


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- aaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/ F.NO.STC/15-66/OA/2019

DIN : 20211264WT0000888DB3

आदेश की तारीख /

Date of Order : 24.11.2021

जारी करने की तारीख /

Date of Issue : 02.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-33/2021-22

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 , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 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, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

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 हैं ।

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.

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

उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क नियमावली 2001 ,के नियम 3 के 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 चार प्रतियों में दाखिल, उसकी भी उतनी ही, की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम) प्रतियाँ संलग्न की जाएंगी 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 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

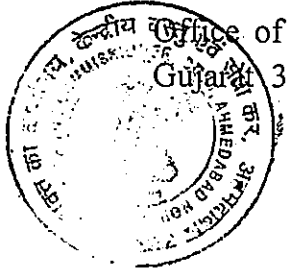
The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice no. DGGI/AZU/Gr.B/36-141/2019-20 dated 08.11.2019 issued to The Chief Post Master, General Post Office, 1st Floor, Office of the Chief Post Master, General Post Office, Salapas Road, Ahmedabad, Gujarat 380001



The Chief Post Master, General Post Office, 1st Floor , Office of the Chief Post Master, General Post Office, Salapas Road, Ahmedabad, Gujarat 380001 was issued SCN dated 08.11.2019 vide F.No. DGGI/AZU/Gr.B/36-141/2019-20 by the DGGI Zonal Unit Ahmedabad demanding therein Service Tax of Rs. 4,56,58,019/-.

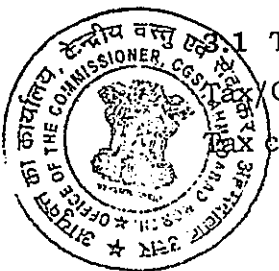
BRIEF FACTS OF THE CASE PERTAINING TO ISSUANCE OF THE SUBJECT SCN ARE AS UNDER:

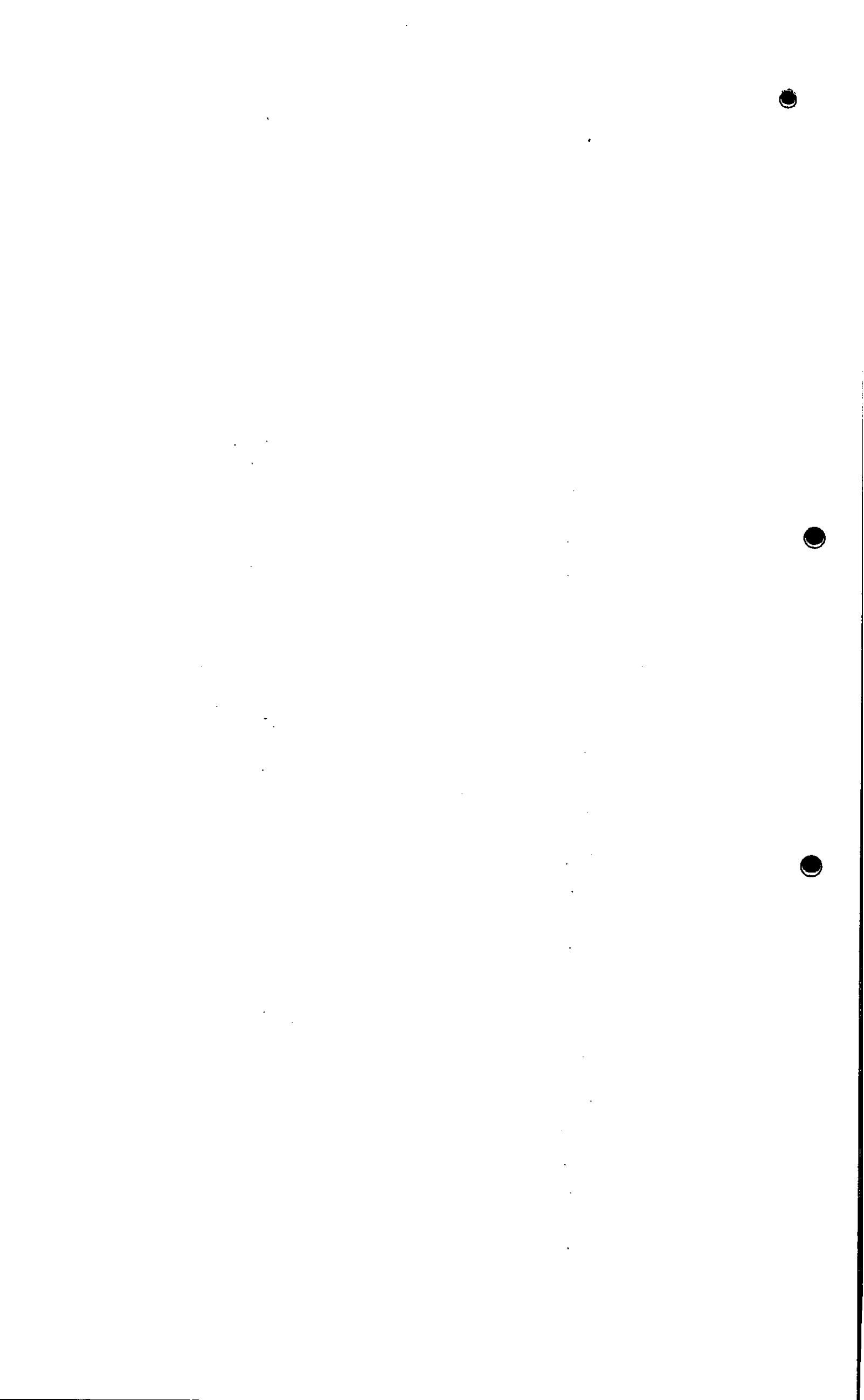
THE CHIEF POST MASTER, GPO situated at 1st Floor , Office of the Chief Post Master, General Post Office, Salapas Road, Ahmedabad, Gujarat 380001, having Service Tax Registration Number AAAGC0117PSD001 obtained on 13.03.2015(hereinafter referred as "GPO- Ahmedabad" or " the assessee" for the sake of brevity) are engaged in providing taxable service under the category of "Business Auxiliary Services", "Life Insurance Services", "Courier Agency Services " etc. under the Finance Act 1994.

2. The Department of Posts, under the Ministry of Communications and Information Technology, Government of India, is the premier agency engaged in booking, collection and delivery of letters ,parcels , etc., for commerce and general public. For providing postal services, the whole country has been divided into 23 postal circles, including Gujarat Postal Circle. In Gujarat Postal Circle, the Department of Posts operates through three Regional Offices viz. Ahmedabad, Vadodara and Rajkot. GPO-Ahmedabad falls under Ahmedabad Region and a total 36 (Thirty-Six only) Sub-Post Offices and 23 (Twenty -Three only) Branch-Post offices fall under the jurisdiction of GPO-Ahmedabad. All the cash accounts, reports, abstracts of accounts are being managed, maintained and consolidated by "CHIEF POST MASTER GPO", GPO-Ahmedabad for all its Sub-Post offices and Branch Post offices. These Sub -post office and Branch Post offices were not having separate service tax registration.

