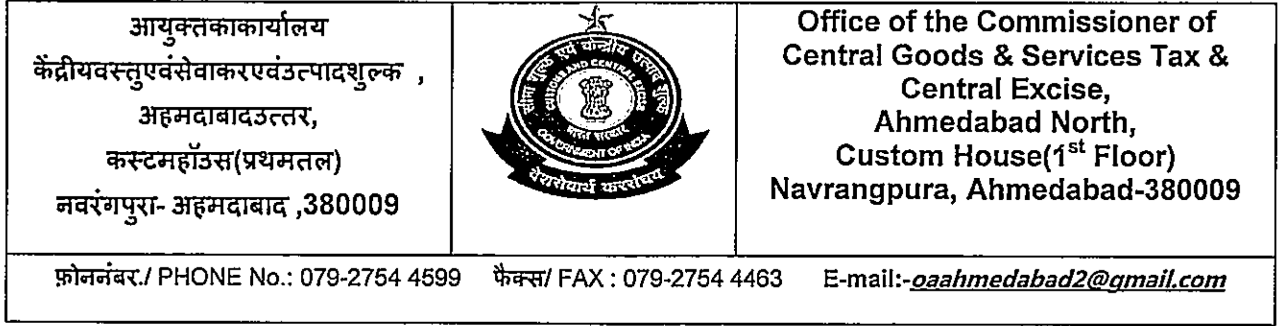


आयुक्तकाकार्यालय
केंद्रीयवस्तुएवंसेवाकरएवंउत्पादशुल्क ,
अहमदाबादउत्तर,
कस्टमहॉउस(प्रथमतल)
नवरंगपुरा- अहमदाबाद ,380009

Office of the Commissioner of
Central Goods & Services Tax &
Central Excise,
Ahmedabad North,
Custom House(1st Floor)
Navrangpura, Ahmedabad-380009

फ़ोननंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:-*oaahmedabad2@gmail.com*

निबन्धित पावती डाक द्वारा /By REGISTERED POST AD

फा .सं/.F.No. STC/15-65/OA/2019

DIN-20201164WT000000A495

आदेश की तारीख़ / Date of Order : 06.11.2020

जारी करने की तारीख़ / Date of Issue : 09.11.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

मुख्य आयुक्त / PRINCIPAL COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–28/2020-21

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,O-20, मेघाणीनगर ,न्यु मेन्टल हॉस्पीटल कम्पाउन्ड ,अहमदाबाद -380016 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है I

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील)नियमावली 2001 ,के नियम 3के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए(। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall

be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं तथा जाएगी की दाखिल में प्रतियों चार , कम से उनमें) जाएंगी की संलगन प्रतियाँ ही उतनी भी उसकी ,हो गई की अपील विरुद्ध के आदेश जिस साथ उसके क सेम एक प्रमाणित प्रति होगी।(

The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 00.1रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 00.4 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide Show Cause Notice bearing No. **DGGI/SZU/36-36/2019-20** dated **06.06.2019issued to M/s. Vishal Décor & Events Pvt. Ltd., B-401/404, Samudra Complex, Nr, GirishColddrink Cross Road, Off CG Road, Navrangpura, Ahmedabad-380 006.**

BRIEF FACTS OF THE CASE

The facts of the case, in brief, are that M/s. Vishal Décor & Event Pvt. Ltd., B-401/404, Samudra Complex, Nr. Girish Colddrink Cross Road, Off C. G. Road, Navrangpura, Ahmedabad – 380006 [hereinafter referred to as 'the*assessee*' for the sake of brevity] is a Private Limited Company, registered under Section 69 of the Finance Act, 1994 under a Certificate bearing number AABCV7045EST001 for providing taxable service of Pandaal and Shamiana/Mandap Keeper Service. The assessee has undertaken to comply with the conditions prescribed in Chapter V of the Finance Act, 1994 read with the Service Tax Rules, 1994. The assessee is liable under Section 68 of the Act to pay the Service Tax leviable under erstwhile Sections 66, 66A of the Act, as may be applicable in particular instances. In GST regime, the assessee is registered vide GSTIN 24AABCV7045E1ZJ.

2. The assessee was also availing Cenvat credit on inputs and input services used in providing the taxable Pandaal and Shamiana/Mandap Keeper services. The assessee having registered with Service Tax Department, were mandated to secure compliance of the obligations placed on them by the Act, the Service Tax Rules 1994, the CENVAT Credit Rules, 2004 (*CCR, 2004 for brevity*), the Place of provision of Service Rules, 2012, the Point of Taxation Rules, 2011 and the Service Tax (Determination of Value) Rules, 2006.

3. Acting on the basis of information that M/s. Vishal Décor & Event Pvt. Ltd. were neither filing ST-3 returns nor discharging their Service Tax appropriately, a search was conducted on 08.11.2016 at their premises and relevant documents (viz. Balance sheet, 26 AS, Copies of Invoices, Tender documents, etc.) were seized under the Panchnama.

4. A statement of Shri Kailashbhai B. Jani, Director of the said assessee was recorded on 08.11.2016 wherein he, *inter alia*, stated as under: -

(i) that he had seen the Panchnama dated 8.11.2016 drawn at their premises and in token of having seen and perused, he had put his dated signature on it in token of agreeing with it.

(ii) that M/s Vishal Décor & Event Pvt. Ltd is a private limited company and he, Shri Mukeshbhai Jani (his son) and Shri Aashik B. Shah are the Directors of the company.

(iii) that they are providing Pandaal and Shamiana services to various government departments in Gujarat.

(iv) that he looks after all the day to day activities of the unit including the Service tax.

(v) that their turnover since 2011-12 is as under:

Financial Year	Turnover in Rs.
2011-12	1,31,48,865
2012-13	3,06,28,384
2013-14	5,65,35,937
2014-15	6,90,45,334
2015-16 (Not audited)	9,59,58,432
2016-17 (till date as per Form 26AS)	2,61,85,274

(vi) that they are registered with service tax department vide Registration No. AABCV7045EST001 and have paid Service tax upto September 2014 and had filed ST-3 returns upto September 2014.

(vii) that their outstanding Service tax liability for the period from October 2014 to till date is approximately Rs. 2.06 crores.

4.1. From the above statement and from the documents submitted by the party during the course of investigation, it was noticed that the said assessee was providing Pandaal and Shamiana service and was registered with service tax and had discharged their service tax liability only upto September 2014 and filed ST-3 returns upto September 2014. However, it was further observed that they had paid a sum of Rs.16,99,932/- towards their service tax liability for the period from October 2014 onwards, though, they had not filed ST-3 returns from October, 2014 onwards.

4.2. It was also found that though they were availing Cenvat credit on inputs and input services but they were not filing the statutory ST-3 returns under the Finance Act, 1994 or any return under CENVAT Credit Rules, 2004. Thus, they were not declaring any information about any input credit or / and input service credit availed under CENVAT Credit Rules, 2004.

4.3. Thus, in view of this, the following two issues emerged which were required to be investigated:

ISSUE-I	Non / Short payment of Service tax on taxable output service for the period from October 2014 to September 2016.
ISSUE- II	Availing of Cenvat Credit without filing of any statutory ST-3 returns and also without eligible documents.

5. *ISSUE-I: Non/Short payment of Service tax on taxable output services for the period from October 2014 to September 2016*

5.1. Whereas, on the date of search on 08.11.2016, the assessee had paid Service tax and had filed ST-3 returns till September, 2014. For the subsequent period, they had paid

Service Tax of Rs.16,99,932/- only, without determining their actual liability and without filing the prescribed ST-3 Returns.

5.2. A statement of Shri Mukesh Kailashbhai Jani, Director was recorded on 13.02.2019. On being asked regarding the practice followed by M/s. Vishal Décor and Events Pvt. Ltd. for charging service tax from Customers, he informed that they were collecting service tax by including the same in the value of service provided, i.e. the amount of service tax charged was not shown separately but was included in the gross invoice value. Relevant question and answer of the said statement is reproduced below: -

> *Q.3. What was the practice followed by M/s. Vishal Décor and Events Pvt. Ltd. for charging Service tax from Customers?*
>
> *A.3. Majority of our Customers are Department of Gujarat State Government and Ahmedabad Municipal Corporation. We used to charge them for services provided by us, inclusive of Service tax. By and large, service tax was not calculated separately in the invoices.*

Thus, the assessee was aware about their service tax liability and was charging and collecting it from their Customers, though they did not mention it separately on the body of invoice.

5.3. During the course of search, some of the files containing photocopies of invoices issued by the assessee were found and seized under Panchnama dated 08.11.2016. Ongoing through the same, it was observed that the files did not contain all the invoices and many invoices were missing. Accordingly, to ascertain the total value of services provided by the said assessee, the assessee was asked to provide the copies of all the invoices vide letter dated 27.11.2017. They were also asked to submit the Sales Register, Balance Sheet and Form 26AS for the relevant period vide letter dated 27.11.2017.

5.3.1. The assessee, vide their letter dated 13.02.2019, submitted Sales Register for the year 2014-15, 2015-16, 2016-17. On comparing Invoices (photocopies) seized under panchnama dated 08.11.2016 with the said Sales Register for the relevant period, no corresponding entries were found in the sales register in respect of all the invoices. On being asked regarding this discrepancy, Shri Mukesh Kailashbhai Jani, Director of the assessee in his statement dated 13.02.2019 explained the practice being followed by them during the relevant period, which is reproduced below:

> *"Q.4. Kindly peruse list of photocopies of invoices (Annexure-A) issued by M/s. Vishal Décor and Events Pvt. Ltd., which are available in documents seized by DGGI from the premise of M/s. Vishal Décor and Events Pvt. Ltd. under Panchnama dated 08.11.2016. Invoices listed therein are not reflected in the sales register for the years 2014-15, 2015-16, 2016-17 (upto 08.11.2016) submitted by you under letter dated 13.02.2019. Why?*

A.4. In token of having perused the list of photocopies of invoices (Annexure-A) available in seized document, I put my dated signature on the same. I state that the details of the Invoices are not reflected in Sales Register submitted by us because of the practice followed in the Mandap Keeper Service business, especially with Government Department and AMC. After provision of Mandap Keeper service to Government Department/AMC, we submit invoice based on self-quantification of work done. However, this is not an actual invoice. After our submission of invoice based on self-estimation of work done, the Government Department/AMC themselves quantifies the work again, amends the invoice value and makes payment on the basis of amended value. Many times cumulative payments are received for multiple invoices. We do not receive any break-up from Government Department/AMC regarding actual value of Service quantified by them against each invoice. Hence, initially, we book the sales on provisional basis when invoice is submitted to Government authority. But subsequently when we receive payment against the bills, we remove the provisional entries and book final sales based on payment received and to the extent payment is received. As we don't have breakup of amount received against each invoice, we make a cumulative sales entry of payment without referring invoice numbers. For the above reason, invoice-wise details is not available in our sales register. Considering practice that was being followed by us, submission of invoices for corresponding sales entry in sales register or vice-versa is not possible. However, I state that all the sales have been recorded in sales register and accounted in Balance Sheet to the extent payment received."

