TEACHERS TRAINING INSTITUTE	183635
14	EXECUTIVE ENGINEER (R&E) DISTRICT DIVISION	64221
15	EXECUTIVE ENGINEER	169062
16	OFFICE OF THE SENIOR SURGEON	1490676
17	RAJULA NAGARPALIKA	3517192
	Total	18389868

(figures in Rs.)

Figures from 26AS for FY 2017-18 (Upto June, 2017)		
S.No.	Name	Amount Credited
1	ADDITIONAL DIRECTOR	44000
2	DEBTS RECOVERY TRIBUNAL	72857
3	SOCIETY FOR CREATION OF OPPERTUNITIES THROUGH PROFICIENCY IN ENGLISH G NAGA	54808
4	RAJULA NAGARPALIKA	1831860
	Total	2003525

6.4.5 The amount of services provided to aforementioned service recipients by M/s Laxmi were on the higher side than the net taxable value reported in ST-3 return filed during the period FY 2014-15 to 2017-18 (upto June-2017). The comparison is tabulated herein table below:-

(Figures in Rs.)

S. No.	Financial Year	Total of figures shown in Table-B, C, D & E above	Net taxable value reported in ST-3 Return	Difference
1	2014-15	4889962	819519	4070443
2	2015-16	15807365	2857022	12950343
3	2016-17	18389868	1587831	16802037
4	2017-18 (upto June-2017)	2003525	0	2003525
	Total	41090720	5264372	35826348

6.4.6 Further, scrutiny of ST-3 returns filed by M/s Laxmi revealed that they had not stated/reported the fact of availment of benefit of any exemption notification. In view of the above, it appeared that the argument put forth by M/s Laxmi during the course of investigation that the difference in taxable turnover as reported in the financial records viz. Balance Sheet, 26AS and ST-3 returns is due to the reason that services were rendered to educational institutions is not sustainable in as much as majority of the recipients of such service are not falling under the definition of educational institution, as is evident from the scrutiny of Form 26AS as discussed in above table.

6.4.6 Accordingly, it appeared that the services provided by M/s Laxmi were taxable and service tax was required to be discharged on the services provided by them. Further, M/s Laxmi had failed to submit copies of invoices issued during the period from FY 2014-15 to 2017-18 (upto June-2017) and they had also failed to submit copies of work orders received from their service recipients to substantiate their claim of exemption for services provided to their clients i.e. Educational Institutions by virtue of notification no. 25/2012 dated 20.06/2012. In view of the above, it appeared that M/s Laxmi had deliberately suppressed the taxable income in their ST-3 return filed with the department with an intention to evade payment of service tax.



6.5 Scrutiny of Balance Sheet, Profit & Loss account and Ledger account of "Security / Main Power Income" submitted by M/s Laxmi for the period from FY 2014-15 to FY 2017-18 (upto June, 2017):

6.5.1 The Balance Sheet, Profit & Loss Account and Journal Register of M/s Laxmi for FY 2017-18 submitted by M/s Laxmi Security (Gujarat) Private Limited vide letter dated 15.07.2019, during the course of inspection at their office premises, were examined. On scrutiny of the said financial documents it was observed that in Profit & Loss account of M/s Laxmi for FY 2017-18, income amounting to Rs. 87,86,653/- had been shown as Security/Man Power Income for entire year and in journal register for FY 2017-18 amount (taxable value) shown as credit against the ledger of Security / Main Power Income during the period April-2017 to June-2017, comes to Rs. 46,84,376/-.

6.5.2 In contradiction to the above, on scrutiny of Balance Sheet and copy of ledger account of Security/Main Power Income for FY 2017-18, submitted by M/s Laxmi vide their letter dated 15.10.2019, it was observed that total income amounting to Rs. 27,98,553/- had been shown as Security / Man Power Income in Profit & Loss account and further in ledger account of Security/Man Power Income for FY 2017-18, all the entries were accounted against a single date 31.03.2018 and the total amount credited is Rs. 27,98,553/-. Interestingly, on perusal of 26AS of M/s Laxmi for FY 2017-18, entries were reflecting during the period April-2017 to June-2017 also and the total amount of the said entries comes to Rs. 24,48,707/-.

6.5.3 On being queried upon the findings as discussed in para 6.4.1 and 6.4.2 above, Shri Ashok Dulichand Dinodiya, authorised signatory of M/s Laxmi in his statement dated 15.10.2019 had interalia stated that they had wrongly submitted aforementioned financial documents i.e. Balance Sheet, Profit & Loss account and Journal Register of M/s Laxmi for the period FY 2017-18 during the course of inspection on 15.07.2019, which were made only for reconciliation purpose and that the actual turnover of M/s Laxmi for the entire FY 2017-18 in respect of services provided by them is Rs. 27,98,553/-. Further, he confirmed that total amount credited during the period April-2017 to June-2017 i.e. 24,48,707/- as reflecting in 26AS was the income of M/s Laxmi during the said period.

6.5.4 Therefore, for the period April, 2017 to June, 2017 taxable income of Rs. 24,48,707/- has been considered as taxable income for computing service tax liability.

**FINAL STATEMENT OF SHRI ASHOK DULICHAND DINODIYA, AUTHORISED SIGNATORY OF M/s LAXMI RECORDED ON 15.10.2019:-**

7. In this regard a statement of Shri Ashok Dulichand Dinodiya, Authorised Signatory of M/s Laxmi was recorded on 15.10.2019, wherein he interalia stated as under:-

- i) that he has been duly authorized by the proprietor of M/s Laxmi to give the present statement and as a testimony of the same he produced letter of authority dated 15-10-2019 issued by Shri Bhavarsinh Dayanand Bholiyan proprietor of M/s Laxmi Security Service;
- ii) that he is the authorised signatory of M/s Laxmi and he looks after and supervises the entire operations of the firm ranging from execution of contracts for supply of manpower/security guard, preparation of invoices, payment of wages, legal matters and compliance matters relating to Service Tax and GST, as the