3. In relation to service tax inquiry, letters F. No. DGCEI/AZU/ 12(3)62/2016-17dated 14.10.2016, 10.11.2016, 10.02.2017, 10.04.2017, 01.01.2018, 25.06.2018,13.07.2018, 07.08.2018, 03.01.2019, 04.02.2019, 20.02.2019, 19.03.2019, 05.04.2019, 25.04.2019, 21.05.2019, 16.08.2019 were issued by the DGGI, Ahmedabad Zonal Unit to the Chief Post Master General/Assistant Director of Postal Services (B &T), Gujarat Circle, Khanpur, Ahmedabad and letter dated 06.09.2019 to the Chief Post Master of GPO, Ahmedabad falling in Ahmedabad Region seeking the details of the service rendered and tax paid thereon. It was requested to provide month-wise amount received for providing services, service tax collected and paid for each category of services provided by way of Speed Post, Express Parcel Post, Life Insurance and Agency Services provided to person other than Government. It was also requested to provide documentary evidence of payment of Service Tax for each category.

1 The Chief Post Master, Ahmedabad GPO vide their letters No. Acct/Service Corr/2019-20 dated 11.05.2019 had submitted the details of month wise Service Tax collected and Service Tax paid by Ahmedabad GPO in prescribed proforma for the





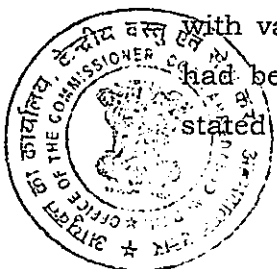
period April-2014 to June-2017 along with copy of ST-3 Returns for the period from April-2014 to September-2016.

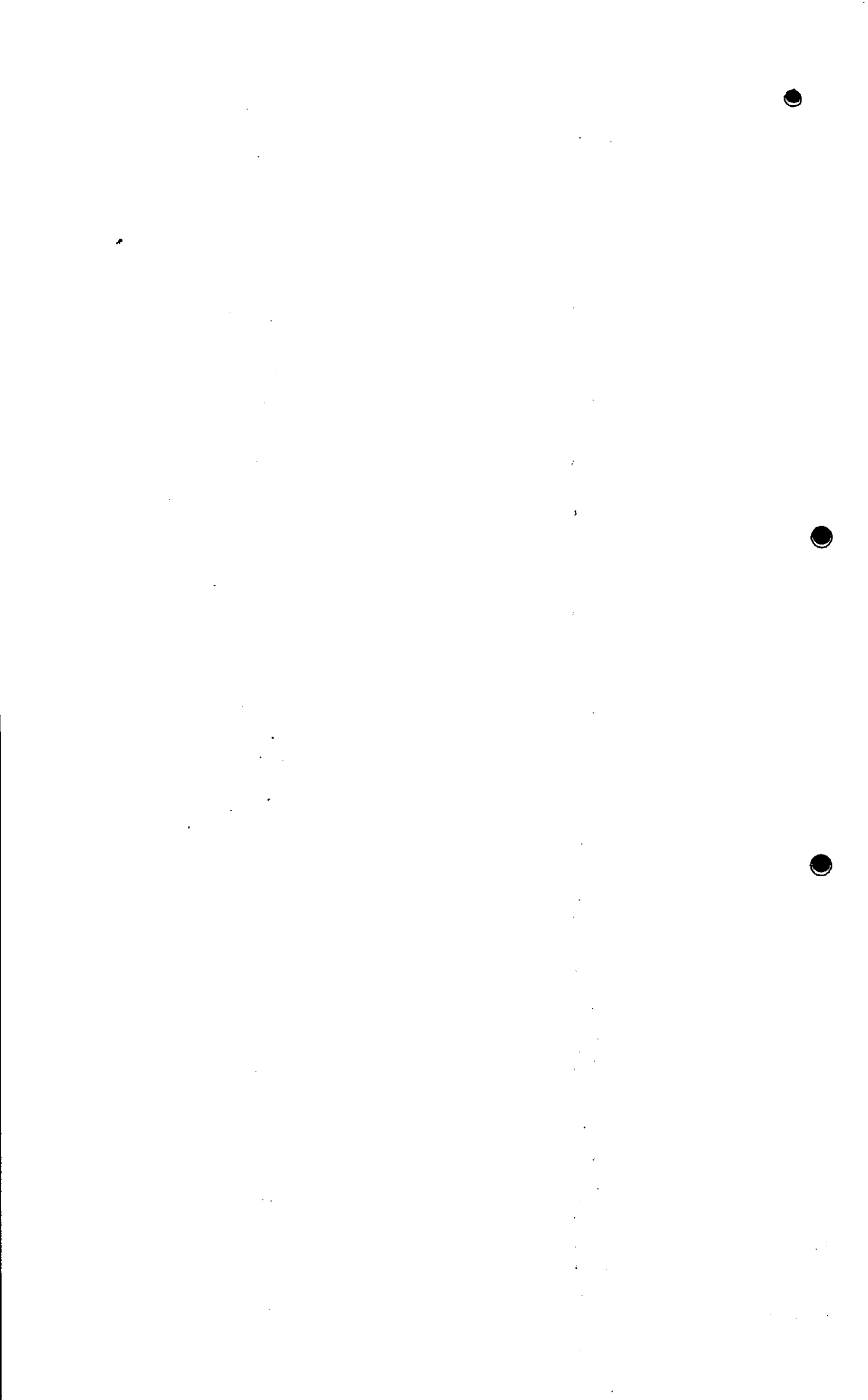
3.2. The Chief Post Master, Ahmedabad GPO vide letter No. Acct/Service Tax/Corr/2019-20 dated 23.05.2019 had submitted the same information again, month wise details of amount collected, service wise separately, for the period from April-2014 to June-2017 and had also submitted the copy of Form ST-1. They had also informed that no Agency services were provided to persons other than Government for the period April-14 to June-2017.

3.3 The Chief Post Master, Ahmedabad GPO vide letter No. Acct/Service Tax/Corr/2019-20 dated 23.08.2019, had submitted the copy of ST-3 Returns for the period October-2016 to June-2017.

3.4 The Chief Post Master, Ahmedabad GPO vide letter No. Acct/Service Tax/Corr/2019-20 dated 17.09.2019 had submitted ST-3 Returns for the period October-2016 to June-2017 and copy of letter No. 29-09/2013-Li/Ser Tax/Sales tax dated 23.12.2014 issued by GOI, Ministry of Communication and Information Technology, Department of Posts O/o Chief General Manager, Postal Life Insurance Directorate, New Delhi 110021 regarding applicability of Service Tax on insurance premium paid by PLI and RPLI policy holders w.e.f. 01/01/2015.

3.5. Another letter vide F. No. DGCEI/AZU/12(3)-62/2016-17 dated 04.10.2019 was issued to the Chief Post Master, GPO-Ahmedabad seeking various details of consideration received towards taxable as well as non-taxable or exempt services mentioned in Part-II Cash Account, detailed description of services provided, Category wise tax paid, details of Cenvat credit availed, details of life insurance premium deducted from the salary of Department of Post employees (month wise), details of agency service provided to persons other than government and a copy of agreement signed with the various service recipients (in respect of entities other than government agencies) was also called for. The Chief Post Master, GPO, Ahmedabad vide letter no. Acct/Service Tax/Corr/2019-20 dated 15.10.2019 and 01.11.2019 had submitted the Month wise copy of Cash Book (Part-II) for the period from April-2014 to June-2017, abbreviation list, details of Cenvat Credit availed, details of premium deducted month wise towards postal life insurance from the salary of the Department of Posts employees and information of agency service provided to the BSNL and UGVCL. The GPO-Ahmedabad, had mentioned that the service tax was paid through book adjustment upto September-2016 and the book adjustment/transfer of the tax up to September-2016 was not done by them but by the Office of the General Manager (Finance), Ahmedabad and the date of such adjustment was not known to them. It was also noticed from the details submitted/ST-3 returns that they have made the payment from October-2016 to June-2017 through Cheque. They had also mentioned that GPO-Ahmedabad did not have the copy of the agreement entered into with various service recipients other than the Government to whom agency services had been provided during the period from April-2014 to June-2017. They had also stated that documents related to CENVAT credit availed were not available with them





and these documents had been submitted to the General Manager (Finance), Ahmedabad. They were also requested vide subsequent email dated 21.10.2019, to give the details of the **Unclassified receipts shown in Part II (Receipts) Cash Account** submitted by them, so that taxability of the services under the head Unclassified receipts could be arrived at. They had stated vide email dated 21.10.2019 that the Preservation period of UCR Schedule was 18 months. Hence the record for the period April-2014 to June-2017 was not available and the information cannot be provided. However, subsequently they had provided the schedule of U.C.R. in soft copy for the period April-2014 to June-2017 vide letter dated 01.11.2019.