5.4. The entire invoices were not available, therefore, it was not possible to ascertain the value of taxable service on the basis of invoices. A file containing the Balance Sheet for the F.Y. 2014-15 & Form 26 AS for the year 2014-15 & 2015-16 was seized and marked as A/44 during search. Further, Balance Sheets for the F.Y. 2015-16 & 2016-17 were submitted by the assessee during the course of investigation under their letter dated 02.08.2017 (RUD-11)& email dated 08.08.2018 respectively, and Form 26 AS for the year 2016-17 was submitted under their email dated 19.12.2018. Therefore, to ascertain the value of taxable service provided by the assessee, a comparison was made regarding the value shown in the Balance Sheet, Sales Register, Form 26AS and value shown in seized invoices as follows:

(in Rupees)

Period	Value as per Balance Sheet excluding Service tax	Value as per Sales Register excluding Service tax	Value of sales as per Form 26AS excluding Service tax. (Receipts during year as per 26AS + TDS(2%) + Closing Sundry Balance -Opening Sundry balance - Service tax declared as payable in ST-3)	Value of sales as per seized invoices excluding S.Tax
2014-15	6,87,81,225	6,87,81,225	6,84,11,837	2,28,08,467
2015-16	11,37,54,555	11,37,54,555	11,11,71,540	64,36,131
2016-17	9,74,40,636	9,74,40,636	8,71,23,162	5,55,26,194

5.4.1. From the comparison of value shown in Balance Sheet, Sales Register, Form 26AS and seized invoices, it is seen that the value shown in Balance Sheet and the Sales Register is same, and is more as compared to the accrued sales value derived on the basis of

receipts in Form 26AS and also as per the sales invoices seized during the search. In view of this, the value shown in Sales Register which is also equal to value shown in Balance Sheet, was found to be appropriate for being considered as the Gross value of taxable service provided by the said assessee during the period October-2014 to September-2016. On the basis of above, the taxable value and Service tax payable has been worked out for the relevant period as under:

Sr. No.	Period	Taxable Value	Service tax payable
1	October 2014 to March 2015	5,27,69,999	65,22,391
2	2015-16	11,37,54,555	1,58,24,663
3	April 2016 to September 2016	2,83,24,226	41,87,777
TOTAL		19,48,48,780	2,65,34,831

Thus, from the above, it was found that during the period from October 2014 to September 2016, the assessee had provided taxable service valued at Rs. 19,48,48,780/- on which Service tax at applicable rate comes to Rs. 2,65,34,831/-. The monthwise details of computation of Service tax has been made in Annexure-A to the Show Cause Notice.

5.4.2. Whereas, the assessee, before the search, was found to have made the following payments towards their Service tax liability, interest and penalty.

(A) Payment made before search for the period from October 2014:

Sr. No.	Tender Date	Challan No.	Service Tax	Interest	Penalty
1	30-03-2016	60599	9,55,940	2,57,786	0
2	16-06-2016	60046	0	0	20,000
3	16-06-2016	60045	48,493	14,539	0
4	23-06-2016	60041	0	0	20,000
5	06-07-2016	60385	3,45,499	0	0
6	14-07-2016	60058	0	0	4,000
7	20-07-2016	60070	3,50,000	0	0
TOTAL			16,99,932	2,72,325	44,000

It is seen from the above that the assessee had made the payment of Service tax of Rs.16,99,932/- only against their Service tax liability from October-2014 onwards. They had also paid interest of Rs.2,72,325/- for late payment of Service tax and had also paid Penalty of Rs.44,000/-.

(B) Payment made after search: During the investigation, the assessee made the following payments towards their Service Tax liability.

Sr. No	Tender Date	Challan no.	Service Tax paid in Rs.
1	10-11-2016	60027	2,54,686
2	10-11-2016	60028	9,00,000
3	10-11-2016	60029	8,50,000
4	13-11-2016	60003	8,42,471
5	21-11-2016	60032	9,00,000
6	02-01-2017	60165	7,00,000
7	04-02-2017	60201	11,40,461
8	04-02-2017	60210	1,59,308
9	04-02-2017	60213	4,25,213
10	04-02-2017	60204	69,618
11	04-02-2017	60206	20,767
12	03-04-2017	60094	17,25,287
13	12-06-2017	60042	4,00,000
14	20-12-2017	60006	21,16,058
15	20-12-2017	60007	4,25,000
16	27-02-2018	00039	15,68,000
17	27-02-2018	00037	4,32,000
18	29-03-2018	60005	8,00,000
19	04-04-2018	60009	5,00,000
20	05-10-2018	60006	10,00,000
21	12-10-2018	60003	4,00,000
22	12-11-2018	60001	20,00,000
23	06-12-2018	60006	5,00,000
TOTAL			1,81,28,869

From the above Table, it is seen that the assessee made a payment of Service tax of Rs.1,98,28,801/- (Rs.16,99,932/- paid before search + Rs.1,81,28,869/- paid after search) against their Service tax liability for the period from October-2014 onwards, and had also paid interest of Rs.2,72,325/- for late payment of service tax. They had also made payment of Rs. 44,000/- as penalty on their own volition.

5.4.3. Thus, the assessee was found to have provided taxable services for the period from October 2014 to September 2016 valued at Rs.19,48,48,780/-. On this amount, their Service tax liability for the period October-2014 to September-2016 worked out to Rs.2,65,34,831/-, against which they had paidService taxof Rs.1,98,28,801/- vide Challans listed in Para 5.3.2. However, they failed to utilize the same to offset their service tax liability in ST-3 returns for the period from October 2014 onwards, filed subsequent to search conducted on 08.11.2016. The date of filing ST-3 returns is detailed in Table below.

ST-3 for the period	Due date of filing ST-3	Filed on
October 14 to March 15	25/04/2015	19/09/2018
April 15 to September 15	25/10/2015	19/09/2018
October 15 to March 16	29/04/2016	19/09/2018
April 16 to September 16	25/10/2016	19/09/2018

6. *Legal provisions*:From the documents seized, submitted by the assessee during the course of investigating and the statements of the Directors, it has been observed that the assessee is engaged in providing *Pandaal and Shaminaa,* etc. for temporary occupation, primarily for events organized by various departments of Government of Gujarat and are receiving consideration in lieu of the said services. In pre–negative list regime, the said service was classified as "Mandap Keeper service". However, in negative list regime, they are discussed as under:

6.1. As per Section 65B(44) of the Finance Act, 1994;

"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include –
(a) an activity which constitutes merely, -
(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
(iii) a transaction in money or actionable claim;
(b) ……………
(c) ……………
(d)

6.2. As per Section 65 B(51) of the Finance Act, 1994 –

"taxable service" means any service on which service tax is leviable under Section 66 B;

6.3. As per Section 66B of the Finance Act, 1994; -

there shall be levied a tax (hereinafter referred to as the Service Tax) at the rate of twelve/fourteen percent on the value of all services, other than those services specified in the negative list, provided or to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

6.4. From the above legal provision, it appears that the Pandal & Shamiana/Mandap Keeper Service is covered under the definition of Service under Section 65B(44) of the Finance Act, 1994 and is taxable service under Section 65B(51) and therefore liable to Service tax under Section 66 B of the Finance Act, 1994. The consideration of Rs.19,48,48,780/-, received by the assessee from various service receivers, for the period from October 2014 to September 2016, for provision of services, are actually towards 'services' provided in respect of the Mandap keeper service.

6.4.1. The assessee had not filed the ST-3 returns after September-2014 onwards and had therefore not declared to the department in any manner that they were engaged in providing Mandap keeper service after September 2014 also. The Service tax liability on the said consideration, as determined in terms of Section 67 of the Finance Act, 1994 for the period October-2014 to September-2016 worked out to Rs.2,65,34,831/-which is required to be paid by them in terms of Section 68(1) of the Finance Act, 1994 read with Rule 6(1) of the Service Tax Rules, 1994 and under proviso to section 73(1) read with section 73A of the Finance Act, 1994 . The assessee also appears to be liable to pay interest on service tax payable, collected but not paid, in terms of Section 75 read with section 73B of the Finance Act, 1994 and penalty in terms of Section 76 and 78 of the Finance Act, 1994. Before the search on 08.11.2016, they had already made the payment of Service tax of Rs.16,99,932/-forthe period from October 2014.

7.1. *Contraventions/ Penal Provisions:*Whereas, the assessee had not paid Service tax of Rs.2,65,34,831/- during the period October-2014 to September-2016 nor did they file the statutory ST-3 returns. Thus, the assessee had contravened the provisions of Finance Act, 1994 by not paying the Service tax and not filing the ST-3 returns. The said contraventions on the part of the said assessee appears to have been committed by them by resorting to suppression of facts, in as much as they failed to declare the taxable value to the department by filing the ST-3 returns. They were aware of their tax liability, as confessed in their statement, but failed to discharge the same with an intent to evade payment of Service tax.

7.1.1. All these acts of omission and commission done by them by way of contravention of the provisions of Section 67, 68, and 70 of the Finance Act, 1994 and Rules made there-under with an intent to evade the payment of Service tax, have rendered them liable for penal action under Section 76 and/or 78 of the Finance Act, 1994.

7.2. Whereas it appears that Shri Kailashbhai Bhagwatiprasad Jani, Director of the said assessee is the person looking after all day to day work including Service tax matters. He was well aware about the provisions of Service tax law and had also collected service tax from their Customers by including the same in the amount charged in the invoice, but had deliberately, with intent to evade tax did not file the ST-3 returns. He also deliberately short paid service tax on various taxable services which he admitted during the course of investigation; thereby, rendering himself liable for penal action under section 78A (a) and (d) of the Finance Act, 1994.

8.1. *Justification for invocation of extended period:*It appears that in spite of getting themselves registered with the department as provider of taxable service and knowing all the procedures very well and also having undertaken to comply with the provisions of the Finance

Act, 1994, the assessee deliberately did not file the ST-3 returns from October-2014 onwards and did not pay their Service tax liabilities.

8.2. The scheme of Service tax rests on voluntary compliance entrusted with the responsibility to pay the Service tax. As such, the original hypothesis with which one starts out is that the assessee would be complying with the Law in all seriousness that is warranted of a responsible tax payer.