- proprietor Shri Bhavarsinh Dayanand Bholiyan, who is his maternal uncle is recuperating after a brain stroke;
- iii) that M/s Laxmi is a proprietorship firm and Shri Bhavarsinh Dayanand Bholiyan, his maternal uncle is the proprietor of the said firm. The firm is engaged in the business of providing Security/Detective Agency Services, Cleaning Services and Manpower Recruitment/Supply Agency Services to its clients i.e. educational institutions, Government Offices etc;
- iv) that the registered address of M/s Laxmi is 158/3, Omkar Nagar, Nr. Jaiguru Temple, B/H Laxmi Nagar Society, Meghaninagar, Ahmedabad, Gujarat but in November, 2018 they had shifted their office to the new address i.e. 214, Leelamani Corporate Heights, Opp. Ramdevpir Tekra BRTS Stand, Nava Vadaj, Ahmedabad;
- v) that M/s Laxmi had not approached service tax department for amendment in the address of business premises of the firm in Form ST-2. He accepted the failure of the firm in getting the Registration Certificate amended within time;
- vi) that M/s Laxmi were registered with the erstwhile service tax Commissionerate, Ahmedabad and were holding Service Tax Registration No. AGVPB9866ASD001 for providing taxable services namely "Security/Detective Agency Services", "Cleaning Services" and "Manpower Recruitment/Supply Agency Services". The firm had regularly discharged their service tax liabilities and filed the corresponding ST-3 Returns up to June-2017. He admitted that the service tax liability shown in the ST-3 returns and discharged by the firm is on the lower side as compared to the taxable income mentioned in the Balance Sheet (Profit & Loss account). Further, he stated that their firm M/s Laxmi is not registered in GST;
- vii) that business of M/s Laxmi was takenover by M/s Laxmi Security (Gujarat) Private Limited on the day of incorporation of the said company i.e Shri Bhavarsinh Dayanand Bholiyan who is also the proprietor of M/s Laxmi & himself are Directors in the said company. After the date of incorporation of M/s Laxmi Security (Gujarat) Private Limited i.e. M/s Laxmi was not in existence and therefore, M/s Laxmi had not taken registration in GST. Further, he stated that a new firm M/s Laxmi Security Service having its principal place of business at B/73, Vraj Residency, Near Ring Road Circle, Opp. Hanspura Residency, Ahmedabad - 382330 has been established on 18.01.2018 wherein Shri Bhavarsinh Dayanand Bholiyan (PAN:AGVPB9866A) is the proprietor and the firm is registered in GST having GSTIN No. 24AGVPB9866A2Z6 since 16.02.2018. He produced copy of Shop and Establishment Certificate issued by Deputy Municipal Commissioner, Ahmedabad Municipal Corporation of the new firm;
- viii) that M/s Laxmi have not surrendered their service tax registration;
- ix) that M/s Laxmi Security (Gujarat) Private Limited having registered office at Shop No. 7, Sant Krupa Shopping Centre, Mina Bazar, Meghaninagar, Ahmedabad, Gujarat were registered with the erstwhile Service Tax Commissionerate, Ahmedabad with Service Tax Registration No. AADCL0717HSD001 for the taxable services namely "Security/Detective Agency Services", "Manpower Recruitment/Supply Agency Services" and "Cleaning Services" since 27.06.2016. The said company is also registered in GST having GSTIN No. 24AADCL0717H1ZW;
- x) that during the visit of the officers of DGGI, Ahmedabad Zonal Unit at the premises of their company M/s Laxmi Security (Gujarat) Private Limited under inspection mode, they, vide letter dated 15.07.2019, had submitted documents viz. Balance Sheet and Profit & Loss Account for the period from FY 2014-15 to FY 2017-18, Form 26AS for FY 2014-15, FY 2015-16 & FY 2017-18, Journal Register for the period from FY 2014-15 to FY 2017-18. He stated that as the firm M/s Laxmi had accounted for all the transactions for services provided to their clients as "Journal Entry" and therefore no Sales Ledger/Sales Register was maintained by the firm during the period FY 2014-15 to FY 2017-18 (Up to June-17). Further, he stated that the turnover figures reported in the above financial document i.e. Balance Sheet (P&L account) are the true and correct turnover figures of M/s Laxmi

- xi) during the aforesaid period; that M/s Laxmi had shifted their office to the address 214, Leelamani Corporate Heights, Opp. Ramdevpir Tekra BRTS Stand, Nava Vadaj, Ahmedabad during the month of November, 2018. During the time of shifting of the office, the records in respect of invoices had been misplaced. Further he stated that they don't have copies of invoices with them and hence they cannot submit the same;
- xii) that the invoices raised during the period FY 2014-15 to FY 2017-18 (upto June, 2017) were misplaced and it is difficult to locate the invoices, hence they cannot submit the invoices by the next day;
- xiii) that M/s Laxmi had accounted for all the transactions for services provided to the clients as "Journal Entry" and hence, no Sales Ledger/Sales Register was maintained by the firm during the period FY 2014-15 to FY 2017-18 (Up to June-17). He provided the year wise aggregate income of M/s Laxmi as per Profit & Loss Statement, Form 26AS and as reflected in ST-3 Returns for the period from financial year 2014-15 to 2017-18 (Up to June, 2017) as below:

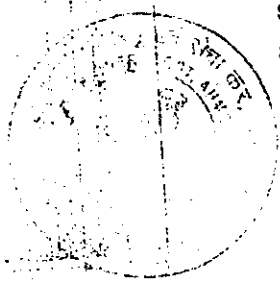
Figures in Rs.

Sr. No.	F.Y.	As per Profit & Loss Statement (Net)	As per 26AS	As per ST-3 Return
1	2014-15	15030534	5635250	819519
2	2015-16	35064190	27024604	2857022
3	2016-17	46012871	38536242	1587831
4	2017-18 (Up to June, 2017)	2448707	2448707	0
	<b>Total</b>	<b>98556302</b>	<b>73644803</b>	<b>5264372</b>

- xiv) that M/s Laxmi maintained all the account in tally software and many of their clients i.e educational institutions, Government offices have deducted TDS in the name of M/s Laxmi during FY 2017-18 whereas invoices to them were raised by M/s Laxmi Security (Gujarat) Private Limited. For reconciliation of wrong deduction of TDS by their clients, they had done the entries in the tally software in the name of M/s Laxmi. After reconciliation, they had approached their clients regarding wrong deduction of TDS in the name of M/s Laxmi and the same had been rectified by their clients. He further stated that by mistake of their office staff who had taken printouts from tally software, they had wrongly submitted Balance Sheet, Profit & Loss account & Journal Register of M/s Laxmi for the period FY 2017-18 to this office which were made only for reconciliation purpose. The actual turnover figures of M/s Laxmi for the FY 2017-18 is Rs. 27,98,553/- and to prove the sanctity of the figures, he submitted copy of income tax return of M/s Laxmi for the FY 2017-18 and copy of ledger account Security/Main Power Income;
- xv) that there are entries reflecting in 26AS of FY 2017-18 for the period April- 2017 to June-2017. He further stated that total amount credited i.e. 24,48,707/- as reflecting in 26AS during the period April-2017 to June- 2017, is the income of M/s Laxmi during the said period. By mistake their accountant had accounted all the entries on 31.03.2018 in the ledger account of Security /Main Power Income. Therefore, taxable income of Rs. 24,48,707/- may only be considered while determining the service tax liability for FY 2017-18 (upto June-2017);
- xvi) that the firm M/s Laxmi is engaged in the provision of "Security/Detective Agency Services", "Cleaning Services" and