3.6 The Chief Postmaster, GPO Ahmedabad, was again asked vide letter dated 04.10.2019, to submit the detailed description and full forms of the abbreviation as mentioned in "Part II (Receipts)", which was maintained to keep the payment details in relation to Accounting Heads of "Part II (Receipts)". In reply to the said letter, the Chief Post Master, GPO-Ahmedabad vide their letter no. ACC/ServiceTax/19-20 dated 01.11.2019 had submitted the details of service provided and abbreviations used in "Part II (Receipts)" along with the description of the services rendered.

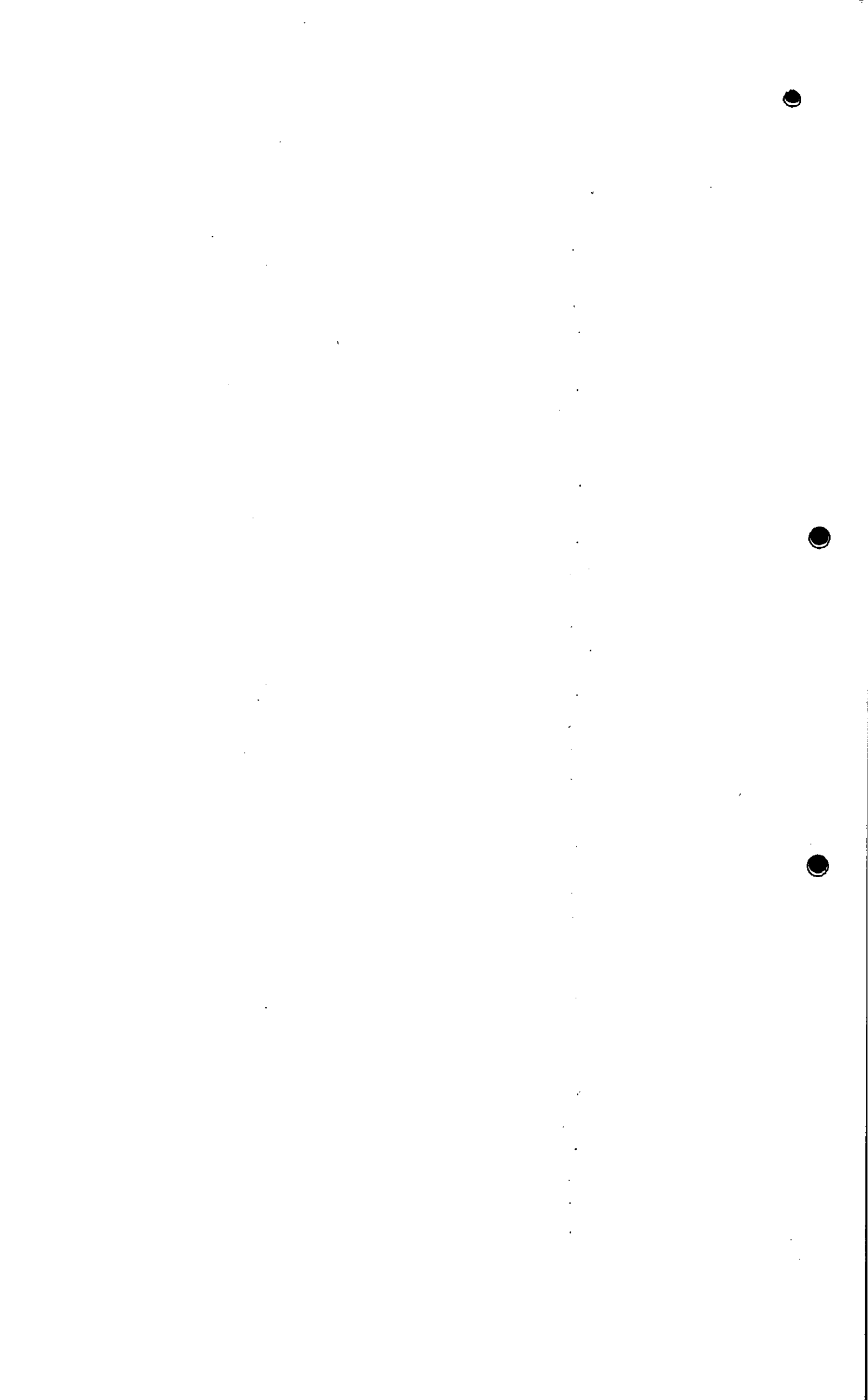
4. It was observed that Post offices were maintaining the cash book Accounts in total 4 Parts. These cash accounts were maintained/ consolidated by them for the all Sub Post Offices and Branch Post Offices falling under their jurisdiction, details of the category of Cash book accounts maintained were as under: -

Sr. No.	Category of Cash Book Accounts	Description thereof
1	Part-I (Receipts)	This part contained the Receipts under various saving schemes and loan amount and the same was not relevant for service tax purposes
2	Part-I (Payment)	This part contained the payment details in relation to Part-I Receipts. (Not relevant for Service Tax purpose)
3	Part-II (Receipts)	This part contained the receipts under various schemes and various services provided by them and includes services which are taxable.
4	Part-II (Payment)	This part contained the payment details in relation to Accounting Heads of Part-II Receipts, not relevant for Service tax purpose.

5. The receipts which were mentioned in "Part-II (Receipts)" of the Monthly Cash Account details the consideration received towards **total services rendered** along with short description of the services, Part II (Receipt) for the period from 01.04.2014 to 30.06.2017 submitted by the GPO, Ahmedabad (**Annexure A** to the SCN).