8.3. Interference of departmental officers is generally not permitted as a matter of routine, but only as exceptions and that too when there is specific information or reason to believe that the tax liability is not correctly being discharged. The CBEC, from time to time, has come out with instructions regarding visits by departmental officers, scrutiny of tax returns and other related matters that serve to underline and strengthen the voluntary compliance system.

8.4. The action of disclosure itself is ordinarily limited to the details contained in the periodical return filed once in every six months and the onus to determine facts and issues relevant to the correct ascertainment and discharge of service tax levy remains with the provider of taxable services. If such facts on the basis of which an independent and proper evaluation can be made is kept away from the department due to an act of omission or commission by the party responsible to pay tax, it would constitute a situation where the first proviso to section 73 of the Finance Act, 1994, can reasonably be invoked.

8.5. The first proviso to Section 73 of the Finance Act, 1994, states:

> "*Provided that where any service tax has not been levied or paid or has been short-levied or short paid or erroneously refunded by reason of:*
> *(a) fraud; or*
> *(b) collusion; or*
> *(c) willful misstatement; or*
> *(d) suppression of facts; or*
> *(e) contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax, by the person chargeable with service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "One year", the words "five years" had been substituted.*"

8.5.1. Thus it appears that a suppression of facts can happen even in the absence of a fraudulent intention or a willful mis-statement, but where suppression has happened and out of a conscious decision, extended period is to be invoked.

8.6. In this case, the assessee deliberately and willfully suppressed the facts of providing taxable services after September-2014 by not filing the prescribed ST-3 Returns. The taxable services provided by the assessee would not have come to the notice of the department,

but for the search carried out by the DGGI. It appears that the assessee has suppressed the above facts from the department with regard to the details/nature of transactions with a clear intention to evade payment of service tax and has willfully contravened the provisions of the Finance Act 1994 & Rules made thereunder with intent to evade payment of service tax. Thus, it appears that the service tax amount of Rs.2,65,34,831/- (inclusive of cess) is recoverable from the assessee by invoking the extended period of limitation under proviso to Section 73(1) read with Section 73(A) of Finance Act, 1994, along with applicable interest under Section 75 read with Section 73(B) of Finance Act 1994.

8.7. It appears that the above omissions and commissions on the part of the assessee are with intent to evade payment of service tax and therefore the extended period in terms of proviso to Section 73(1) of the Finance Act, 1994 is rightly invokable for recovery of the service tax not paid within the stipulated time, along with interest in terms of the provisions of Section 75 of the Finance Act, 1994. Further, it also appears that by willfully suppressing the facts regarding provision of taxable output service and receipt of the consideration with intent to evade payment of service tax, the assessee rendered themselves liable to penalty under the provisions of Section 76 and/or Section 78 of the Finance Act, 1994.

8.8.1. *Penalty on Director:* M/s. Vishal Decor and Events Pvt. Ltd. were collecting Service tax from their customers by including the same in amount charged in the invoice, during the period October-2014 to September-2016. During the period from October-2014 to September-2016, they collected Rs.2,65,34,831/- as Service tax (incl. cess) but did not credit the same to Government for a period of more than 2 years. Shri Kailashbhai B. Jani, Director of the assessee, in his statement recorded on the day of search on 08.11.2016 had admitted their outstanding Service tax liability and assured to pay the same. He also admitted that he was looking after day to day business activity including Service tax matters. The assessee was holding Service Tax registration since 2004 and Shri Kailashbhai B. Jani, Director was looking after Service tax matters since long and accordingly was very well conversant with Service tax provisions. Though being fully aware that the Service tax collected from their customers is to be deposited to Government account timely, he deliberately evaded payment of Service tax. In conspiring to evade payment of Service tax, he deliberately did not file ST-3 returns, thereby suppressing vital information regarding provision of taxable service by them during the period October-2014 to September-2016. The service tax socollected was also not paid to the credit of Government for more than 02 years. Shri Kailashbhai B. Jani, Director appears to have played instrumental role in these contravention, and has thus, thereby rendered himself liable to penalty under Section 78A (a) and (d) of the Finance Act, 1994.

8.8.2. *Penalty for non-maintenance of records*:Rule 4A(1) of Service Tax Rules, 1994 is as under :

> *4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan.-*
>
> *(1) Every person providing taxable service shall, not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or agreed to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely:-*
>
> *(i) the name, address and the registration number of such person;*
>
> *(ii) the name and address of the person receiving taxable service;*
>
> *(iii) description and value of taxable service provided or agreed to be provided; and,*
>
> *(iv) the service tax payable thereon......*

Whereas, Shri Mukesh Kailashbhai Jani, Director in his statement recorded on 13.02.2019 on being asked the reason for non-submission of sales invoices asked vide Summons dated 27.11.2017 has stated that;

> *Q.5. This office summons dated 27.11.2017 may be perused. Till date you have not submitted Sales invoices. Why?*
>
> *A.5. As per practice followed by us narrated above, we do not issue proper Sales invoice at the time of sales but we submit only an estimate, which is labelled as Invoice. The entries of these invoice are recorded in sales register provisionally, which are revised upon receipt of payment. No other invoice is issued subsequently showing final sales value. As we do not retain copies of the estimates labelled as invoices, we are not in position to submit the same.*

Whereas, it appears that the assessee have failed to maintain basic records mandated as per Service Tax Rules 1994. By contravening provision of Rule 4A(1) of Service Tax Rules, 1994, they have rendered themselves liable for penalty under Section 77 (1)(b) of Finance Act, 1994.

9. *Appropriation of Service tax already paid during investigation*: During investigation, the assessee filed all the ST-3 returns for the period from October 2014 onwards on 19.09.2018, i.e. much after the search on 08.11.2016, and submitted copy of the same to DGGI vide their email letter dated 27.09.2018. The taxable value and service tax payable declared in the ST-3 returns filed by the assessee for the period October 2014 to September 2016 is shown in Table below :

Period	Taxable value declared in ST-3 (Rs.)	Total tax (incl. cess) payable declared in ST-3 (Rs.)
OCT' 14 -MARCH' 15	5,02,58,496	62,11,948
APRIL' 15 -SEPT.' 15	4,66,18,693	60,85,959
OCT.' 15-MARCH' 16	6,70,40,744	96,39,600
APRIL' 16-SEPT.' 16	2,83,24,226	41,87,777
TOTAL	19,22,42,159	2,61,25,284

The taxable value and service tax payable declared by the assessee in ST-3 returns is lower compared to that calculated on the basis of Sales register (Actual liability was Rs.2,65,34,831/- as worked in Annexure-A to this SCN, whereas, they have declared Service Tax liability of Rs.2,61,25,284/- only, in the ST-3 Returns). Scrutiny of the said ST-3 returns revealed that they had not shown the payment of Service tax made in cash in the ST-3 returns. On being asked, the assessee, vide their letter dated 13.02.2019 stated that they have paid the Service tax by challans against their Service tax liability for the period from October-2014 onwards, however by mistake they have not mentioned the details of Challans paid, in their ST-3 returns.

9.1. However, as the assessee was found to have made the payment of Service tax of Rs.1,98,28,801/- by challans, the same is required to be appropriated from the total demand of Rs. Rs. 2,65,34,831/- (inclusive of cess) for the period October-2014 to September-2016.

9.2. Scrutiny of the ST-3 return filed by the asssessee revealed that they have also utilized Cenvat credit for discharging the Service tax liability for the period October 2014 to September 2016 as under.

ST-3 for the period	Due date of filing ST-3	Filed on	Liability discharged using Cenvat Credit as per ST-3 return
October 14 to March 15	25/04/2015	19/09/2018	17,77,301
April 15 to September 15	25/10/2015	19/09/2018	23,98,232
October 15 to March 16	29/04/2016	19/09/2018	33,05,267
April 16 to September 16	25/10/2016	19/09/2018	20,98,676
TOTAL			95,79,476/-

It appears that the assesse had availed Cenvat credit in contravention of Rule 4(1) and Rule 9(9) of CENVAT Credit Rules, 2004 and have utilized the same for payment of Service tax for the period October 2014 to September 2016. As the said Cenvat credit has been availed incorrectly, the same is not considered as Service tax payment as discussed in later part of this Notice.

10. ISSUE-2 : Wrong availment of Cenvat Credit of Rs.1,38,73,196/- for the period from October 2014 to June 2017.

10.1. The assessee had filed the ST-3 return for the period April-2014 to September-2014 before the search. In the said return, they had shown the closing balance of input credit and input service credit as NIL. Thereafter they did not file any ST-3 returns for the subsequent period. They have belatedly filed ST-3 return for the period October-2014 to June-2017 on 19.09.2018. A summon was issued to the assessee on 27.11.2017 to produce the copies of invoices received by them from various input suppliers and input service providers. However, the assessee failed to produce any of the invoices. Further, vide email dated 08.05.18, 11.05.2018 and 14.05.2018the assessee submitted list showing (i) the date of invoice, (ii) name of input supplier / input service provider and (iii) the duty / tax amount. However, the list did not contain (i) the invoice number, (ii) the value of goods or service supplied, (iii) date on which credit taken and the details of inputs and input service. Further, they failed to submit the copies of invoices on the strength of which they had availed the Cenvat credit.

10.2. On the basis of the list submitted by the assessee vide above dated emails, Annexure -C has been prepared. The said annexure shows the date of invoice, name of input supplier/input service provider and the duty/tax amount. The assessee filed all the remaining ST-3 returns for the period October-14 to June 2017, on 19.9.2018 and also availed the Cenvat credit and utilized the said Cenvat credit. The details of ST-3 returns filed and the Cenvat credit availed and utilized is as under:

Sr. No.	ST-3 Return period	Due date for filing ST-3	ST-3 filed on	Cenvat Credit availed in ST-3	Cenvat Credit utilized in ST-3	Delayed days in filing ST-3
1	October 14 to March 15	25/04/2015	19/09/18	17,77,301	17,77,301	1243
2	April 15 to September 15	25/10/2015	19/09/18	23,98,232	23,98,232	1060
3	October 15 to March 16	29/04/2016	19/09/18	33,05,267	33,05,267	881
4	April 16 to September 16	25/10/2016	19/09/18	20,98,676	20,98,676	694
TOTAL-A				95,79,476	95,79,476	
5	October 16 to March 17	30/04/2017	19/09/18	27,43,761	27,43,761	517
6	April 17 to June 17	15/08/2017	19/09/18	15,49,959	15,49,959	400
TOTAL-B				42,93,720	42,93,720	
GRAND TOTAL (A+B)				1,38,73,196	1,38,73,196	

10.3. From the above it can be seen that the first information the assessee furnished regarding availing Cenvat credit is on 19.09.2018 by filing ST-3 return. Apart from these ST-3

returns filed on 19.09.2018, the assessee never submitted any other records for availing the Cenvat credit on inputs and inputs service to the jurisdictional Superintendent. They submitted those annexures through emails dated 08.05.18, 11.05.2018 and 14.05.2018 to DGGI. Thus, in absence of any return, records filed by them, the date of filing the ST-3 returns has to be considered as the date of availing Cenvat credit. As discussed above, Annexure-C has been prepared on the basis of details provided by the assessee vide their email dated 08.05.18, 11.05.2018 and 14.05.2018 which states (i) the date of invoice, (ii) name of input supplier/ input service provider and (iii) the duty/tax amount. Ongoing through the dates of all the invoices mentioned in the said Annexure, it was found that all the invoices were issued more than one year back from the date of filing ST-3 return i.e. 19.09.2018.