“Manpower Recruitment/Supply Agency Services” and the entire income reflected in the Balance Sheet & 26AS of M/s Laxmi is the consideration received towards providing these services and nothing else;

- xvii) that M/s Laxmi to get the work order from their clients, have to apply for the tender and if the firm fulfills the eligibility criteria, then they get the work order from the clients. Prior to incorporation of M/s Laxmi Security (Gujarat) Private Limited, the work orders received from their clients i.e. educational institutions and Government offices were in respect of M/s Laxmi and hence invoices were raised in the name of M/s Laxmi even after the date of incorporation of M/s Laxmi Security (Gujarat) Private Limited i.e. 27.05.2016 and thereby, the turnover figures were shown in the Profit & Loss account for FY 2016-17 and the same were for Security/Manpower income for whole year i.e. 01.04.2016 to 31.03.2017. Further, he stated that some of the work orders received from their clients in the name of M/s Laxmi were continued in FY 2017-18 also and hence the turnover figures had been shown in the Profit & Loss account for the FY 2017-18;
- xviii) that among all the figures, the correct income of M/s Laxmi is shown in the Profit and Loss Account/Balance Sheet. The variations noticed in the figures mentioned in 26AS, P&L Statement of Balance Sheet and the ST-3 Returns filed during the period from 2014-15 to 2017-18 (Up to June, 2017) is due to the reason that certain quantum of taxable income had not been reported in the periodical ST-3 Return filed by their firm as the said income was received for providing Security Services, Cleaning Services and Manpower Services to educational institutions and various Government offices and in their view the same were exempt from levy of service tax by virtue of mega exemption Notification No. 25/2012 dated 20.06.2012;
- xix) that services provided by their firm to educational institutions were exempt from levy of service tax vide S. No. 9 of Mega Exemption Notification No. 25/2012 dated 20.06.2012;
- xx) that M/s Laxmi in the ST-3 returns filed by them, had not stated/reported the fact of availment of benefit of any exemption notification and accepted the failure of M/s Laxmi in reporting the true facts while filing of ST-3 returns;
- xxi) that on being shown copies of Form 26AS recovered/submitted by M/s Laxmi for the period FY 2014-15 to FY 2017-18 and the observation made by this office on perusal of the 26AS form of M/s Laxmi for FY 2014-15 to FY 2017-18 that following service recipients as mentioned in tables below does not appear to be falling under the definition of educational institutions Shri Ashok Dulichand Dinodiya stated he agrees that aforementioned service recipients/institutions are not educational institutions as defined in Notification No. 25/2012 dated 20.06.2012 and therefore services provided to them by M/s Laxmi are taxable. He also admitted that the actual taxable turnover had been under-reported by the firm M/s Laxmi:-



(Figures in Rs.)

Figures from 26AS for FY 2014-15				
S. No.	Name	TAN No.	Amount Credited	Section
1	AHMEDABAD ELECTRICAL DNN02	AHMA00024D	74500	194C
2	ADDITIONAL DIRECTOR	AHMA00370G	1083152	194C
3	CAPITAL PROJECT DIVISION NO 3 GANDHINAGAR	AHMC01992E	1554923	194C
4	AHMEDABAD ELECTRICAL DIVISION NO 1	AHME00163C	186480	194C
5	EXECUTIVE ENGINEER ROAD & BUILDING DIVISION MEHSANA	AHME00560A	203280	194C
6	GUJARAT LALIT KALA ACADEMY	AHMG03016G	121437	194C
7	REGIONAL COACHING CENTRE	AHMR02502D	65980	194C
8	SECONDARY TEACHERS TRAINING INSTITUTE	AHMS22316A	215478	194C
9	EXECUTIVE ENGINEER (R&B) DISTRICT DIVISION	BRDD00729B	772348	194C
10	OFFICE OF THE SENIOR SURGEON	RKT000353D	612384	194C
	<b>Total</b>		<b>4889962</b>	

Figures in Rs.

Figures from 26AS for FY 2015-16				
S.No.	Name	TAN No.	Amount Credited	Section
1	AHMEDABAD ELECTRICAL DNN02	AHMA00024D	462700	194C
2	ADDITIONAL DIRECTOR	AHMA00370G	2485773	194C
3	CANTEEN STORES DEPARTMENT	AHMC01916F	227004	194C
4	CAPITAL PROJECT DIVISION NO 3 GANDHINAGAR	AHMC01992E	1214638	194C
5	DEBTS RECOVERY TRIBUNAL	AHMD03188D	48000	194C
6	AHMEDABAD ELECTRICAL DIVISION NO 1	AHME00163C	811440	194C
7	EXECUTIVE ENGG CAPITAL PROJECT DIVISION NO 2	AHME00668D	299200	194C
8	GUJARAT LALIT KALA ACADEMY	AHMG03016G	133268	194C
9	GUJARAT EDUCATIONAL INNOVATIONS COMMISSION	AHMG05567C	203511	194C
10	KNOWLEDGE CONSORTIUM OF GUJARAT	AHMK05810A	5813932	194C
11	OFFICE OF THE D D G V T M GUJARAT	AHM000736B	756378	194C
12	SACHIVALAY COMPLEX ELECTRICAL DIVISION-GANDHINAGAR	AHMS08600E	574751	194C
13	SOCIETY FOR CREATION OPPERTUNITIES THROUGH PROFICIENCY IN ENGLISH G NAGA	AHMS14652B	62627	194C
14	SECONDARY TEACHERS TRAINING INSTITUTE	AHMS22316A	275724	194C
15	EXECUTIVE ENGINEER (R&B) DISTRICT DIVISION	BRDD00729B	217493	194C
16	EXECUTIVE ENGINEER	BRDE00091A	400431	194C
17	OFFICE OF THE SENIOR SURGEON	RKT000353D	1820495	194C
	<b>Total</b>		<b>15807365</b>	

Figures in Rs.

Figures from 26AS for FY 2016-17				
S.No.	Name	TAN No.	Amount Credited	Section
1	AHMEDABAD ELECTRICAL DNN02	AHMA00024D	115800	194C

2	ADDITIONAL DIRECTOR	AHMA00370G	2501912	194C
3	CANTEEN STORES DEPARTMENT	AHMC01916F	62500	194C
4	DEBTS RECOVERY TRIBUNAL	AHMD03188D	303186	194C
5	AHMEDABAD ELECTRICAL DIVISION NO 1	AHME00163C	1510544	194C
6	EXECUTIVE ENGG CAPITAL PROJECT DIVISION NO 2	AHME00668D	799463	194C
7	GUJARAT LALIT KALA ACADEMY	AHMG03016G	58485	194C
8	GUJARAT EDUCATIONAL INNOVATIONS COMMISSION	AHMG05567C	186024	194C
9	KNOWLEDGE CONSORTIUM OF GUJARAT	AHMK05810A	5746694	194C
10	OFFICE OF THE D D G V T M GUJARAT	AHMO00736B	874234	194C
11	SACHIVALAY COMPLEX ELECTRICAL DIVISION-GANDHINAGAR	AHMS08600E	554541	194C
12	SOCIETY FOR CREATION OPPERTUNITIES THROUGH PROFICIENCY IN ENGLISH G NAGA	AHMS14652B	251699	194C
13	SECONDARY TEACHERS TRAINING INSTITUTE	AHMS22316A	183635	194C
14	EXECUTIVE ENGINEER (R&B) DISTRICT DIVISION	BRDD00729B	64221	194C
15	EXECUTIVE ENGINEER	BRDE00091A	169062	194C
16	OFFICE OF THE SENIOR SURGEON	RKT000353D	1490676	194C
17	RAJULA NAGARPALIKA	RKTR01294G	3517192	194C
	<b>Total</b>		<b>18389868</b>	

Figures in Rs.