6. Regarding taxability of services provided by GPO, Ahmedabad, it was observed that after 01 July 2012 services provided by Government or a local authority, excluding certain services specified under clause (a) of section 66 D were covered under the Negative List. As per Section 66 D (a)(i), such exclusion covered services by the Department of Posts by way of speed post, express parcel post, life insurance and services provided to a person other than Government and are therefore taxable. Further, services wherein consideration in the form of commission/charges





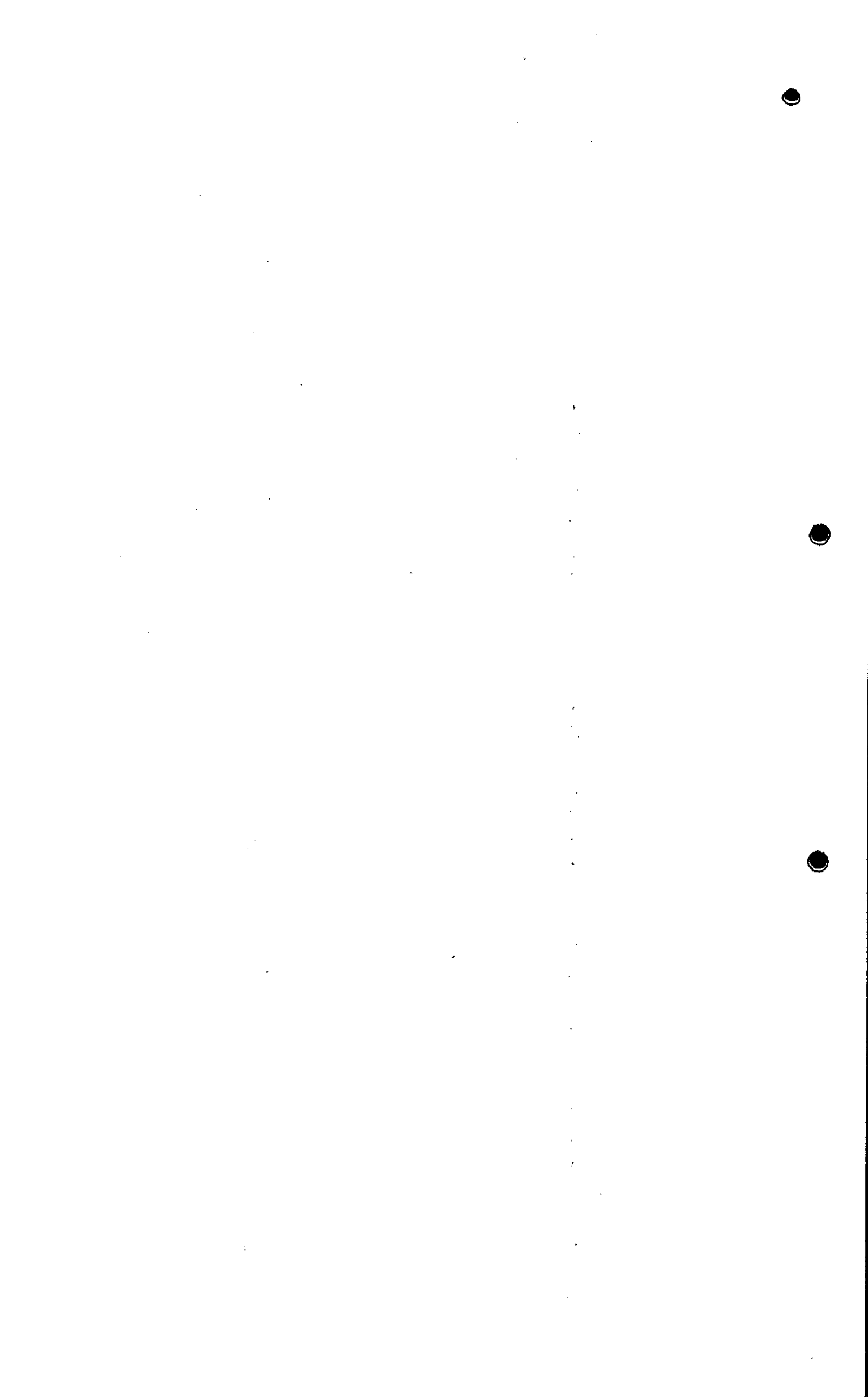
was received from BSNL and UGVCL for collection against bills (Retail Post), sale of judicial and non-judicial stamp papers and sale of speed post envelope; "Business post", service which was given on chargeable basis for additional services to various entities for bulk posting of articles; "Bill mail Service", which was the charges from BSNL for posting of telephone bills; "Mobile Money Transfer Service Commission" which was received for mobile money transfer service; "Business post cash on delivery fee" which was collected against cash on delivery (COD) fees on delivery of Business Post Articles etc. rendered by GPO-Ahmedabad were in relation to business or commerce and thus "Support Services" which were excluded from negative list under provision of section 66D (a)(iv). Further, scope of taxability of service provided by government or a local authority was widened with effect from 01.04.2016 vide notification 06/2016-S.T.dated 18.02.2016 by replacing "Support Services" with "any services".

7. The list of taxable services rendered by the GPO-Ahmedabad which are derived from the Part-II Cash Account was attached as **Annexure B** to the subject SCN. These services, being the service by way of speed post, express parcel post, life insurance and agency services provided to a person other than government (Annexure B-1 to the SCN) and support services provided by GPO-Ahmedabad to business entities against which they had received consideration in the nature of commission/charges were taxable services (Annexure B-2 to the SCN).

8. It further appeared from other Accounting Heads/Items shown in "Part-II Receipt" of Monthly Cash Account, that services by the Department of Posts by way of Speed Post, Express Parcel Post, Life Insurance and Agency services provided to the persons other than Government were taxable. With effect from 01.04.2016, any other services rendered by them to business entities were also made taxable, whereas prior to 1.4.2016, only "Support Services" provided to business entities were taxable. Except these services, the remaining services fall under the Negative list defined under Section 66 D of the Finance Act, 1994 and did not attract levy of service tax.

8.1 As discussed, GPO-Ahmedabad was engaged in providing taxable as well as non-taxable services. It was observed that there was one account-head with abbreviations "UCR" (Unclassified Receipts) in "Part II (Receipts)" Cash Account but the nature of account head was not clear from the submission made by the GPO Ahmedabad whether it was related to a taxable or non-taxable service. Therefore, email dated 21.10.2019 was sent to the Chief Post Master, GPO-Ahmedabad at the email id 'cpmahmedabadgpo@indiapost.gov.in' and in response, they vide email dated 21.10.2019 had informed that the preservation period of UCR Schedule is only 18 months. Hence the record for the period April-2014 to June-2017 was not available and the information could not be provided. However, they had subsequently sent the Schedule of Unclassified Receipts (details of receipts which were classified under "UCR") for the period from April, 2014 to June, 2017 in soft copy vide their letter dated 11.11.2019. The list of services/receipts rendered by the GPO-Ahmedabad under UCR category had been scrutinized and it was found that many sub-heads of the UCR