10.4. Theassessee,being registered with Service Tax were mandated to secure compliance of the obligations placed on them by the CENVAT Credit Rules, 2004 and thus, can avail credit of duty / tax paidon the inputs and input service under CENVAT Credit Rules, 2004, subject to following of prescribed procedure and fulfillment of certain conditions, which are discussed as under.

10.4.1. Rule 9(1) of the CENVAT Credit Rules, 2004 specifies that the CENVAT Credit shall be taken by the manufacturer or the provider of output service on the basis of any of the following documents, namely :-

(a) *an invoice issued by*
(i) a manufacturer for clearance of –
(ii) inputs or capital goods from his factory or depot ....
(iii) inputs or capital goods as such.
(b) ....
(c) ....
(d) ....
(e) ....
(f) *an invoice, a bill or challan issued by a provider of input service.*

10.4.2. Further sub-rule (5) and (6) of Rule 9 of CENVAT Credit Rules, 2004 specifies about how the records are to be maintained by a Service provider for the inputs as well as input service. For ease of reference, the same are reproduced as under:

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

10.4.3. Rule 9(9) of CENVAT Credit Rules 2004, as amended is reproduced as under;

"(9) The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year."

10.4.4. The third proviso to Rule 4 (1) of CENVAT Credit Rules, 2004, inserted vide Notification No. 21/2014-CE (NT), dated 11/07/2014 (effective from 01.09.2014) specifies the time period in which an assessee can avail the CENVAT credit. The said proviso is reproduced as under: -

*"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after one year **[OLD-** six months **]** of the date of issue of any of the documents specified in sub- rule (1) of rule 9.*

In above third proviso, the words "*one year*" has been substituted vide Notification No. 06/2015-CE (NT), dated 01/03/2015.

10.5. From the above discussed provisions of law, it appears that

(i) the credit can be availed on the basis of invoices issued by the manufacturer and or on the basis of an invoice, bill or challan issued by a provider of input service. Thus, it is mandatory to have original invoice, bill or challan to avail credit.

(ii) The manufacturer or provider of output service has to maintain proper records for the receipt, disposal, consumption and inventory of the inputs and has also to maintain proper records for the receipt and consumption of the input services. The records shall contain the relevant information regarding the value, tax paid, CENVAT credit taken and utilized and the person from whom the input service has been procured. The burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(iii) The provider of output service availing CENVAT has to submit a half yearly return to the superintendent by the end of month following the particular quarter of half year.

(iv) The manufacturer or the provider of output service shall take CENVAT credit within one year from the date of issue of invoice, bill or challans.

10.5.1. In the present case, the assessee had failed to produce the invoices, challans and bills, which they said to have received from the manufacturers and input service providers and on the basis of which they had availed the cenvat credit as shown in the ST-3 returns filed on 19.09.2018. In this regard, letter dated 27.11.2017 was issued to the assessee to submit original invoices on which Cenvat credit was availed by them, however, they have failed to submit the same. Shri Mukesh K. Jani, Director in his statement dated 13.02.2019 stated that they will be submitting the same within 10 days, however, they have failed to submit the same till date. The relevant portion of the statement is reproduced as under.

> *"Q.7. This office summons dated 27.11.2017 may be perused. Till date you have not submitted Original Invoices on which Cenvat credit has been availed. Why?*
> *A.7. Due to some internal mis-management, original invoices on which Cenvat credit has been availed have been misplaced. We are in the process of arranging all the Original invoices and will be submitting the same within 10 days or else you may proceed further in the matter considering we are not in position to produce the same."*

In view of above, it appears that the said assessee had contravened the provisions of Rule 9(1) of CENVAT Credit Rules, 2004.

10.5.2. The assessee had received inputs from the manufactures and input services from input service providers. However they failed to maintain proper records for the receipts, disposal, consumption and inventory of the inputs and also did not maintain any records for the receipts and consumption of the input services. They, vide their emails dated 8.5.18, 11.5.2018 and 14.5.2018 submitted a list of invoices showing the date of invoice, name of supplier and duty/tax amount. The said list did not mention details regarding the invoice/challan or bill number, the value of invoice/bill, the date when the credit has been availed and the date when the credit has been utilized. There is no month wise summary, which can show how much credit they had availed in a particular month. By not maintaining the prescribed records, it appears that the assessee had contravened the provisions of sub rule (5) and (6) of Rule 9 of CENVAT Credit Rules, 2004.

10.5.3. Whereas, it is mandatory for the provider of output service availing CENVAT credit to submit a half yearly return to the Superintendent by the end of the month following the particular quarter or half year. The assesse had failed to submit any such return even though they have claimed Cenvat credit. They filed the Statutory ST-3 returns for the period from October 2014 to September-2016/June-2017 only on 19.9.2018 stating the amount of credit

availed and utilized and have thus contravened the provisions of Rule 9(9) of CENVAT Credit Rules, 2004.

10.5.4. Whereas, Rule 4(1) of CENVAT Credit Rules, 2004 mandates that the provider of output service shall not take CENVAT credit after one year of the date of issue of any documents viz. invoice/challan/Bills. In this case, the assesse did not avail the credit in the time period prescribed in Rule 4(1). The list submitted by them vide their Email dated 8.5.18, 11.5.2018 and 14.5.2018 did not contain the date of availing the credit but contain the date of invoice only. The first document they submitted to the department showing the availment of CENVAT credit was ST-3 return filed on 19.9.2018 which demonstrates that they had availed the credit only on 19.9.2018. In view of this, it appears that the assessee had contravened the provision of Rule 4(1) of CENVAT Credit Rules, 2004.

10.6. Whereas, the Cenvat credit taken crystallizes only when the assessee files statutory returns before the Department. A mere claim of receipt of taxable inputs/input services and possession of invoices during the period cannot be treated as availment of Cenvat credit by the assessee. The process of availment of Cenvat Credit appears to be complete only when the assessee intimates the Department the amount of Cenvat Credit availed/utilized during a particular period, by filing the prescribed return for that period as mandated in Rule 9(9) of CENVAT Credit Rules, 2004 alongwith filing ST-3 return.

10.6.1. Whereas, until ST-3 return mentioning details of Cenvat Credit availed/utilized is not filed by assesse before the Department, it remains open for the assessee to modify their personal records maintained for availment/utilization of Cenvat Credit retrospectively, thereby defying the very purpose of insertion of third proviso to Rule 4(1) of CENVAT Credit Rules, 2004, as amended. Thus, it appears that Cenvat Credit can be treated as availed/utilized by Service provider only when statutory ST-3 return is filed.

10.6.2. Whereas, there was a restriction of time period of six months for taking CENVAT credit from the date of issue of the specified documents under Rule 4(1) of CENVAT Credit Rules, 2004. The said "six months" were substituted as "one year" w.e.f. 01.03.2015 and thus from this date, the manufacturer or the provider of output service can take CENVAT credit within one year from the date of issue of the specified documents.

10.7. Whereas, the assessee has filed ST-3 returns for the period October-2014 to June-2017 on 19.09.2018 and accordingly, had availed Cenvat Credit for this entire period on 19.09.2018 only. List of invoices, on the basis of which they had availed Cenvat credit, was submitted by them vide their emails dated 8.5.18, 11.5.2018 and 14.5.2018 **(RUD-7, 8 & 9)** but they could not provide the copies of invoices. The said list does not show the date of availing

Cenvat Credit.On verification of the said list of invoices, it appears that all the invoices on which Cenvat credit has been availed by the assessee on 19.09.2018, have been issued prior to one year from 19.09.2018 i.e. the date of availment of Credit/filing of ST-3 return. Thus, in view of above, it appears that Cenvat credit of Rs.1,38,73,196/-, as shown in ST-3 returns for the period October 2014 to June 2017 has been availed in contravention of CENVAT Credit Rules, 2004 and are also barred by time in terms of Rule 4 (1) of CENVAT Credit Rules, 2004, and thus not allowable.

11. *Contravention*: The assessee have contravened the provisions of Rule 4(1) of CENVAT Credit Rules 2004 by availing Cenvat Credit after one year from the date of issue of invoice on the basis of which CENVAT Credit was availed, and they have also contravened Rule 9 of CENVAT Credit Rules 2004 by availing credit without eligible document. They had also not maintained the records as mandated under sub rule (5) and (6) of Rule 9 of CENVAT Credit Rules, 2004 nor they had filed the half yearly return as mandated in Rule 9(9) of CENVAT Credit Rules, 2004.

12.1. *Recovery of CENVAT credit wrongly taken*: As per Rule 14 of CENVAT Credit Rules, 2004, where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Central Excise Act, 1944 or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries.

12.2. The fact of non-maintaining any records for availing credit and non-filing the ST-3 and not paying the Service tax came to the light only during the search carried out by the DGCEI (now DGGI). Therefore, it appears that the above omissions and commissions on the part of the said assessee are with intent to evade payment of service tax. Hence, the extended period in terms of proviso to Section 73(1) of the Finance Act, 1994 is invokable for recovery of wrongly availed and utilized CENVAT credit, along with interest in terms of the provisions of section 75 of Finance Act, 1994 read with Rule 14 (ii) of the CENVAT Credit Rules, 2004.

12.3. *Penalty underRule 15 of CENVAT Credit Rules 2004*: As per Rule 15(3) of CENVAT Credit Rules, 2004, in a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of sub-section (1) of section 78 of the Finance Act, 1994.

13. Therefore, the Additional Director General, DGGI, Surat issued a show-cause-notice F.No. DGGI/SZU/36-36/2019-20 dated 06.06.2019 to M/s. Vishal Decor & Event Pvt. Ltd., B-401/404, Samudra Complex, Nr. Girish Colddrink Cross Road, Off. C. G. Road, Navrangpura, Ahmedabad–380006, Gujarat was called upon them to show cause to the Principal Commissioner/Commissioner of Central GST and Central Excise, Ahmedabad-North Commissionerate, having office at 1st Floor, Custom House, Near All India Radio, Navrangpura, Ahmedabad 380009, as to why -

(i) Service Tax amounting to Rs.2,65,34,831/- for the period October-2014 to September-2016 (including applicable cess), as summarized in Annexure-Ato the Show Cause Notice, should not be demanded and recovered from them by invoking extended period as per proviso to sub-section (1) of Section 73 and Section 73A of the Finance Act, 1994.