Figures from 26AS for FY 2017-18 (Upto June, 2017)				
S.No.	Name	TAN No.	Amount Credited	Section
1	ADDITIONAL DIRECTOR	AHMA00370G	44000	194C
2	DEBTS RECOVERY TRIBUNAL	AHMD03188D	72857	194C
3	SOCIETY FOR CREATION OF OPPERTUNITIES THROUGH PROFICIENCY IN ENGLISH G NAGA	AHMS14652B	54808	194C
4	RAJULA NAGARPALIKA	RKTR01294G	1831860	194C
	<b>Total</b>		<b>2003525</b>	

xxii) that on being shown the calculation of service tax liability based on the figures reported in the Balance Sheet (P&L Account) and ST-3 Returns filed during the period from FY 2014-15 and FY 2017-18 (Apr-Jun) and the submissions made during the course of recording of the statement, as reproduced in table below, he stated that there is a short payment/non-payment of service tax on the services provided by M/s Laxmi during the period FY 2014-15 to FY 2017-18 (upto June, 2017) and he on behalf of M/s Laxmi assured that they would pay the amount short paid/not paid by them during the aforesaid period;

Calculation of Service Tax Demand for the period from FY 2014-15 to FY 2017-18 (upto June-17)

Financial Year	Net turnover as per Balance Sheet	Service Tax Liability on net turnover reported in Balance Sheet	Value Reported in the ST-3 Return	Abatement /Exemption availed in the ST-3 Return	Net Taxable Value Shown in ST-3 Return	Service Tax Paid in the ST-3 Return	Value of taxable services Suppressed	Service Tax evaded
	1	2	3	4	5=3-4	6	7=1-5	8=2-6

2014-15	15030534	1857770	819519	0	819519	101286	14211015	1756484
2015-16	35064190	5021687	2857022	0	2857022	355617	32207168	4666070
2016-17	46012871	6869853	1587831	0	1587831	238176	44425040	6631677
2017-18 (upto June, 2017)	2448707	367304	0	0	0	0	2448707	367304
<b>Total</b>	<b>98556302</b>	<b>14116614</b>	<b>5264372</b>	<b>0</b>	<b>5264372</b>	<b>695079</b>	<b>93291930</b>	<b>13421535</b>

xxiii) that M/s Laxmi had under-reported the actual taxable turnover and he further stated that M/s Laxmi would pay the amount short-paid/not paid by them during the period from FY 2014-15 to FY 2017-18 (Up to June, 2017) with applicable interest and penalty.

### LEGAL PROVISIONS

8.1 With effect from 01.07.2012, 'Service' has been defined in clause (44) of the Section 65 B and means; any activity carried out by a person for another for consideration and includes a declared service.

8.2 M/s Laxmi are providing Security/Detective Agency Services, Cleaning Services and Manpower Recruitment/Supply Agency Services to various clients for commercial consideration. All the above said ingredients of being a 'service' are available in this case and accordingly it appears that the services rendered by M/s Laxmi are covered under the definition of service and that these services are not covered under negative list as provided in Section 66D of the Finance Act, 1994, therefore, the services continued to be chargeable to service tax even after 01.07.2012 read with Section 174 of the CGST Act 2017.

8.3 The term '**Taxable service**' is defined in clause (51) of Section 65B of the Finance Act, 1994. The said definition is reproduced below: -

*"(51) "taxable service" means any service on which service tax is leviable under Section 66B"*

8.4 Section 66B of the Finance Act, 1994, which is the charging section of service tax, is reproduced below:

*"66B. Charge of service tax on and after Finance Act, 2012  
There shall be levied a tax (hereinafter referred as the service tax) at the rate of twelve percent, on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed."*

With effect from 01.06.2015, Section 66B was amended to increase the rate of service tax from 12% to 14%.

### VALUATION

9.1 The provisions of sub-section (2) of Section 67 of Finance Act, 1994, provides for valuation of taxable services for charging service tax. The same reads as under:

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

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

Repeal and Saving - **Section 174 of the CGST Act, 2017)**

(1) ---

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994(32 of 1994) (hereafter referred to as 'such amendment' or

'amended Act', as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

- (a) revive anything not in force or existing at the time of such amendment or repeal; or
- (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered there under; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

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

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

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

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

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

**Miscellaneous Transitional Provisions**

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

**QUANTIFICATION/COMPUTATION OF SERVICE TAX LIABILITY:-**

10.1 On the basis of the documentary evidences available on record and the discussions made in the foregoing paras, the following quantification of the service tax demand was made which is being discussed in table below:-

Calculation of Service Tax Demand for the period from FY 2014-15 to FY 2017-18 (upto June-17)  
Figures in Rs.



Financial Year	Net turnover as per Balance Sheet	Service Tax Liability on net turnover reported in Balance Sheet	Value Reported in the ST-3 Return	Abatement/Exemption availed in the ST-3 Return	Net Taxable Value Shown in ST-3 Return	Service Tax Paid in the ST-3 Return	Value of taxable services Suppressed	Service Tax payable
	1	2	3	4	5=3-4	6	7=1-5	8=2-6
2014-15	15030534	1857770	819519	0	819519	101286	14211015	1756484
2015-16	35064190	5021687	2857022	0	2857022	355617	32207168	4666070
2016-17	46012871	6869853	1587831	0	1587831	238176	44425040	6631677
2017-18 (upto June, 2017)	2448707	367304	0	0	0	0	2448707	367304
Total	98556302	14116614	5264372	0	5264372	695079	93291930	13421535

10.2. From the above table, it is clearly evident that M/s Laxmi had evaded service tax to the tune of Rs. 1,34,21,535/- on the suppressed taxable value of Rs. 9,32,91,930/- during the period from April-2014 to June-2017 and as such the said amount is required to be recovered by them along with applicable interest and penalty. During the course of his statement, Shri Ashok Dulichand Dinodiya, authorised signatory of M/s Laxmi had admitted to the short payment of service tax by M/s Laxmi.