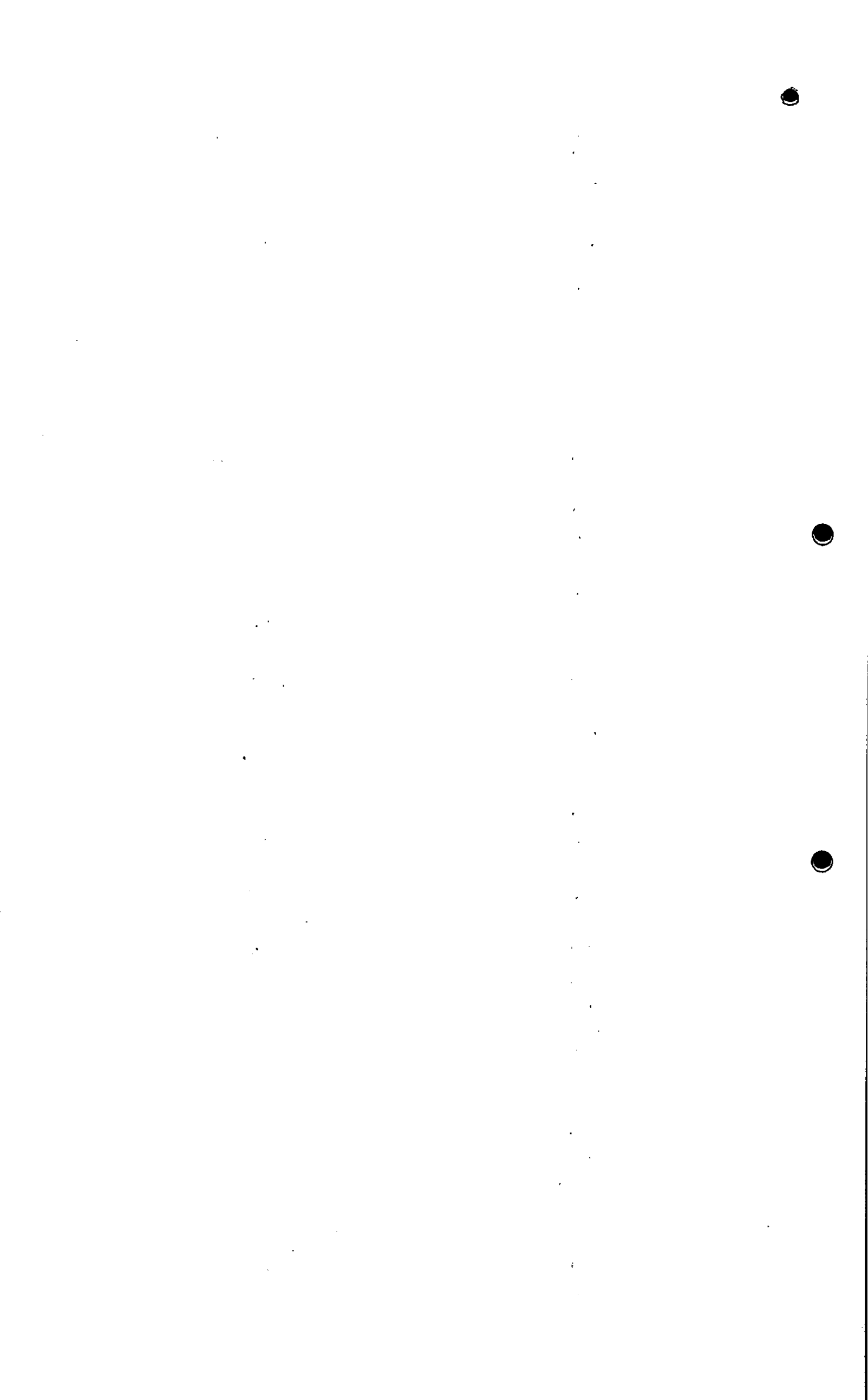




pertained to receipt on account of Salary, GPF Advance Deposit, Pension, sale of old records etc. and the same appeared to be **non-taxable**. Apart from these, **remaining receipts** like BNPL receipt, Cheque Clearance Charges, Logistic Post Revenue etc. appeared to be considerations received for provision of services and hence **taxable**. Also, no reason was put forth by GPO-Ahmedabad for claiming all such receipts as non-taxable. Further, regarding certain receipts sub-heads like 'Manager MMS', 'Charges' etc., it was noticed that the descriptions of sub-heads of the receipts have not been mentioned clearly/ categorically by the GPO-Ahmedabad. Apart from receipts on account of Salary, GPF Advance Deposit, Pension, sale of old records etc., all other receipts were not appearing to be covered under the negative list or any exemption notification. Hence, in the absence of complete description of all the services provided by the GPO-Ahmedabad under the accounting head "UCR" (Unclassified receipt), the remaining receipts under "UCR" has been considered as taxable services. These receipts were considered to be out of the purview of negative list as per **Annexure-B2** to the notice. **Hence, out of the total value of Rs. 7,51,52,74,658/- under the UCR head, the value amounting to Rs. 3,01,44,737 was considered as taxable and the remaining amount of Rs. 7,48,51,29,921 was considered as non taxable.** The sub-heads under the head "UCR" which appeared to be "Taxable Service" were given in **Annexure-D** to the notice. Service Tax on these "sub-heads" was included in computation of Service Tax as given in **Annexure C** to the notice.

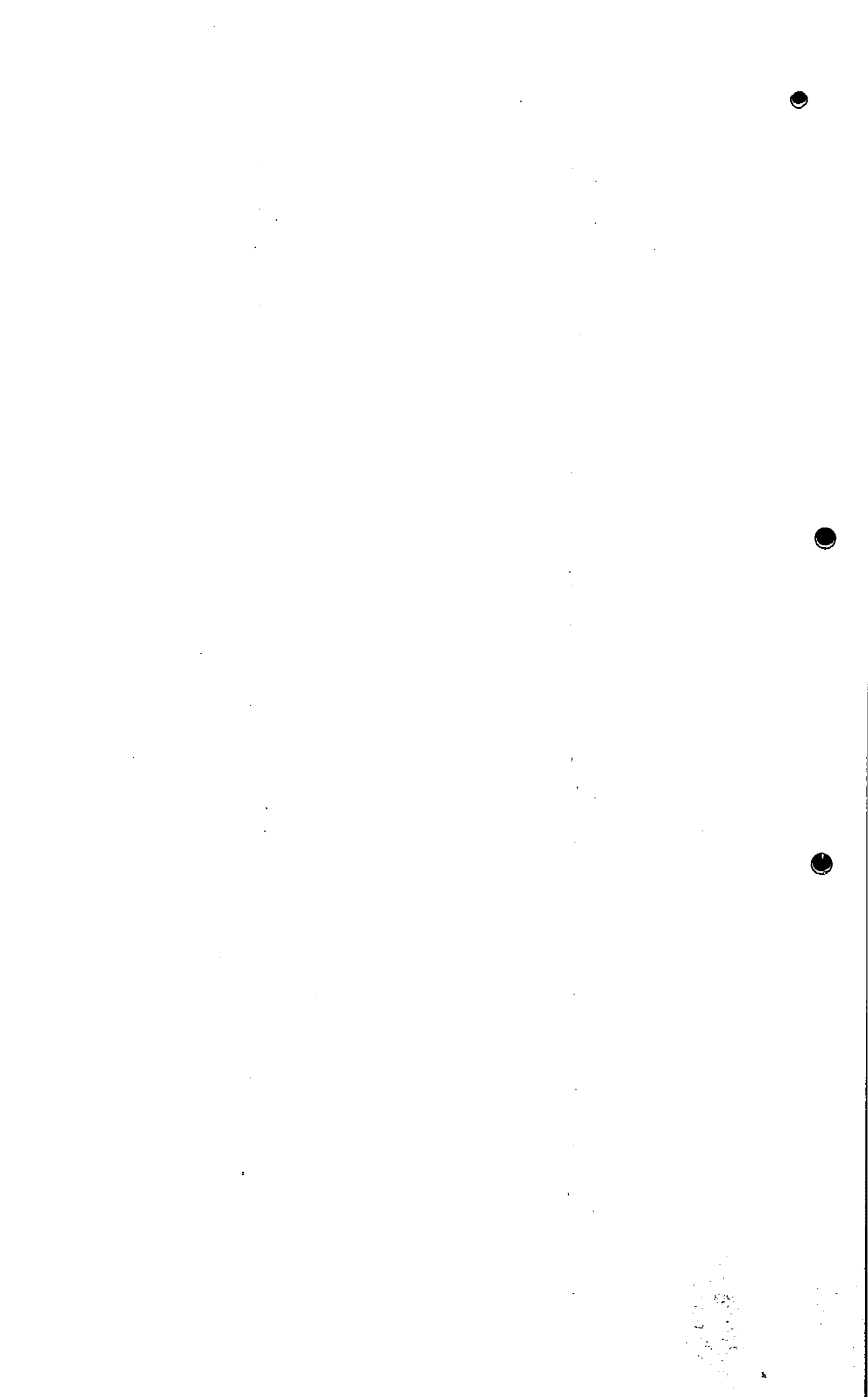
9. In the letter dated 15.10.2019/01.11.2019, GPO-Ahmedabad had stated that they had made payment of service tax of Rs.65,56,119/- for the period from **April-2014 to September-2016** through Book Adjustment and through cheque of Rs. 32,00,416/- for the period from **October-2016 to June-2017**. It was also seen that they had filed the ST-3 Returns electronically for the period from April-2014 to June-2017 **after 09.04.2017**. They were having Registration Number but did not file Returns in time. It further appeared that service tax payment was made under the major head-0044 through Book Adjustments **till September-2016, which** was not evidenced by any supporting documents and it was merely mentioned that such accounting book transfer were further made by the General Manager (Finance) Ahmedabad. The said liabilities were disclosed in the ST-3 Returns filed for the period April-2014 to June-2017 and therefore, in view of the provisions under Section 73(1B) of the Finance Act, 1994 such amount, being admitted liability, was not considered for the purpose of demand in the instant Show Cause Notice, except the amount of Cenvat credit found to be inadmissible for the reason stated hereinafter.