(ii) Service tax of Rs.1,98,28,801/-paid before/during investigation in cash through e-challan, as detailed in para 5.3.2 of the SCN should not be appropriated from the total demand as mentioned at (i) above.

(iii) Cenvat credit of Rs. 1,38,73,196/- wrongly availed and utilized by them for the period October-2014 to June-2017, should not be disallowed and recovered from them under Rule 14(ii) of CENVAT Credit Rules, 2004, read with Section 73 of the Finance Act, 1994;

(iv) Interest at applicable rates on the amount of Service Tax demanded at (i) above, should not be recovered from them under Section 75 read with Section 73B of the Finance Act, 1994;

(v) Interestof Rs. 2,72,325/- already paidvide Challans,as detailed in para 5.3.2 of the SCN should not be appropriated against interest to be recovered as mentioned at (iv) above;

(vi) Interest at applicable rates on the wrongly availed CENVAT credit, demanded at (iii) above, should not be recovered from them under Rule 14(ii) of CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994;

(vii) Penalty should not be imposed upon them under Section 76 and/or Section 78 of the Finance Act, 1994.

(viii) Penalty should not be imposed upon them under Section 77(i)(b) of the Finance Act, 1994.

(ix) Penalty should not be imposed upon them for wrongly availing and utilizing Cenvat credit in terms of Rule 15(3) of CENVAT Credit Rule, 2004 read with sub-section (1) of Section 78 of the Finance Act, 1994;

(x) Penalty of Rs. 44,000/-already paidvide Challans, as detailed in para 5.3.2 of the SCN should not be appropriated against penalties proposed at (vii), (viii) & (ix) above;

(xi) Late fees should not be charged for not filing of ST-3 return for the period October 2014 to June 2017 by due dates under Section 70 of the Finance Act, 1994.

13.1. Shri Kailashbhai B. Jani, Director of M/s. Vishal Decor & Event Pvt. Ltd., B-401/404, Samudra Complex, Nr. Girish Colddrink Cross Road, Off. C. G. Road, Navrangpura, Ahmedabad–380006 was also called upon under the said show cause to the Principal Commissioner/Commissioner of Central GST and Central Excise, Ahmedabad-North Commissionerate, having office at 1st Floor, Custom House, Near All India Radio, Navrangpura, Ahmedabad 380009, as to why penalty under Section 78A(a) and (d) of the Finance Act, 1994 should not be imposed upon him.

DEFENCE REPLY

14. The said assessee submitted a letter dated 05.10.2020 stating that due to covid pandemic, they were not able to file defence submission in time and sought for another 15 days for the same. They also waived their right to personal hearing and requested to decide the case on the basis of such defence submission. Thereafter, the assessee vide their letter dated 26.10.2020 filed their defence reply inter alia, stating that they deny the averments and allegations of contravention of any provisions of the Finance Act, 1994, Cenvat Credit Rules, 2004 and/or the rules made thereunder, deliberately or otherwise, which would have resulted in any non-payment or short-payment of service tax or ineligible availment of any cenvat credit, that warrants any demand or recovery of such tax or credit with or without any interest, or that calls for any imposition of penalty on their firm under the provisions of the said law, except the facts and situations which are expressly stated and explicitly admitted by them, if any, in the following paragraphs; that the subject show cause notice is not based on any actual facts or figures nor it contains any proper interpretation of the law but instead, the same has been framed upon mere fictions and fancies of the investigating officers with no legal substance; that the investigating authorities have not considered even the most important evidences placed by a bonafide taxpayer before framing exorbitant tax demands upon them; and that therefore, they requested to consider the following facts and explanations and drop the proceedings initiated under the subject notices *in limine* without causing undue injury.

15. They stated that in order to better comprehend the issues involved in the aforesaid SCNs and to make their submission brief to the relevant points, they listed below the grounds/issues based on which the subject SCN has been issued by the department and would accordingly furnish their submissions as follows: -

Sl	Issue/grounds for demand	Period involved	Amount of service tax or cenvat credit demanded.
1.	Non/Short payment of service tax on taxable output services	October, 2014 to September, 2016	Rs. 2,65,34,831
2	Wrong availment of cenvat credit	October, 2014 to June, 2017	Rs. 1,38,73,196

16.1 *Non/Short payment of service tax on taxable output services:* - They stated that as per the SCN, they had not paid ST-3 Returns and not paid service tax for the period from October-2014 to September-2016 except for depositing lump sum amount of Rs. 16,99,932/-; that there are some lapses of delay in filing ST-3 returns and paying applicable service tax, for which they wanted to record the actual reasons which contributed such lapses, which are:

(i) that 99.99% of their taxable services were provided to various Government departments and public sector enterprises, where payments against their bills were not received even upto 1½ years after completion of service and after submission of their initial estimate/bill;

(ii) that the actual practice of issuing bills and subsequent reduction made by the service recipient department were explained by Shri Mukesh Jani, Director of their company during his statement recorded on 13.02.2019 and discussed in Para 5.3.1 of the SCN;

(iii) that the investigating authorities were satisfied about the manner and method of issuing provisional invoices which contained self quantified taxable value which were subsequently recomputed and reworked by the recipient department before making their actual payment to us. Since service tax was payable only on the actual value received by them from the service recipients, they used to take such final figures to books of account. As already explained by the director, they were not receiving any break-up for the reduction/revision of value from the concerned recipient department. Therefore, they were unable to issue final taxable invoices exactly in the manner as required by the department. However, with all bonafides exhibited from their part, they were considering the final amount paid by the service recipient as the taxable value and were recording such amount as the taxable value in their books of account. Since there was substantial delay, i.e. delay which went upto 1½ years, there was a bonafide delay in their filing ST-3 returns and discharging the actual liability of service tax. It is during this intervening period that the DGGI officers conducted search and made out their case;

(iv) that the above practice of business as stated by their director during the investigation, which are not disputed by the investigating authorities were the only reasons for non/short-payment of service tax and delay in filing ST-3 returns.

16.2. Therefore, they requested to kindly consider the above facts and genuine reasons while charging the delay in filing ST-3 returns and non/short payment of service tax. Having explained the actual reasons for their admitted lapse, they have discussed the actual liability arising out of this issue.

17. They stated that the SCN proposed demand of service tax for the period from October-2014 to September-2016; that it is not understood as to why department has limited the demand to September, 2016 when the SCN was issued as late as on 06.09.2019 and when they had submitted the entire sales figures and details covering the entire service tax regime right upto June, 2017; that in fact the SCN calculated the tax liability on the basis of the sales register submitted by them vide their letter dated 13.02.2019 which is marked as RUD # 4; that even the said letter dated 13.02.2019 covered the sales data for the period upto June, 2017; and that nevertheless, since the SCN considered the demand only upto September-2016, they furnish their reply for the same period only.

18.1. They submitted that there is a slight difference in the value and service tax appearing in the SCN vis-à-vis the data furnished by them while filing ST-3 returns on 19.09.2018, which is tabulated below for ready reference: -

Period	Taxable value as per Sales Register excluding Service tax	Service tax worked out in the SCN as per their Sales Register	Taxable value declared in the ST-3 returns	Service tax payable/paid as per ST-3 returns.
2014-15 (Oct-Mar)	5,27,69,999	65,22,391	5,02,58,496	62,11,948
2015-16	11,37,54,555	1,58,24,663	11,36,59,637	1,57,25,559
2016-17 (Till Sep)	2,83,24,226	41,87,777	2,83,24,226	41,87,777
TOTAL	19,48,48,780	2,65,34,831	19,22,42,359	2,61,25,284

18.2. They stated and submitted the above difference, though minor, came up due to some factors such as: difference of understanding on the taxability on services provided to a *Gau Seva Kendra* run by Patanjali, percentage retention of taxable value by the service recipient towards future liabilities, non-receipt of payment, etc. However, in order to avoid litigation, they accepted the liability of Rs. 2,65,34,831/- as demanded in the SCN.

18.3. They also stated that they have made total payments of service tax amounting to Rs. 2,16,07,408/- in cash. Details of such cash payments along with details of challan numbers

and photocopies of corresponding tax payment challans are enclosed herewith as Annexure-A. They submitted that out of this total payment of Rs. 2,16,07,408/-, details of payment totaling Rs. 1,98,28,801/- are already discussed in Para 5.4.2 of the SCN and sought to be appropriated vide Para 13(ii) of the SCN. Remaining amount was paid in lump sum during the subsequent period. They requested to kindly appropriate the entire amount towards the demand and settle the issue. They also stated that the balance payment has also been paid through Cenvat credit account as indicated in the ST-3 returns, details of which are discussed later in their submission, in connection with the second issue involved in the same SCN. They stated that therefore, they are not liable to pay any further service tax in this regard.

19. The assessee also stated that non-payment and/or short-payment of service tax was happened on their part due to bonafide business exigencies listed above. There was absolutely no intention to evade or avoid payment of service tax. This is further evident from their action of depositing lump sum Rs. 16,99,932/- towards service tax, along with interest and penalty of Rs. 2,72,325/- and Rs. 44,000/-, respectively, even before the DGGI officers made their visit to their premises and made out the case. Their bonafides are further evident from the manner and method of payment of cash payment challans, the dates of which indicates the period as and when they received the payments from their service recipients. Thus, they stated that there was no guilt or mens rea on their part, and hence state that they are not liable for any penalty under section 76 or 78 as proposed in the SCN. For the same reasons, proposal to impose penalty on the director under section 78A is also not sustainable. Accordingly, they requested to appropriate the payments already made and settle the SCN.

20.1 *Wrong availment of Cenvat Credit*: - The assessee further state that the SCN also seeks to recover cenvat credit amounting to Rs. 1,38,73,196/- availed by them during the period from October-2014 to June-2017. In this connection, they stated that the SCN is lacking application of mind and false in interpretation of law. The reasons for seeking denial of such a huge amount of credit are that they have not filed any monthly return showing the details of availment of cenvat credit; that they have not declared before the proper officer about their availment of cenvat credit; that since they have filed their monthly return only on 19.09.2018, department would consider the date of their availment of credit as on the said date of 19.09.2018; and that since the credit taken were in respect of the invoices issue more than one year prior to the said date of 19.09.2018, they are not eligible for cenvat credit under Rule 4(1) of CCR, 2004, etc.