#### **OUTCOME OF INVESTIGATION / CONCLUSION:**

11. In view of the discussions in the foregoing paras and the evidences brought on record and the statement dated 15.10.2019 given by Shri Ashok Dulichand Dindioya, authorised signatory of M/s Laxmi during the course of investigation, it appeared that:

11.1 M/s Laxmi had provided Security/Detective Agency Services, Cleaning Services and Manpower Recruitment/Supply Agency Services to various clients during the period from FY 2014-15 to FY 2017-18 (up to June-17). The above services provided by M/s Laxmi were taxable services under the provisions of Section 65B(51) of Finance Act, 1994 read with Section 66D of Finance Act, 1994 and the definition of 'service' as enunciated in Sec. 65B(44) of the Act ibid (w.e.f. 01.07.2012).

11.2 M/s Laxmi had filed their ST-3 returns for the period from FY 2014-15 to FY 2017-18 (Apr-17 to June-17) vide which they have disclosed the values for taxable services provided by them during the aforesaid period and their net tax liability during the even period. They had reported gross value of Rs. 52,64,372/- in the ST-3 Returns filed by them for taxable services provided by them which did not appear to be the correct taxable value of M/s Laxmi. In order to ascertain the correct taxable value of M/s Laxmi, the turnover values reported in the Balance Sheet, Profit & Loss Accounts, Form 26AS were examined. Shri Ashok Dulichand Dindioya, authorised signatory of M/s Laxmi in his statement dated 15.10.2019, inter alia stated that as the firm M/s Laxmi had accounted for all the transactions for services provided to their clients as "Journal Entry" and therefore no Sales Ledger/Sales Register was maintained by the firm during the period FY 2014-15 to FY 2017-18 (Up to June-17). Post such examination, it appeared that the values reported in the Profit & Loss Account are the highest of all taxable values recorded by M/s Laxmi and therefore the same have been considered for the arriving at the actual tax liability of M/s Laxmi during the period from FY 2014-15 to FY 2017-18 (April-June 2017). The correctness of the figures shown in Profit & Loss account has been admitted by Shri Ashok Dulichand Dinodiya, Authorised Signatory of M/s Laxmi in his statement dated 15.10.2019.

11.3 M/s Laxmi had willfully suppressed the quantum of taxable turnover

reported in the ST-3 returns filed by them by way of under-reporting of the taxable turnover reported in the Profit & Loss account. During the period from FY 2014-15 to FY 2017-18 (up to June-17), M/s Laxmi had under-reported a net taxable income of Rs. 9,32,91,930/- and evaded service tax liability of Rs. 1,34,21,535/-.

- 11.4 Shri Ashok Dulichand Dinodiya, Authorised Signatory of M/s Laxmi in his statement dated 15.10.2019 had admitted that there was a short payment/non-payment of applicable service tax on the services provided by M/s Laxmi during the period from FY 2014-15 to FY 2017-18 (upto June-2017) due to under-reporting of actual taxable turnover in the ST-3 returns. He on behalf of M/s Laxmi had assured that they will pay the service tax short-paid/not paid during the aforesaid period with applicable interest and penalty.

**INVOCATION OF EXTENDED PERIOD AND PENALTY UPON M/s. LAXMI:**

12.1 And whereas M/s. Laxmi were having knowledge of the various provisions of service tax in as much as they were having service tax Registration for payment of service tax on the services viz. Security/Detective Agency Services, Cleaning Services, Manpower Recruitment/ Supply Agency Services rendered by them. However, they deliberately adopted the modus as indicated above to evade payment of service tax.

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

12.3 It is pertinent to mention here that the system of self-assessment is in vogue in respect of service tax. In the scheme of self-assessment, the department comes to know about the service rendered and payment made only during the scrutiny of the statutory returns filed by the service providers. Therefore, it places greater onus on the party/assessee to comply with higher standards of disclosure of information in the statutory returns. It is seen from the facts that emerged during the investigation of the case against M/s Laxmi that they have not filed the correct service tax returns thereby they have wilfully under-reported their actual turnover. Thus, M/s Laxmi have suppressed the material facts from the Department by not filing correct ST-3 returns. This appears to be done intentionally so as to hide their actual turnover of the taxable services provided by them from the Department. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. The evaluation of tax behaviour of M/s Laxmi, shows clear intent to evade payment of service tax by an act of suppression and omission in as much as M/s Laxmi 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, the correct turnover of the taxable services provided by them. Had the investigation proceedings not conducted by DGGI, Ahmedabad Zonal Unit, these facts would never ever come to light.

12.4 In view of the specific omissions as elaborated above, it is apparent, that M/s Laxmi have deliberately suppressed the facts of receipt of consideration towards providing taxable services by under-reporting in the ST-3 returns filed by them. This amounts to wilful suppression of facts with the deliberate intent to evade payment of service tax. Therefore, the extended period of limitation as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 read with Section 174 of the CGST Act, 2017 appears to be invocable to demand service tax for the period from April- 2014 to June, 2017.

12.5 In this regard, it may not be out of place, to highlight 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 there under 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 there under 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 there under, 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 11 A, 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.'*

12.6 Therefore, it appeared that M/s Laxmi have wilfully suppressed the taxable turnover in the ST-3 returns filed by them by way of under-reporting of taxable provision of services with the sole 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 was applicable in the instant case. Consequently, M/s. Laxmi are also liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment service tax short/not paid by them.

12.7 Further, all above acts of contravention as detailed in para 13 hereinafter, with an intent to evade payment of service tax constitute an offence of the nature as described under the provisions of Section 77(l)(b), Section 77(l)(e) and Section 76 and/or 78 of the Finance Act, 1994, rendering themselves liable to penalty under Section 77(l)(b) for failure to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made there under; Section 77(l)(e) for failure to issue invoice in accordance with the provisions of the Act or Rules made there under, with incorrect or incomplete details or fails to account for an invoice in his books of account and not furnishing the information in respect of

above taxable service provided by them and the taxable value thereof in prescribed periodical ST-3 returns as well as under 76 and/or Section 78 of the Finance Act, 1994 for suppression of taxable value of said taxable services provided by them during the period from April, 2014 to June, 2017.