9.1. In their letter dated 01.11.2019, they had mentioned that service tax was deposited through book adjustment done by the Office of the General Manager(Finance), Ahmedabad. Therefore, it appeared that GPO-Ahmedabad were required to deposit the tax in the government account as mandated in Rule 6 of the Service Tax Rules, 1994, which stipulates that Service Tax shall be paid to the credit of the Central Government "electronically through internet banking" by the 6th of the month immediately following the period, when the tax was due. This was not done by them in the manner prescribed by law.



9.2 It also appeared that the claim of GPO-Ahmedabad of having paid service tax of **Rs.18,92,802/-** during the period from 01.04.2014 to 30.06.2017 through mechanism of Cenvat Credit availed, was not supported by documents and they had not filed ST-3 Returns in time claiming the CENVAT credit. In the ST-3 returns, they also appeared to have credited/ debited this Cenvat amount of Rs. 18,92,802/- after a period of more than six month/one year from the date of invoice. As per provisions of fifth proviso to rule 4(7) of the Cenvat Credit Rules, 2004, manufacturer or service provider shall not take Cenvat Credit on inputs services after one year from the date of issuance of document specified in sub-rule (1) of rule 9, prior to 01.03.2015, the time limit for availing Cenvat Credit was six months. Further, they had failed to produce any records and documents on the basis of which they had availed Cenvat credit. They had not provided any documents on the basis of which Cenvat Credit was availed by them. These documents/ST-3 Returns were mandatory for availment of Cenvat Credit under Rule 9 of the Cenvat Credit Rules, 2004. GPO-Ahmedabad had not filed ST-3 returns in time, in which they were required to show details of Cenvat Credit availed and utilized as prescribed under Rule 9 of Cenvat Credit Rules 2004 and Rule 4A of Service Tax Rules, 1994. They had failed to avail the Cenvat credit within six months/ one year form the date of invoice as per Rule 4 of Cenvat Credit Rules, 2004 as they have filed the returns after 09.04.2017. Also, GPO-Ahmedabad were providing both taxable services and non-taxable/ exempted services, as such they were required to comply with provisions of Rule 6 of the Cenvat Credit Rules, 2004. However, they had failed to comply with the provisions prescribed in Rule 6 of Cenvat Credit Rules,2004. They neither maintained Cenvat Credit accounts separately nor reversed the credit availed on the input services utilised in rendering non-taxable services. They had not entered any such details in the ST-3 Returns as per requirement of the Cenvat Credit Rules, 2004. Therefore, their claim of eligibility of CENVAT credit of amounting to **Rs.18,92,802/-** appeared to be untenable being in contravention of Rule 4,6 and 9 of Cenvat Credit Rules, 2004. Rule 14 of Cenvat Credit Rules, 2004 stipulates that Cenvat Credit wrongly availed and utilised is required to be recovered from the provider of the output service and provisions of Section 73 of the Finance Act shall apply to it. GPO-Ahmedabad has not complied with provisions of Rule 4, 6 and Rule 9 of the Cenvat Credit Rules, 2004, therefore the Cenvat credit of Rs. 18,92,802/- appeared to be wrongly taken and appeared to be recoverable from them in terms of Section 73 (1) of the Act read with Rule 14 of the Cenvat Credit Rules, 2004.

9.3 It also appeared that, from the total receipts accounted for the "Part II (Receipt)", GPO-Ahmedabad had not correctly determined and paid the tax on various taxable services rendered by them including insurance services. There was difference in the value of taxable services rendered as per Part II (Receipt) (pertaining to taxable services therein) and total taxable services shown in the detailed information submitted through various letters upto June-2017. It also appeared from the Part II Receipts submitted by GPO-Ahmedabad that the Postal Life Insurance (PLI) premium amount deducted from the salaries of their employees and the amount of book



transfer and payment of Service Tax was made centrally by DDM (PLI), Kolkata, which was leviable to service tax, was not reflected in monthly Cash Account (Part-II Receipt). Thus, GPO Ahmedabad appeared to have not at all accounted for the taxable value and the service tax collected through PLI in respect of the staff of the Postal Department. It was observed that the details of Postal Life Insurance Premium were shown in the recovery schedule of the pay bill and same was sent to The Director of Accounts (Postal), and accounting of the same was done in Account Head 8014, leading to non-payment of service tax, as it was not reflected in the monthly cash account Part II (Receipts).

10. Legal Provisions:

10.1. The nature of all services provided by the Department of Post did not appear to be falling within the ambit of negative list as defined under Section 66D of the Finance Act, 1994. Section 66D of the Finance Act, 1994 reads as under:-

Negative list of services.

66D. The negative list shall comprise of the following services, namely: (a) Services by Government or a local authority **excluding** the following services to the extent they are not covered elsewhere-

- (i) **Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;**
- (ii) **Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;**
- (iii) **Transport of goods or passengers; or**
- (iv) **support service ["any service" w.e.f. 1.4.2016] other than services covered under clauses (i) to (iii) above, provided to business entities;**

10.2 As per Section 66 B of the Finance Act, 1994 Service Tax shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list as listed under Section 66D of the Finance Act, 1994 (with effect from 01.07.2012). Further, Section 65B of the Finance Act, 1994, as amended interprets "Services", "taxable services" as under:

65B. Interpretations: In this Chapter, unless the context otherwise requires,

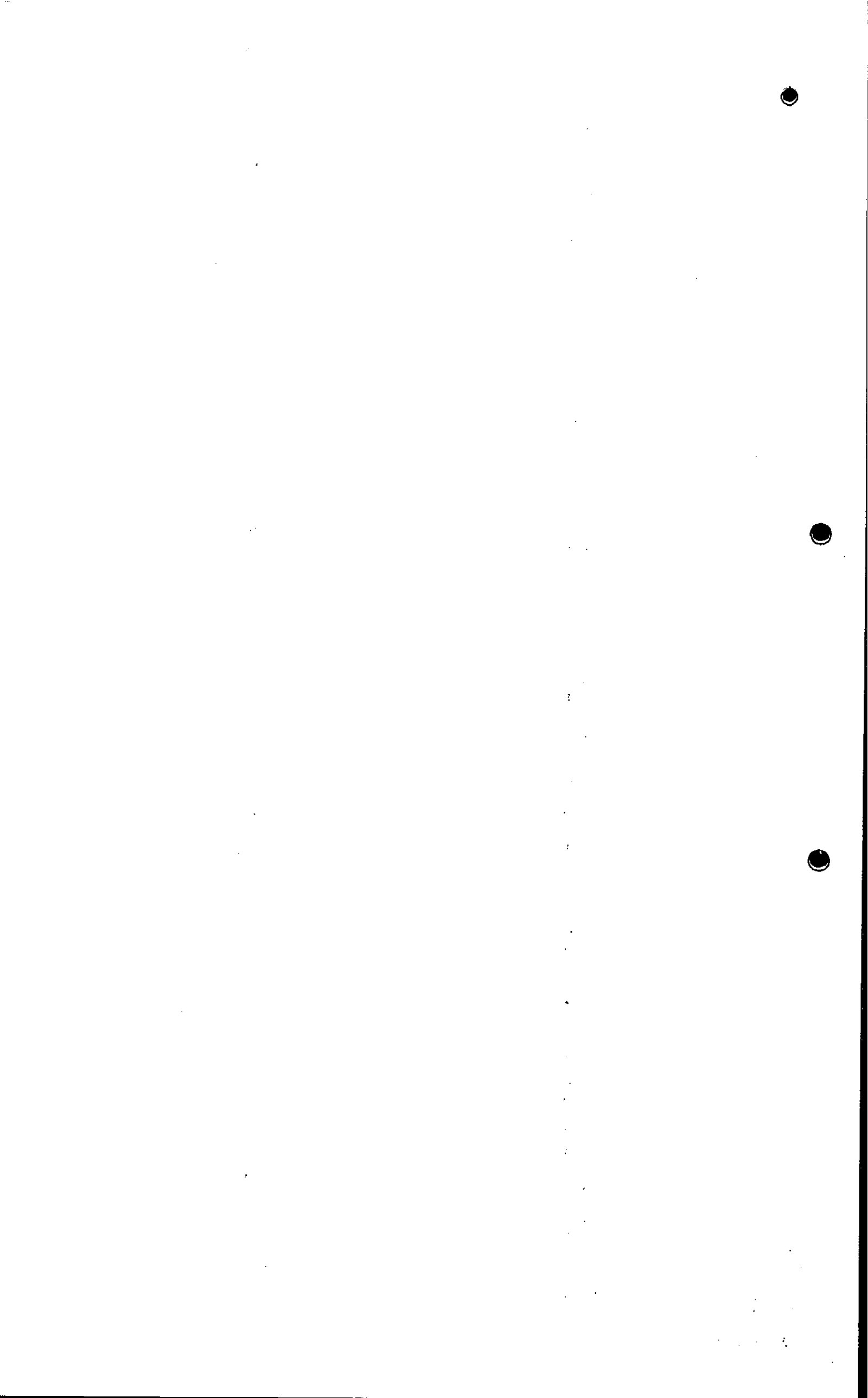
(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

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

10.3 Further, Section 66B of the Finance Act, 1994, as amended, governs the taxability of all services and stipulates as under:

Section 66B: There shall be levied a tax (hereinafter referred to as the service tax) at the rate of (as applicable from time to time) on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be described.





10.4 The valuation of the service will be construed in accordance with Section 67 of the Act *ibid* which stipulates as under:

SECTION 67. Valuation of taxable services for charging service tax.

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall-

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

10.5 Section 68 of the Act *ibid* this stipulates as under:

"... every person providing taxable service to any person shall pay Service Tax at the specified rates and in such manner and within such period as may be prescribed.

10.6 As regards valuation of taxable service of Life Insurance, Rule 6(7A) of the Service Tax Rules, 1994 during the material period as it stood is as under:

"(7A) An insurer carrying on life insurance business shall have the option to pay tax:

(i) on the gross premium charged from a policy holder reduced by the amount allocated for investment; or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

(ii) 1.5 per cent of the gross amount of premium charged from a policy holder in all other cases;

towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the said Act:

Provided that such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance."

10.7 Further, the clause (ii) of Rule 6 (7A) of the Service tax Rules, 1994 was further substituted by Notification No. 03/2012 - Service Tax dated 17.03.2012 as under:

"(ii) in all other cases, 3 per cent. of the premium charged from policy holder in the first year and 1.5 per cent. of the premium charged from policy holder in the subsequent years;"

10.8 Further the Service Tax rate was changed vide Notification No. 05/2015ServiceTax dated 01.03.2015, which was effective from 01.06.2015 (as per Notification No. 15/2015 - Service Tax dated 19.05.2015):

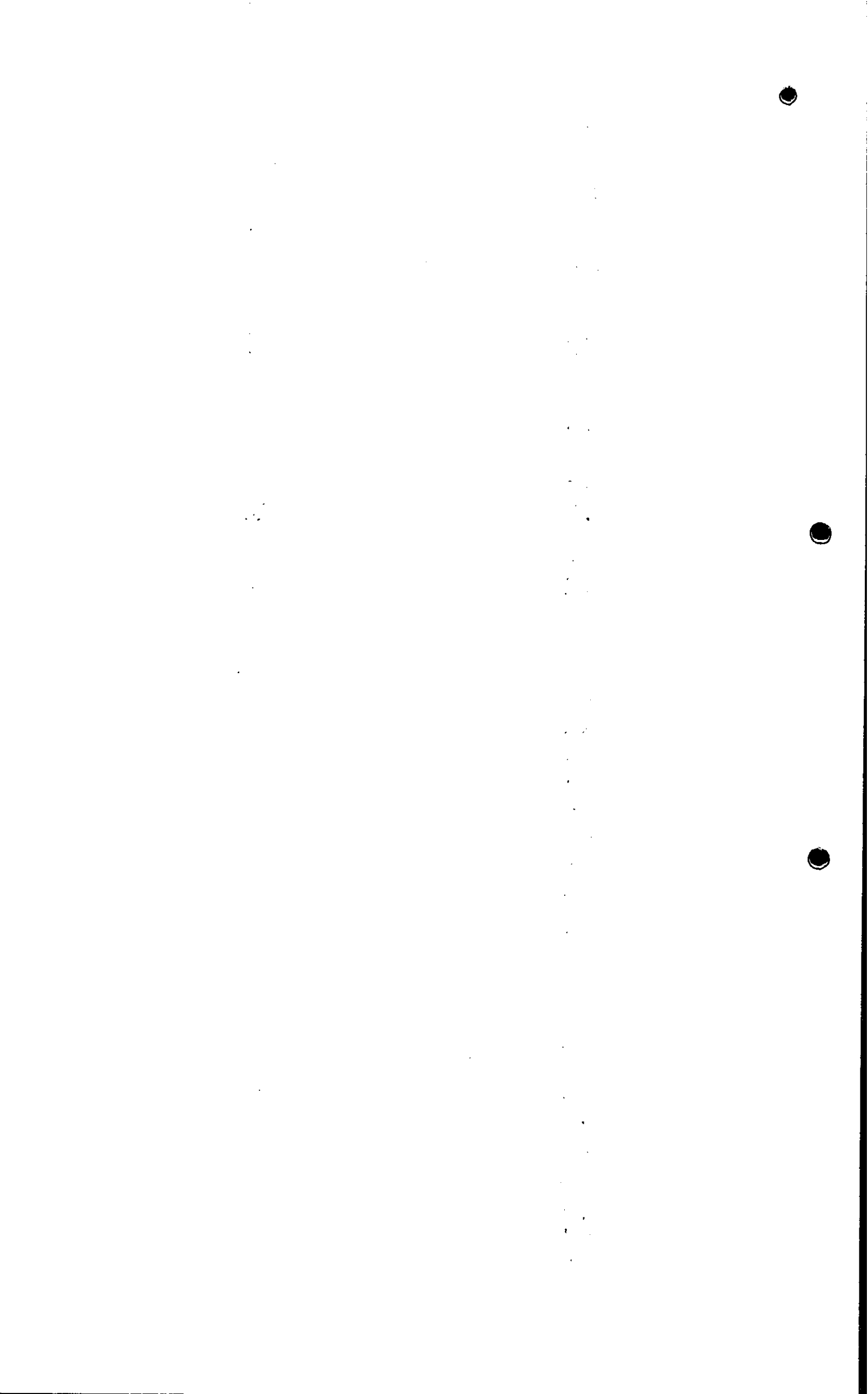
"for the figures and words "3 per cent." and "1.5 per cent.", the figures and words "3.5 per cent "and" 1.75 per cent." shall respectively be substituted;"