20.2. They stated that the law does not require them to file any regular returns or intimations to the proper officer of the department except the ST-3 monthly return. They admitted that they have not regularly filed the ST-3 returns, but filed the same as late as on 19.09.2018, for which the law makes them liable for a penalty as provided under the statute,

which the SCN already invoked against them under para 13(xi) of the SCN. Once the penal provisions for non-filing of ST-3 returns are invoked against them, there is no reason for charging them again by not filing any other intimations or returns which are non-existent in the statute. Thus the SCN is factually wrong when it demanded compliance which does not exist in the law. They enclosed herewith photocopies of all the ST-3 Returns filed by them for the period from October-2014 to June-2017 as Annexure-B.

21. They further submitted that the SCN has wrongly mixed the the concepts of 'availment' and 'utilization' of cenvat credit in its run to make out a big case against them. Various appellate authorities have time and again explained that availment and utilization of cenvat credit are two separate events in the statutory process. Distinguishing the two, Hon'ble Tribunal in *re VN Salgaonkar & Sons Pvt. Ltd. cited at 2008 (10) STR 609 (Tri.Mum)* stated that: "*It was sought by the ld. SDR to distinguish the word "as to taking and allowed" of the credit. I am unable to understand the stand of the revenue. If an assessee to takes eligible credit, he should be allowed to utilize the same, also there could no reason for allowing the credit and not permitting the utilization. This would go against the substantive legislation of the Cenvat Credit Rules, 2004*". It is simply understood that the availing cenvat credit is taking the credit on receipt of invoices and goods or services, while utilization is the process of using such credit towards discharging one's tax liabilities.

22. They mentioned that Para 10.4.4 of the SCN states that they have violated the time limit provided under the third proviso to Rule 4(1) of the CCR, 2004 which reads as: "*Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after one year of the date of issue of any of the documents specified in sub-rule (1) of rule 9.*" It is the case of the department that since they have filed their ST-3 return only on 19.09.2018, the date of their taking cenvat credit shall be considered as the said date of 19.09.2018. They stated that they had already taken/availed the cenvat credit as and when the invoice accompanied with the goods/service reached their premises, but utilized/used such credit only on 19.09.2018 while filing ST-3 returns. Therefore, the interpretation taken by the department is absolutely false and mischievous.

23. They invited attention to Para 10.1 of the SCN which states about their emails dated 08.05.2018, 11.05.2018 and 14.05.2018 sent to the DGGI officers, which contains the list of all invoices on which they had availed/taken cenvat credit. These emails and list of invoices are available on records as RUD # 7, 8 and 9. Copy of the list of invoices submitted under the said emails is also attached herewith as Annexure-C.

24. They further stated that they had regularly maintained accurate accounts and records in respect of each of these invoices, as and when these invoices accompanied with

corresponding goods and/or services received at their premises. In order to substantiate their claim, they submited printouts of their accounts ledger for the FYs 2014-15, 2015-16 and 2016-17 showing the details of cenvat credit and input credit availed/taken by them during these periods, as Annexure-D. Further photocopies of all such invoices are also attached herewith as Annexure-D. They stated that the Original copies of these invoices are all available with them and shall be submitted before this authority or its deputed officers at any time.

25. They have summarised their submission by stating that they were availing/taking cenvat credit each time when the goods or services were received by them along with the corresponding invoices and were scrupulously maintaining all records and documents of accounts and inventories with them. The ledger account of cenvat credit and input credit produced by them as above will fully substantiate their claims. Since maintaining of any service tax statutory records are done away with, department ought to have been considered their private accounts and computerized records to satisfy their availment/taking of cenvat credit. Therefore, they stated that the allegation in the SCN that they have taken/availed cenvat credit only on 19.09.2018, which is the date of late filing of ST-3 returns, is totally false and without any authority of law.

26. Accordingly, they summarized that out of the total tax liability of Rs. 2,65,34,831/- involved during the period from October-2014 to September-2016, they have already paid Rs. 2,16,07,408/- in cash as per the challans listed in the annexure to their defence reply. Similarly, during the period from October-2014 to June, 2017, they have availed total cenvat credit of Rs. 1,38,29,945/- as seen from their computerized account records, out of which they have already utilized Rs. 1,37,19,266/- as declared in the ST-3 Returns filed by them for the said period. They have requested that per the aforesaid ST-3 returns, out of the above total cash payments, Rs. 1,65,81,556/- may be appropriated towards their differential liability for the period from October-2014 to September-2016 (after considering the utilization of cenvat credit) and the balance may be considered against their total liability for the period upto June, 2017.

27.1 <u>*SCN Time-Barred*</u>: Further, the assesseesubmitted that the SCN cannot survive as it has been wrongly issued by invoking extended period of limitation of five years. As already stated above, they have been maintaining scrupulous records in respect of all their transactions in their computerized as well as manual records which were officially required to be maintained for their conduct of business. All these records irrefutably establish their availment of cenvat credit and the liability of service tax. Except for late filing of ST-3 returns due to non-receipt of payments from their clients resulting in late payment of service tax, none of the fact were mis-declared, suppressed or presented in any manner with intent to evade or avoid payment of service tax. Therefore, they claimed that none of the ingredients required for

invoking extended period of five years are available in their case. They pointed out that the SCN does not explain, nor does it even remotely indicate any allegations as to how they have suppressed any information from the knowledge of the department or how they have mis-declared or mis-stated any facts with intent to evade service tax. In the absence of any such essential ingredients they stated that the SCN is absolutely illegal and requires to be dropped per se. They also submitted that various judicial authorities including Hon'ble Apex Court and High Courts have repeatedly examined the question of suppression of facts and settled the principles of law by providing clear guidelines in this regard, some of which are cited in the following paras.

27.2. In the case of Bhagwati Spherocast Pvt. Ltd. cited at 2019 (368) ELT 308 (Guj), Hon'ble High Court of Gujarat held that:

> *"6. The law about invocation of extended period of limitation is well settled. Only in a case where the assessee knew that certain information was required to be disclosed and yet the assessee deliberately did not disclose such information, the case would be that of suppression of facts. When the Excise Officers called or certain information and the assessee did not disclose the same or deliberately disclosed wrong information that would be a case of wilful misstatement. Even in cases where certain information was not disclosed as the assessee was under a bona fide impression that it was not duty bound to disclose such information, it would not be a case of suppression of facts as held by the Supreme Court in the well-known cases of Padmini Products and Chemphar Drugs & Liniments reported in 1989 (43) E.L.T. 195 (S.C.) and 1989 (40) E.L.T. 276 (S.C.), respectively.*
>
> *6.1 What is "suppression" has been considered by the Supreme Court in the case of Continental Foundation Jt. Venture v. CCE, Chandigarh reported in 2007 (216) E.L.T. 177 (S.C.), and it is held by the Hon'ble Supreme Court with regard to the proviso to Section 11A of the Central Excise Act, 1944, that mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty. In the previous case like Messrs Jaiprakash Industries Ltd. reported in 2002 (146) E.L.T. 481 (S.C.) also, the Supreme Court has held that a bona fide doubt as to non-dutiablility of goods was sufficient for the assessee to challenge the demand on the point of imitation. However, mere failure in giving correct information would not be a case where the Revenue can invoke extended period of limitation."*

27.3. In the case of *Asian Tubes Ltd. – 2011 (21) ELT 58 (Tri.Ahd),* Hon'ble Tribunal held that when details of availment of credit has been reported in periodical monthly return, there cannot be a suppression of facts for the purpose of invoking extended period. In the matter of *Parul Associates Interiors Pvt. Ltd. reported in 2016 (46) STR 373 (Tri.Bang)* it is held that the extended period cannot be invoked and the appellants cannot be found fault with if they claimed a *bona fide* belief that what they were doing was correct. The appellants had taken the registration themselves; were paying Service Tax regularly; filing returns regularly and hence they cannot have suppressed any information. In the case of Zee Media Corporation Ltd. – 2018 (18) GSTL 32 (Allh), Hon'ble High Court held that when the show cause notice itself states that the assessee has maintaining all records they cannot be considered to have suppressed any

information and hence extended period not invocable. In the case of *Savira Industries cited at 2016 (331) ELT 504 (Tri Chennai)* it is held that bonafide doubt regarding excisability of goods cannot be a valid ground for invoking extended period.

27.4. Hon'ble Supreme Court has categorically ordered in the case of HMM Ltd. – 1995 (76) ELT 497 (SC) that extended period cannot be invoked unless the SCN puts the noticee specifically as to which of the commissions or omissions has been committed by them. The judgement says as follows: -

> *".....Now in order to attract the proviso it must be shown that the excise duty escaped payment by reason of fraud, collusion or wilful mis-statement or suppression of fact or contravention of any provision of the Act or of the Rules made thereunder with intent to evade payment of duty. In that case the period of six months would stand extended to 5 years as provided by the said proviso. Therefore, in order to attract the proviso to Section 11A(1) it must be alleged in the show cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or wilful mis-statement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been noticed or that the assessee was guilty of wilful mis-statement or suppression of fact. In the absence of such averments in the show cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11A(1) of the Act."*

27.5. They claimed that if one goes through the judicial pronouncements on the subject matter, there are thousands of judgments delivered by Hon'ble Supreme Court and almost all the High Courts of the Country which incontrovertibly states that the extended period of limitation cannot be invoked where the department is unable to pinpoint the misdeclaration, mis-statement or suppression of facts with intent to evade duty/tax by the assessee.

28. They recapitulated that in their case, except for the delay in filing ST-3 returns and consequent delay in payment of service tax, no other contraventions are existing. Therefore, there is not even a remote attempt or intent on their part to evade any tax. In view of these facts, they requested to kindly settle the proceedings as explained by them in the foregoing paras.

PERSONAL HEARING

29 The said assessee vide their letter dated 30.10.2020 informed that since the issues involved in the case are only about considering the facts and figures which are already

available on records, they do not want any personal hearing, and hence they requested to decide the matter on merits on the basis of their detailed defence reply already filed in the matter.

DISCUSSION AND FINDINGS

30. Having carefully gone through the records of the case, I find that the subject SCN has brought up two separate issues for determination, viz: (i) short-payment or non-payment of service tax during the period from October-2014 to September-2016; and (ii) wrong availment of cenvat credit during the period from October-2014 to June-2017. Although these two issues are distinct in nature and legality, the same would together consitute the final liability arising out of this proceedings, and hence I would first discuss the two issues separately and then determine the tax liability.