**CONTRAVENTION OF PROVISIONS OF FINANCE ACT, 1994 AND RULES FRAMED THERE UNDER:-**

13.1 In light of the facts discussed hereinabove and the material evidences available on record, it appeared that M/s. Laxmi Security Service, Proprietor Bhanwarsingh D. Bholiyani, having his registered office at 158/3, Omkar Nagar, Nr. Jaiguru Temple, B/h Laxmi Nagar Society, Meghaninagar, Ahmedabad, Gujarat have contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 read with Section 174 of the CGST Act, 2017, with intent to evade payment of service tax in respect of services provided by them to various clients during the period from April, 2014 to June, 2017:-

- (a) **Section 67** of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable services viz. 'Security/Detective Agency Services', 'Cleaning Services' and 'Manpower Recruitment/Supply Agency Services'.
- (b) **Section 68** of the Finance Act, 1994 in as much as they failed to make payment of service tax liability of Rs. 1,34,21,535/- on the services provided by them during the period April-2014 to June-2017, in such manner and within the period prescribed;
- (c) **Section 70** of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to furnish proper periodical returns mentioning the particulars of the aforesaid taxable service provided by them.
- (d) **Rule 6** of the service tax Rules, 1994 in as much as they have failed to deposit the payment of service tax to the credit of the Central Government

14. Sub-Section (6) of Section 73 of the Finance Act, 1994 reads as under:-

"For the purposes of this section, "relevant date" means, —

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made there under.....;"

M/s Laxmi had filed their ST-3 return for the period April, 2014 to September, 2014 for the F.Y. 2014-15 on 21.10.2014 and therefore the relevant date for the purpose of demanding the service tax evaded during the period from April, 2014 to June, 2017 would be 20.10.2019.

15. Further, all the above acts of contravention constitute an offence of the nature as described under the provisions of Section 77 and 78 of the Finance Act, 1994 thereby rendering themselves liable to penalty under Section 77 ibid separately for failure to account for the correct taxable value and not furnishing the information in respect of receipt of income for providing taxable service in prescribed periodical ST-3 returns as well as under Section 78 of the Finance Act, 1994 for suppression of taxable value received from taxable

services provided during the period from April, 2014 to June, 2017 with intent to evade payment of service tax leviable thereon. M/s Laxmi also appear to be liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of service tax.

16. Therefore, M/s. Laxmi Security Service, Proprietor Bhanwarsingh D. Bholiyan having their registered office at 158/3, Omkar Nagar, Nr. Jaiguru Temple, B/H Laxmi Nagar Society, Meghaninagar, Ahmedabad, Gujarat, were issued Show Cause Notice No. DGGI/AZU/Gr-A/36-97/2019-20 dated 18.10.2019, vide which they were called upon to show cause as to why:-

- (i) The service tax amounting to **Rs. 1,34,21,535/- (Rupees One Crore Thirty Four Lakhs Twenty One Thousand Five Hundred Thirty Five only)** (inclusive of Education Cess, Secondary and Higher Edu. Cess, Swachh Bharat Cess and Krishi Kalyan Cess), should not be demanded and recovered from them for the period from April, 2014 to June, 2017 under Section 73 of the Finance Act, 1994, by invoking extended period of limitation as per the proviso to Section 73(1) of the Finance Act, 1994 which has been kept in force in the GST regime vide Section 142 and 174 of the Central Goods and service tax Act, 2017;
- (ii) Interest at an appropriate rate for delayed payment of service tax should not be demanded and recovered from them under **Section 75** of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Services Tax Act, 2017 on the service tax amount of **Rs. 1,34,21,535/-**.
- (iii) Penalty should not be imposed upon them for contravention of provisions of the Finance Act, 1994 under **Section 77 (1) (b)** of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017;
- (iv) Penalty should not be imposed upon them for contravention of provisions of the Finance Act, 1994 under **Section 77 (1) (e)** of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017;
- (v) Penalty should not be imposed upon them under **Section 76** of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and service tax Act, 2017, for the contraventions as mentioned in foregoing paras;
- (vi) Penalty should not be imposed upon them under **Section 78** of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and service tax Act, 2017, for the contraventions as mentioned in foregoing paras.

#### ADJUDICATION PROCEEDINGS

17. During the adjudication proceedings, M/s. Laxmi requested for grant of early hearing and passing of order at the earliest stating that they would like to opt for the SVLDRS as per Board's Circular No. 1074/07/2019-CX dated 12.12.2019. They further stated that for sake of expedite clearing of SCN, they would not argue on any points on merits also. They requested for passing the order without conducting personal hearing by considering their letter dated 03.01.2020 as application to waive of their right to seek personal hearing.

18. Accordingly, Order-in-Original No. 13/ADC/2019-20/MLM dated 10.01.2020 was passed by the then Additional Commissioner, CGST and Central Excise, Ahmedabad North, wherein:-

- a) Demand of Service Tax amounting to Rs.1,34,21,535/- (Rupees One Crore Thirty Four Lakhs Twenty One Thousand Five Hundred Thirty Five only) was confirmed under 73 of the Finance Act, 1994, by invoking extended period of limitation as per the proviso to Section 73(1) of the Finance Act, 1994 which has been kept in force in the GST regime vide Section 142 and 174 of the Central Goods and service tax Act, 2017;
- b) Interest at applicable rate was ordered to be recovered from M/s. Laxmi under Section 75 of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and service tax Act, 2017 on the Service Tax amount of Rs.1,34,21,535/-;
- c) Penalty of Rs.10,000/- was imposed on them for contravention of provisions of the Finance Act, 1994 under Section 77 (1) (b) and 77(1)(e) of the Finance Act, 1994;
- d) Penalty under Section 76 was imposed ;
- e) Penalty of Rs.1,34,21,535/- was imposed on M/s. Laxmi under Section 78 of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and service tax Act, 2017.

#### **APPEAL BEFORE THE COMMISSIONER (APPEALS)**

19. Aggrieved by the Order-in-Original dated 10.01.2020 passed by the Adjudicating Authority, M/s. Laxmi filed an appeal before the Commissioner (Appeals), CGST, Ahmedabad.

20. During appeal proceedings, M/s. Laxmi admitted that they had supplied the services in question and received considerations and consequently they were liable to discharge service tax liability as alleged in SCN, however, they had contested only quantification of demand by contending that they had provided the services, i.e. security or cleaning or house-keeping services, to educational institutions also for which they were eligible for exemption under Entry No. 9(b)(iii) of Notification No. 25/2012-ST dated 20.06.2012. They also submitted copies of related work orders, summary, ledger, invoices in respect of exempted services provided and had accepted liability amounting to Rs.53,61,060/- out of the total demand confirmed. The appellate authority, the Commissioner (Appeals) CGST, Ahmedabad, remanded the case back to the adjudicating authority to decide the case afresh after examination of documents and the appellant was also directed to produce all the documents provided with the appeal papers as well as in their written submission and other supporting documents to the adjudicating authority for causing necessary verification.

#### **DE-NOVO ADJUDICATION PROCEEDINGS**

21. As per the directions of the adjudicating authority, De-novo adjudication proceedings were initiated. M/s. Laxmi were directed to produce all the



documents with the appeal papers as well as their written submission and other supporting documents to the adjudicating authority for causing necessary verification. M/s. Laxmi provided copy of Appeal form along with statement of facts, however, they did not provide any documents in support of their claim for exemption from service tax, despite specific and clear directions by the Commissioner (Appeals), CGST, Ahmedabad. However, following principle of natural justice, M/s. Laxmi was given opportunity of personal hearing on 30.11.2022, 10.03.2023, 28.03.2023, 26.05.2023 and 11.10.2023, however, M/s. Laxmi neither appeared nor furnished any written response.