31. The first issue involves short-payment or non-payment of service tax by the said assessee on the taxable output services provided during the period from October-2014 to September-2016 which was calculatedin the SCN as Rs. 2,65,34,831/-. I find from the defence reply filed by the said assessee that they have specifically admitted this liability of Rs. 2,65,34,831/-, despite having some minor variation in the tax liability declared by them while late filing their ST-3 returns later on 19.09.2018. Although they have listed out various reasons for such short/non-payment of service tax, I am not delving into them for not being relevant for the limited purpose of determination of their net tax liability. Accordingly, I hold that the said assessee has short paid and/or not paid service tax totaling Rs. 2,65,34,831/- leviable on the taxable output services rendered during the period from October-2014 to September-2016 which is liable to be recovered from them as proposed in the subject SCN.

32. The SCN states that out of their aforesaid total tax liability of Rs. 2,65,34,831/-, the said assessee had already deposited Rs. 16,99,932/- together with interest of Rs. 2,72,325/- towards late payment of service tax and penalty of Rs. 44,000/-on their own volition, allin cash, even before the search operation conducted by the DGGI officers on 08.11.2016. Similarly, as per 5.4.2 of the SCN, they have subsequently made cash deposit of Rs. 1,81,28,869/- towards their tax liability. However, the defence reply filed by the said assessee reveals that the assessee has made total deposit of Rs. 2,16,07,408/- through various challans, details of which form part of the defence reply along with photocopies of relevant challans. While going through these challans, I find that the said total deposit of Rs. 2,16,07,408/- includes the aforesaid interest amount of Rs. 2,72,325/- towards late payment of service tax and penalty of Rs. 44,000/- voluntarily deposited by them. In other words, out of their total admitted tax liability of Rs. 2,65,34,831/-, the said assessee has made voluntary deposit of tax amount of Rs. 2,12,91,083/- plus interest amount of Rs. 2,72,325/- towards late payment of service tax as well as penalty of Rs. 44,000/- totaling Rs. 2,16,07,408/-.

33. I find that the demand of service tax has been made in the SCN for the period from October-2014 to September-2016 whereas proposal to deny cenvat credit has been made for the period from October-2014 to June-2017. Since the final net cash liability of the assessee will be dependant on their eligibility or otherwise of the cenvat credit, I am unable to find out the reason for restricting the demand of service tax only for the period upto September-2016 especially when the assessee had filed ST-3 returns for the entire period upto June-2017 and submitted copies thereof to the investigating officers and when the SCN was issued as later as on 06.09.2019. Meanwhile, I find that all the facts and figures for the subsequent period from October-2016 to June-2017 are available on record. In their defence reply, the assessee also requested to appropriate their aforeasid voluntary tax deposits towards their liability arising out of the period upto June-2017 after considering the cenvat credit utilized by them for the same period. Since eligibility of cenvat credit is a separate issue, which I would discuss in the succeeding paras, final liability and appropriation of tax demand could be determined accordingly.

34. The second issue involved in this case is the alleged wrong availment of cenvat credit by the said assessee during the period from October-2014 to June-2017. From the SCN, I find that the only issue which requires determination here is whether the said assessee had actually taken cenvat credit within the mandatory period of 'six months' of the date of issue of input invoice for the period upto 01.03.2015 and 'one year' for the subsequent period from 01.03.2015 onwards as provided under Rule 4(1) of the CCR, 2004, or otherwise. It is the case of the department that since the said assessee had not filed ST-3 returns during this period and since they have not filed any declaration or intimation to the proper officer in this regard, they cannot be considered to have taken cenvat credit for such period. Therefore, SCN considered the date of filing ST-3 return on 19.09.2018 as the date of their taking/availing cenvat credit for the period from October-2014 to June-2017 and thus proposed to deny cenvat credit on the ground of limitation of six months or one year, as applicable. In order to better understand the legal provisions, I quote below the third proviso to Rule 4(1) of CCR, 2004 as cited in Para 10.4.4 of the SCN: -

> *"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after one year of the date of issue of any of the documents specified in sub- rule (1) of rule 9." (earlier, six months)*

35. There is no doubt that an assessee has to take cenvat credit within one year from the date of issue of taxable input invoices and hence, the date of availment/taking cenvat credit is vital for resolving the issue. As a part of the Government policy for simplification of the procedures of tax compliance, all statutory requirements of Service Tax law for filing periodical returns and intimations on any taxable and exempted activities carried out by the taxpayers have

been codified into a single document, i.e. periodical ST-3 returns. In case an assessee fails to file periodical ST-3 returns, the law provides for provisions of penalty for late filing or non-filing, etc. I am of the opinion that once the penal provisions for late filing of ST-3 returns are invoked in a particular case, then the substantial benefits otherwise admissible under such late filed ST-3 returns cannot be denied to the assessees. In the present case, SCN already proposed late fees and penalty for non-filing and late filing of ST-3 returns by the said assessee. Therefore, further allegations of non-filing of any other declarations or intimations will not survive. In the present case, the said assessee has admittedly filed the ST-3 returns as late as on 19.09.2018. Now, the question is whether this late filing date of 19.09.2018 can be considered as the date of availing/taking cenvat credit by the assessee in respect of the taxable inputs or input services received by them during the past period from October-2014 to June-2017?

36.1. I find that the Finance Act, 1994 and the rules made thereunder do not prescribe for maintaining any statutory records for daily receipt and supply of taxable services including inputs, input services, output services, etc. Rule 5 of the Service Tax Rules, 1994 provides that the private records maintained by the assessee containing the requisite particulars shall be acceptable under the law. The said Rule 5 prescribes the manner and method of maintaining records by the assessees, and reads as: -

> *"5. **Records** –*
> *(1)The records including computerized data as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.*
>
> *(2) Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-*
>
> *(i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,- [(a) providing of any service;]*
>
> *(b) receipt or procurement of input services and payment for such input services;*
>
> *(c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;*
>
> *(d) other activities, such as manufacture and sale of goods, if any.*
>
> *(ii) all other financial records maintained by him in the normal course of business.*
>
> *(3) All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.*
> *..."*

36.2. Therefore, if an assessee is able to prove from their private records about their eligibility for any benefits accrued out of receipt of inputs or input services, such private records are acceptable under the law. I also find that the the necessity for maintaining statutory records such as RG 23A Part-I and Part-II etc. under Cenvat Credit Rules, 2004 have also been

done away with long back and it is for the assessee to maintain private records establishing eligibility for cenvat credit in such manner and method as otherwise satisfy the requirements provided in the statute. In fact, Para 10.4.2 of the SCN states this fact by reproducing Rule 9(5) and 9(6) of CCR, 2004 which I quote as under: -

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

36.3. Thus, although the said assessee is not legally bound to maintain any statutory records for daily receipt of inputs or input services in any form prescribed under the law, the onus is solely upon them to prove their eligibility for cenvat credit from the private records or account books maintained by them in this regard. In this regard, Para 10.5.2 of the SCN alleges that the assessee failed to maintain proper records for the receipts, disposal, consumption and inventory of the inputs and also did not maintain any records for the receipts and consumption of the input services. I am unable to accept this allegation as the same Para also refers to the emails dated 08.05.2018, 11.05.2018 and 14.05.2018 submitted by the assessee to the investigating officers which contained the list of invoices showing the date of invoice, name of supplier and duty/tax amount. These emails and its attachments form part of the SCN as RUD Nos. 7, 8 and 9. The assessee has also submitted a complete list of such invoices along with copies of all these as annexure to their defence reply. I have examined these lists which are prepared for FYs 2014-15, 2015-16, 2016-17 and 2017-18 showing the details such as document/invoice number, date, amount of cenvat credit involved, etc. I also find from their defence reply that they have submitted printouts of their computerised account ledger showing details of credit of Cenvat Credit of Excise Duty, Input Tax Credit, etc. maintained on daily basis for the same FYs 2014-15, 2015-16, 2016-17 and 2017-18. There cannot by any doubt that the dates appearing in these ledger accounts for the credit entries are nothing but the dates which could at the best be considered as the date of availment/taking of such cenvat credit on inputs and input services by the said assessee. As a matter of abundant precaution, I have compared the invoice details and credit entries appearing in these computerised ledgers vis-à-vis the email lists of RUD Nos. 7, 8 and 9 referred above. I have also verified these figures with the cenvat credit availment figures as declared by the said assessee in their ST-3 returns filed late on 19.09.2018. Although the said assessee has provided photocopies of their cenvat

invoices as annexure to their defence reply, I have also called for the original invoices during this proceedings to ensure that they possess the original invoices for all the three FYs involved. Since the aforesaid ledger accounts of Cenvat Credit of Excise Duty, Input Tax Credit, etc. are forming part of the official books of account maintained by the said assessee for their business activities, I find no reason to disprove or disregard them for considering as the date of actual availment/taking cenvat credit. Similarly, when the facts regarding substantial compliance of maintaining computerised ledger accounts for day-to-day availment of cenvat credit which form part of their official accounts are available on records, I find no reason to consider the date of filing ST-3 return on 19.09.2018 as the actual date of availing/taking cenvat credit. Therefore, I hold that the said assessee has availed/taken cenvat credit on inputs and input services within the mandatory period of six months or one year, as the case may be, and hence they have satisfied the limitation provided under the third proviso to Rule 4(1) of CCR, 2004. Accordingly, they are eligible for the cenvat credit as appearing in the aforesaid RUD Nos. 7, 8 and 9 which are supported by their possession of original invoices as specified under Rule 9 ibid, computerised ledger account showing daily availment of cenvat credit on inputs and iput services, as well as their declarations of availment and utilization of such credit made in their ST-3 returns. For the same reasons, I hold that the observations made in 10.6 of the SCN that the Cenvat credit taken crystallizes only when the assessee files statutory returns before the Department; that a mere claim of receipt of taxable inputs/input services and possession of invoices during the period cannot be treated as availment of Cenvat credit by the assessee; and that the process of availment of Cenvat Credit appears to be complete only when the assessee intimates the Department the amount of Cenvat Credit availed/utilized during a particular period, by filing the prescribed return for that period as mandated in Rule 9(9) of CENVAT Credit Rules, 2004 alongwith filing ST-3 return, etc. are factually and legally wrong.

37. In order to arrive at the aforesaid interpretations, I draw support from the following case laws: -

37.1. In the case of *Voss Extech Automotive Pvt. Ltd. cited at 2018 (363) ELT 1141 (Tri.Mum)*, Hon'ble Tribunal has stated that in the absence of any statutory records prescribed, e.g., so called RG-23A Part II, entry in books of accounts is sufficient compliance and it cannot be said that there was any delay in taking credit. In this case, Tribunal observed in Para 4 of its decision that: "*...Moreover for taking credit there is no statutory records prescribed the assessee's records were considered as account for Cenvat credit. Even though the credit was not entered in so-called RG-23A Part-II, but it is recorded in the books of accounts, it will be considered as Cenvat credit was recorded. On this ground also it can be said that there no delay in taking the credit. As per my above discussion, the appellant is entitled for the Cenvat credit hence the impugned order is set aside The appeal is allowed.*"

37.2. In the case of*Bharat Petroleum Corporation Ltd. reported at 2019 (365) ELT 536 (Tri.Mum),* Hon'ble Tribunal observed that the facts regarding receipt and use of inputs are to be verified and if found that all inputs on which credit was availed even though belatedly but have been accounted for in private records and books of acounts then credit cannot be denied. Para 4.1 of the said order reads: "... *facts regarding receipt and use of inputs needs to be verified, which can be done on the basis of private records and the books of account maintained by the appellant. If it is found that all the inputs on which the credit was availed even though belatedly but have been accounted for in the private records and books of accounts then the credit cannot be denied...*".

37.3. In the case of ABM Knowledge Ltd. cited at *2019 (27) G.S.T.L. 694 (Tri. Mumbai),* Hon'ble Tribunal has referred to a number of judicial orders, e.g. *2012 (27) S.T.R. 134 (Kar.), 2017 (47) S.T.R. 188 (Tribunal), 2017 (3) G.S.T.L. 45 (Mad.), 1991 (55) E.L.T. 437 (S.C.)* and stated that merely procedural lapses cannot be the ground for denial of substantive benefit of Cenvat credit. It is stated that Cenvat Credit Rules, 2004 lays more thrust on substantive provision and less on the procedural provisions. Once the substantive provisions are complied with for a mere technical lapse the right to Cenvat credit cannot be denied to the appellant.

38.1. Having discussed about the service tax payable by the said assessee for the period from October-2014 to September-2016 and about their eligibility of cenvat credit during the period from October-2014 to June-2017, I would now quantify the demand to determine the net tax liability required to be discharged by the said assessee as a result of this proceedings. As already discussed in Para 32 above, the said assessee has admitted tax liability of total Rs. 2,65,34,831/- for the period October-2014 to September-2016. As per the ST-3 returns filed by them for this period, they have availed/taken total cenvat credit of Rs. 1,00,79,299/- which is admissible to them as per the aforesaid discussion held in Para 36 above. Out of this, they have utilized cenvat credit of total Rs. 95,43,728/- during the same period towards payment of service tax as declared in their ST-3 returns. Thus, out of the total service tax amount of Rs. 2,65,34,831/- payable for the period from October-2014 to September-2016, the said assessee has utilized cenvat credit of Rs. 95,43,728/-, and therefore, the balance amount of Rs. 1,69,91,103/- is required to be appropriated from the voluntary cash deposit of total Rs. 2,12,91,083/- made by them as stated above.

38.2. Similarly, as per the ST-3 returns filed by them, during the remaining period from October-2016 to June-2017, the said assessee has availed total cenvat credit of Rs. 37,50,646/- and utilized Rs. 41,75,538/- which included the balance carried forward from the previous months. As already discussed in Para 36 above, the said assessee is eligible for this availment and utilization of cenvat credit. As per the ST-3 returns, the total tax liability of the

said assessee during this period comes to Rs. 1,20,33,721/- out of which they have utilized the aforesaid cenvat credit of Rs. 41,75,538/-. Since the said assessee has voluntarily requested in their defence reply to approprite the balance amount of Rs. 42,99,980/- towards their differential tax liability of Rs. 78,58,183/- involved for the subsequent period from October-2016 to June-2017, I allow such appropriation despite not having proposed in the SCN.

39. I also find that the said assessee has argued against invoking extended period of limitation on the ground that the ingredients for such action do not exist in their case. While I accept their contention in respect of their availment and utilization of cenvat credit which are suported by their own official books of account, I am unable to accept this version with regard to non-payment of service tax for the period from October-2014 to September-2016. I accept the grounds for invoking the extended period of limitation as explained in the SCN and accordingly hold that the demand has been correctly made. For the same reasons, I hold that the said assessee is liable to pay interest under Section 75 and penalty under Section 78 for such amount. Since they have already deposited interest of Rs. 2,72,325/- towards late payment of service tax and deposited Rs. 44,000/- towards penalty on their own volition, these amounts are required to be appropriated towards the total interest and penalty, as the case may be.

40. Although the SCN also proposes penalty under Section 76, I hold that since penalty has aleady been imposed under Section 78, no separate penalty can be imposed under Section 76 on the same grounds. The SCN also proposes penalty under Section 77(1)(b) of the Act for non-maintenance of records. But no such acts of contravention could be proved in the light of the discussion held above, and hence I am not inclined to impose any penalty on this ground. Similarly, proposal for penlaty under Rule 15(3) of CCR, 2004 read with Section 78 for wrong availment of cenvat credit will also not survive on the facts and grounds discussed above. However, late fee for delayed filing of ST-3 returns as proposed in the SCN is chargeable on the admitted facts on their delay.

41. As regards the proposal for personal penalty proposed on Shri Kailashbhai B. Jani, Diretor of M/s. Vishal Décor & Events Pvt. Ltd., I find that his statements recorded during the investigation and the information provided by him clearly indicate that he was in charge and responsible for the conduct of the said assessee company and was knowingly concerned with all the aforesaid acts of omission and commission carried out by them. He was also aware and concerned about the acts of contravention committed by the said assessee. Therefore, I hold that he is liable for a penalty as provided under section 78A of the said Act.

42. In view of the facts and evidences as discussed in the foregoing paras, I pass the following order: -

ORDER

(i) I confirm demand of service tax amounting to **Rs. 2,65,34,831/-** [*Rupees Two Crores Sixty Five Lakhs Thirty Four Thousands Eight Hundred and Thirty One only*] from M/s. Vishal Décor & Event Pvt. Ltd., Ahmedabad which is leviable on the taxable value of Rs. 19,48,48,780/-/- worked out for the period from October-2014 to September-2016 as discussed in Para 5.4 of the SCN, under Section 73(2) of the Finance Act, 1994;

(ii) I drop the demand of Cenvat Credit made on the alleged ground of wrong availment and utilizationof such credit by the said assessee during the period from October-2014 to June-2017. I confirm their availment of total Cenvat Credit of Rs. 1,38,29,945/- and utilization of Rs. 1,37,19,266/- towards discharging their tax liability as declared in the ST-3 returns filed for the said period from October-2014 to June-2017;

(iii) I order appropriation ofan amount of Rs. 1,69,91,103/-,out of the total cash deposit of Rs. 2,12,91,083/- voluntarily made by the said assessee, towards their differential tax liability arising after utilization of Cenvat credit, during the period from October-2014 to September-2016;

(iv) I allow appropriation of an amount of Rs. 42,99,980/-, being the balance amount of total cash deposit of Rs. 2,12,91,083/- voluntarily made by the said assessee, towards their differential tax liability arising after utilization of Cenvat credit, during the period from October-2016 to June-2017 as per the request made by them in their defence reply;

(v) I order that M/s. Vishal Décor & Event Pvt. Ltd., Ahmedabad should pay interest at the applicable rates under Section 75 of the Finance Act, 1994 on the above confirmed demand of service tax as per Para 42(i) above;

(vi) I order appropriation of an amount of Rs. 2,72,325/- already paid by the said assessee, as discussed in Para 5.3.2 of the SCN, towards the interest payable as per Para 42(v) ahove;

(vii) I impose penalty of **Rs. 2,65,34,831/-** [*Rupees Two Crores Sixty Five Lakhs Thirty Four Thousands Eight Hundred and Thirty One only*] on M/s. Vishal Décor & Event Pvt. Ltd. under Section 78 of the Finance Act, 1994;

(viii) I drop the proposal to impose penalty on the said assessee under Section 76 of the Finance Act, 1994;

(ix) I drop the proposal to impose penalty on the said assessee under Section 77(1)(b) of the Finance Act, 1994;

(x) I drop the proposal to impose penalty on the said assessee under Rule 15(3) of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994;

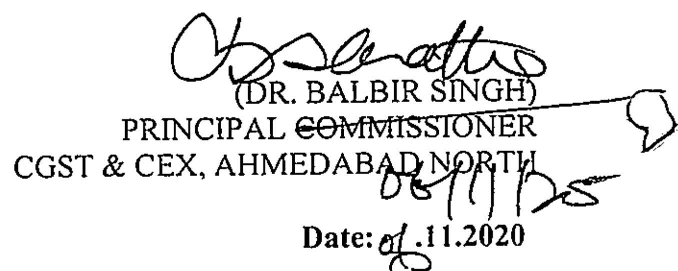
(xi) I order appropriation of an amount of Rs. 40,000/- already paid by the said assessee, as discussed in Para 5.3.2 of the SCN, towards the penalty payable under Section 78 of the Finance Act, 1994 as per Para 42(vii) ahove;

(xii) I impose a late fee of **Rs. 20,000/-** *[Rupees Twenty Thousand only]* on M/s. M/s. Vishal Décor & Event Pvt. Ltd. in terms of Section 70 of the Finance Act. 1994 on the grounds as discussed in Para 40 above;

(xiii) The amount of penalty imposed under Section 78 of the Finance Act, 1994 as above shall be reduced to twenty-five percent of the service tax determined under Section 73(2) as per Para 42(i) above, provided such reduced penalty is also paid along with the service tax so determined and the interest as applicable, within a period of thirty days of the date of receipt of this order;

(xiv) I impose a penalty of **Rs. 1,00,000/-** [*Rupees One Lakh only*] on Shri Kailashbhai B. Jani, Director M/s. Vishal Décor & Event Pvt. Ltd. under Section 78A of the Finance Act, 1994; and

(xv) SCN F.No. DGGI/SZU/36-36/2019-20 dated 06.06.2019 referred above is accordingly disposed of.



(DR. BALBIR SINGH)
PRINCIPAL COMMISSIONER
CGST & CEX, AHMEDABAD NORTH

Date: 06.11.2020

F.NO. STC/15-65/OA/2019
BY REGD POST AD

To

(i) **M/s. Vishal Decor & Event Pvt. Ltd.,**
B-401/404, Samudra Complex,
Nr. Girish Cold drink Cross Road,
Off. C. G. Road, Navrangpura,
Ahmedabad – 380006.

(ii). **Shri Kailashbhai B. Jani,**
Director of M/s. Vishal Decor & Event Pvt. Ltd.,
B-401/404, Samudra Complex,
Nr. Girish Cold drink Cross Road,
Off. C. G. Road, Navrangpura,
Ahmedabad – 380006

<u>*Copy to*</u>: -

1. The Principal Chief Commissioner, CGST & Central Excise Zone, Ahmedabad.
2. The Additional Director General, DGGI, Surat Zonal Unit, Surat.
3. The Deputy Commissioner, CGST & C.Ex. Div-(SG Highway East), Ahmedabad North.
4. The Superintendent, CGST & CX, AR-I, Div- VII (SG Highway East), Ahmedabad North.

Guard File