22. As M/s. Laxmi were given sufficient opportunities of personal hearing, however, they neither availed any of these opportunities, nor filed any submissions in response to SCN, I am therefore bound to decide the case on the basis of the available facts on record and merits.

### **DISCUSSION AND FINDINGS**

23. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

24. I have carefully gone through the records of the case. I find that M/s. Laxmi have not provided any documents in support of their claim for exemption despite clear and specific direction given by the Commissioner (Appeals), CGST, Ahmedabad. I further find that ample opportunities of personal hearing were given to M/s. Laxmi however, they have not availed the same to defend their case. Therefore, I am proceeding to decide the case ex-parte based upon the records available with this office and on merits.

25. In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals, in several judgments/decision, have held that ex-parte decision will not amount to violation of principles of Natural Justice, when sufficient opportunities for personal hearing have been given for defending the case. In support of the same, I rely upon the following judgments/orders as under:-

a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;  
*"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.*

*(Emphasis Supplied)*

b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, deciding on 13-9-1963, has observed that;  
*"Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the assessee was issued a show cause notice, his reply considered, and he was also given a personal hearing in*

support of his reply - Section 33 of Central Excises & Salt Act, 1944. - *It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]*

(Emphasis supplied)"

(c) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.), has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

(Emphasis Supplied)"

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), has observed that;

"Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

(Emphasis Supplied)"

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.L.T. 1296 (S.C.), has observed as under:

"Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing. - If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(Emphasis Supplied)"

(f) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), has observed as under;

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was

argued that an *ex parte* hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."

26. I observe that after introduction of new system of taxation of services in negative list regime w.e.f. 01.07.2012, any activity carried out by a person for another person for a consideration is taxable service except those services specified in the negative list or exempt list by virtue of mega exemption notification or covered under exclusion clauses provided under the meaning of "service" as per Section 65B(44) of Finance Act, 1944. The term "**Service**" has been defined under Section 65B (44) of the Finance Act, 1994 ('Act') as under:

*"service" means any activity carried out by a person for another for consideration, and includes a declared service"*

The term "**Taxable Service**" has been defined under Section 65B (51) of the Act as under:

*"taxable service" means any service on which service tax is leviable under section 66B*

Section 66B provides for levy of service tax, which reads as under:

**SECTION [66B.** *Charge of service tax on and after Finance Act, 2012. — There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

(With effect from 01.06.2015, Section 66B was amended to increase the rate of service tax from 12% to 14%)

27. I find that prior to 01.07.2012 i.e. before introduction of a new system of taxation of services, the tax was levied on services of specified description only, as provided under Section 66 (in force at the material time) of the Act. In other words, the service tax was levied on services of specific description provided under the statute. The new taxation system of services had widened the scope of levy of tax on services without specific description of service. Accordingly, any activity carried out by a person for another person in lieu of the consideration is "service" and is liable to service tax unless it is covered under negative list of services or exempt services under mega exemption notification or covered under exclusion clauses of "service".

28. As per the SCN, M/s. Laxmi was registered with department and was having the Reg. No. AGVPB9866ASD001 and are engaged in providing taxable

services, however, they had short-paid/not paid Service Tax of Rs.1,34,21,535/- (inclusive of Education Cess, Secondary and Higher Edu. Cess, Swachh Bharat Cess and Krishi Kalyan Cess) for the period from April 2014 to June 2017. I find that M/s. Laxmi did not turn up for the P.H given on specified dates. Further, they neither submitted any details /documents as directed by the Commissioner (Appeals).

29. In the instant case, the Service tax demand of Rs.1,34,21,535/- (inclusive of Education Cess, Secondary and Higher Edu. Cess, Swachh Bharat Cess and Krishi Kalyan Cess) is arrived at on the basis of documents gathered by officers of Directorate General of GST Intelligence and on the basis of Shri Ashok Dulichand Dinodiya's statement. As per the investigation, M/s. Laxmi had suppressed Taxable Value of Rs. 9,32,91,930/- and had evaded Service Tax of Rs. 1,34,21,535/-. Summary of the same is given below:-

Financial Year	Net turnover as per Balance Sheet	Service Tax Liability on net turnover reported in Balance Sheet	Value Reported in the ST-3 Return	Abatement/Exemption availed in the ST-3 Return	Net Taxable Value Shown in ST-3 Return	Service Tax Paid in the ST-3 Return	Value of taxable services Suppressed	Service Tax payable
	1	2	3	4	5=3-4	6	7=1-5	8=2-6
2014-15	15030534	1857770	819519	0	819519	101286	14211015	1756484
2015-16	35064190	5021687	2857022	0	2857022	355617	32207168	4666070
2016-17	46012871	6869853	1587831	0	1587831	238176	44425040	6631677
2017-18 (upto June, 2017)	2448707	367304	0	0	0	0	2448707	367304
Total	98556302	14116614	5264372	0	5264372	695079	93291930	13421535

30. A taxable person is required to provide information/documents to the department as and when required. However, in this case M/s. Laxmi failed to furnish/provide the required documents in support of their claim to prove that they are not liable to service tax being the service tax provider. Even during the course of personal hearing also they failed to appear and also failed to submit any documents proving that they are eligible for exemption from payment of service tax or abatement of value for the purpose of calculating service tax liability. In view of the these facts, it is proved that M/s. Laxmi might have been trying to avoid furnishing the details which may have lead to prove that M/s. Laxmi were liable to pay service tax.

31. Further, they had wrongly claimed benefit of exemption Notification No. 25/2012-ST dated 20.06.2012 despite them not being eligible for the same. They also did not seek any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services. In view of the specific omissions and commissions as elaborated in the Show Cause Notice dated 18.10.2019, it is apparent that M/s. Laxmi had deliberately suppressed correct value of Taxable Service in the ST-3 Returns during the relevant period. Consequently, this amounts to mis-declaration and wilful suppression of facts with the deliberate intent to evade payment of Service Tax.

32. I further find that M/s.Laxmi had contravened various 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 "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period April 2014 to June 2017.

33. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of M/s. Laxmi have been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years along with applicable interest. All these acts of contravention of the provisions of Section 67, 68 and 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 of the erstwhile Service Tax Rules, 1994 on part of assessee have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

34. Further, as per provisions of Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made thereunder, 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 said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

35. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Act, rendering themselves liable to penalty under Section 77(1)(b) and 77(1)(e) of the Finance Act, 1994. M/s. Laxmi had not correctly accounted for the value of services provided by them to the service recipients. Accordingly, M/s. Laxmi has failed to keep maintain or retain books of account and other documents as required and is liable to penalty under Section 77(1)(b) of the Finance Act, 1994.

36. Shri Ashok Dulichand Dinodiya, in answer to Question No. 22, 23 and 24, of his statement dated 15.10.2019, admitted that actual taxable turnover has been under-reported by M/s. Laxmi and they shall pay the amount short-paid/not-paid by them along with applicable interest and penalty. Thus, this is fit case for imposition of penalty under Section 77(1)(e) of the Finance Act, 1994 as they failed to account for actual taxable turnover as admitted by Shri Ashok Dulichand Dinodiya, Authorised Signatory, of M/s. Laxmi.

37. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of Finance Act, 1994 as M/s. Laxmi failed to pay the correct amount of Service Tax with intent to evade the same. It is also a fact that they had deliberately not shown correct value of taxable services in their ST-3 Returns and service tax involved thereon, with intent to evade the proper payment of service tax. Had there been no investigation by the officers of Directorate General of GST Intelligence,

Ahmedabad Zonal Unit, Ahmedabad, the service tax evasion would not have been detected. They had never informed the Service Tax department about the correct value of taxable services provided by them to their service recipients during the relevant time and they had also not shown the aforesaid correct value of taxable service provided by them, in respective ST-3 returns filed by them for the relevant period. M/s. Laxmi have thus, willfully suppressed the correct value of services provided by them and service tax payable thereon with intent to evade the Service Tax. It, thus, is found that M/s. Laxmi, as a service provider, deliberately suppressed the correct value of the taxable services provided by them and service tax payable thereon, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act, 1994.

38. In the instant SCN, penalties under section 76 and 78 have been proposed. However, penalty under Section 76 and Section 78 of the Finance Act, 1994 cannot be imposed simultaneously. The Finance Act, 2008 (18 of 2008) which came into force from 10-5-2008, the Parliament has made the legal position clear by introducing a proviso to Section 78. Therefore, as per the prevailing provisions of law, penalty can be imposed either under Section 76 or Section 78 of the Finance Act, 1994 w.e.f 10.05.2008. As I propose to impose penalty u/s.78 of the Finance Act, 1994, I refrain from imposing any penalty u/s.76 of Finance Act, 1994 in this case.

39. In view of facts stated hereinabove, the Value of Services and Service Tax payable thereon mentioned in Show Cause Notice dated 18.10.2019 issued to M/s. Laxmi is considered as taxable Value of Services provided and Service Tax payable. Taxable Value as the Show Cause Notice comes to Rs. 9,32,91,930/- and Service Tax Payable as per the Show Cause Notice is Rs. 1,34,21,535/-.

40. Further the onus is on the assessee to prove that they are eligible for any exemption Notification. In this connection the Hon"ble Supreme Court of India in the case of Commissioner of Central Excise New Delhi Vs. Hari Chand Shri Gopal reported in 2010(260) ELT 3 (SC) clarified that the person claiming exemption or concession has to establish that he is entitled to that exemption or concession. The relevant portion of the order is reproduced as under:

*"22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exemption or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave - (1996) 2 SCR 253, held*

*that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."* Here in the instant case the assessee failed to prove that they are eligible for the exemption Notifications.

41. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. On the basis of investigation done by the officers of the Directorate General of GST Intelligence, Ahmedabad Zonal Unit, it appeared that M/s. Laxmi had not discharged service tax liability correctly. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposed on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing correct value of taxable service with intent to evade payment of service tax. All the above facts 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. Therefore, service tax of Rs. 1,34,21,535/- not paid by M/s. Laxmi as worked out in the Show Cause Notice dated 18.10.2019 issued to M/s. Laxmi is required to be recovered from them under Section 73 (1) of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

42. 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. M/s. Laxmi had deliberately shown incorrect value of services and Service Tax payable thereon in ST-3 Returns, with intent to evade the payment of Service Tax. These facts would not have come to light if there had been no investigation against M/s. Laxmi. Moreover, 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 has made the following observations 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, non payment, 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."

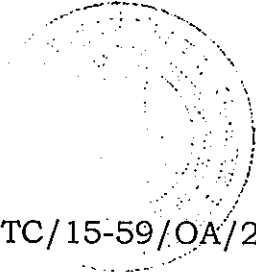
43. In view of the above facts and findings, I pass the following order.

### ORDER

- (i) I confirm the demand of Service Tax of Rs. 1,34,21,535/- (Rupees One Crore Thirty Four Lakhs Twenty One Thousand Five Hundred Thirty Five only) (inclusive of Education Cess, Secondary and Higher Edu. Cess, Swachh Bharat Cess and Krishi Kalyan Cess), which was not paid/short paid by M/s. Laxmi Security Services, for the period from April, 2014 to June, 2017, as discussed in forgoing paras and order to recover the same from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Services Tax Act, 2017;
- (ii) I confirm the demand of Interest at the appropriate rate and order to recover from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Services Tax Act, 2017;
- (iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Laxmi Security Services, under Section 77(1)(b) of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Services Tax Act, 2017;
- (iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Laxmi Security Services, under Section 77(1)(e) of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Services Tax Act, 2017;
- (v) I drop penalty under Section 76 of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Services Tax Act, 2017 as discussed above;
- (vi) I impose Penalty 1,34,21,535/- (Rupees One Crore Thirty Four Lakhs Twenty One Thousand Five Hundred Thirty Five only), under Section 78 of the Finance Act, 1994, as amended on M/s. Laxmi Security Services, I

further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Laxmi Security Services, pay the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Laxmi Security Services, shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

44. Accordingly the Show Cause Notice No. DGGI/AZU/Gr-A/36-97/2019-20 dated 18.10.2019 is disposed off.



(Lokesh Damor)  
Additional Commissioner  
Central GST and Central Excise  
Ahmedabad North

F.No. STC/15-59/OA/2019

Dt:12.01.2024

To  
M/s. Laxmi Security Service  
158/3, Omkar Nagar, Nr. Jaiguru Temple,  
B/h Laxmi Nagar Society, Meghaninagar,  
Ahmedabad, Gujarat.

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Joint Director, Directorate General of GST Intelligence, Ahmedabad Zonal Unit, 6<sup>th</sup> and 7<sup>th</sup> Floor, I-The Address, Near Sola Flyover, Sarkhej-Gandhinagar Road, Thaltej, Ahmedabad - 380059.
3. The Deputy/Assistant Commissioner, Central Excise & CGST, Division-II (Naroda Road), Ahmedabad North.
4. The Supdt, , C. Ex. & CGST, Range-I, Division-II (Naroda Road), Ahmedabad North
- ✓ 5. The Supdt(system) CGST, Ahmedabad North for uploading on website.
6. Guard File