10.9 Further, a new sub-rule 6(7D) was inserted vide Notification No. 25/2015ServiceTax dated 12.11.2015 w.e.f. 15.11.2015 for payment of Swachh Bharat Cess, which is as under:

2. In the Service Tax Rules, 1994, in rule 6, after sub-rule (7C), the following sub rule shall be inserted, namely:

"(7D) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by 0.5 and dividing the product by 14 (fourteen), during any calendar month or quarter, as the case may be, towards the discharge of his liability for Swachh Bharat Cess instead of paying Swachh Bharat Cess at the rate specified in sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015) read with notification No.22/2015-Service Tax, dated the





6h November, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G. S.R. 843 (E) dated the 6h November, 2015, and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances."

10.10 Further, a new sub-rule 6(7E) was inserted vide Notification No. 31/2016-Service Tax dated 26.05.2016 w.e.f. 01.06.2016 for **levy of Krishi Kalyan Cess** as under:

2. In the Service Tax Rules, 1994, in rule 6,

(i) in sub-rule (7D), for the figures "0.5" the words "effective rate of Swachh Bharat Cess" and for the words, figures and brackets "14 (fourteen)", the words and figures "rate of service tax specified in section 66B of the Finance Act, 1994" shall be substituted;"

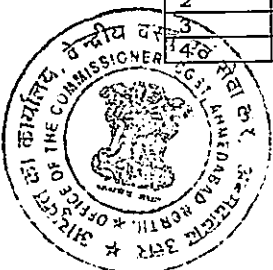
(ii) after sub-rule (7D), the following sub-rule shall be inserted, namely:- "(7E) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by effective rate of Krishi Kalyan Cess and dividing the product by rate of service tax specified in section 66B of the Finance Act, 1994, during any calendar month or quarter, as the case may be, towards the discharge of his liability for Krishi Kalyan Cess instead of paying Krishi Kalyan Cess at the rate specified in sub-section (2) of section 161 of the Finance Act, 2016 (28 of 2016) and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances."

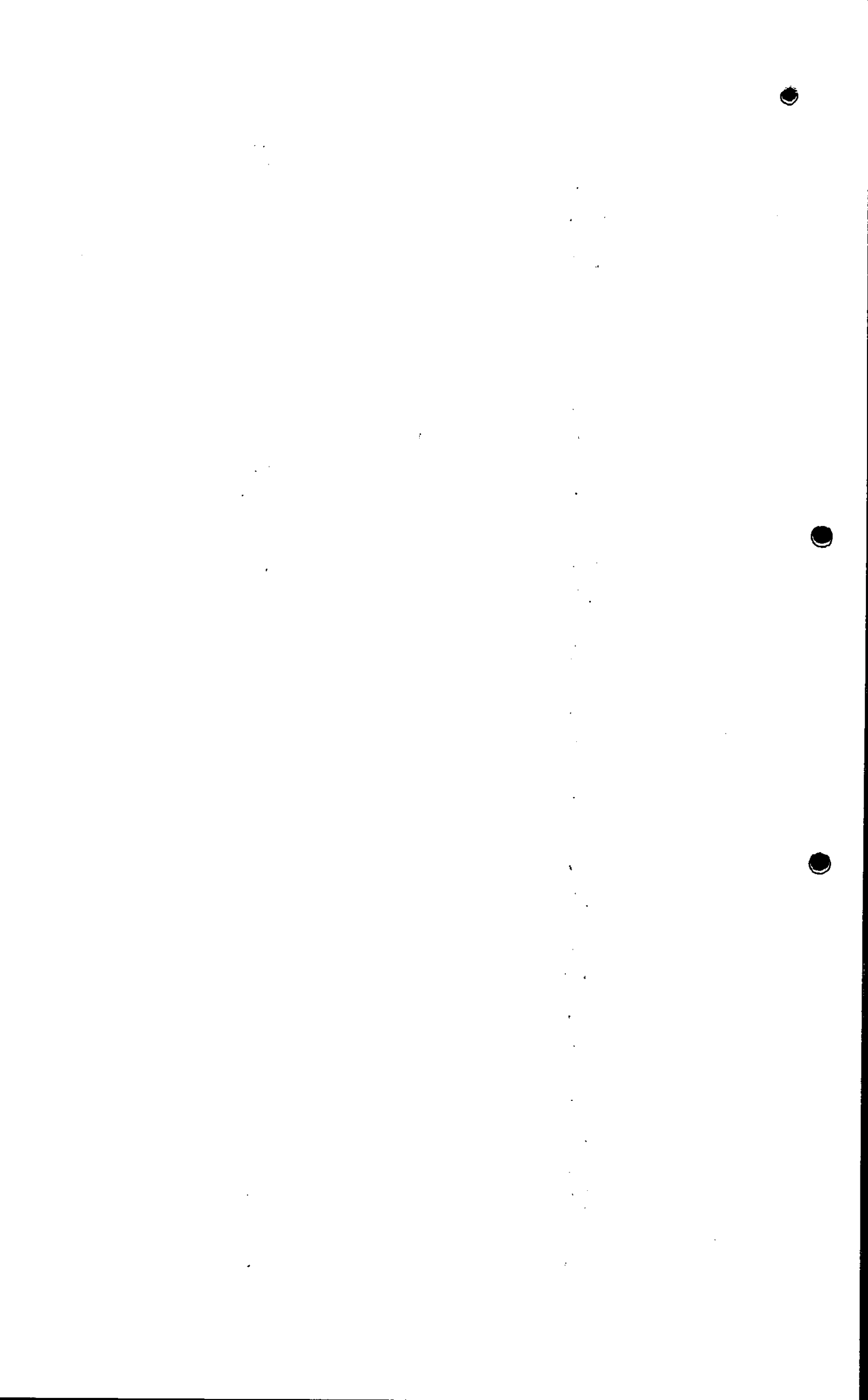
10.11 The premium amount for Postal Life Insurance covers risk factor as well as investment/ savings. As per letter No. 29-09/2013-U/Ser. Tax/ Sales tax dated 23.12.2014 of the Chief General Manager of Postal Life Insurance Directorate, New Delhi, the Postal Department decided to collect service tax on Insurance Premium from all PLI & RPLI policy holders w.e.f. 01.01.2015. Authority for such rates and collection have been mentioned in the above paras. Hence, they were liable to pay Service Tax under composition scheme w.e.f. 01.01.2015 at the following rate during relevant time.

Sr. No.	Period	Service Tax Rate on 1 st Year Premium	Service Tax Including Cess	Service Tax Rate on Renewal Premium	Service Tax Including cess
1	01.01.2015 to 31.05.2015	3% + 2% E.Cess (on Tax) & 1% SHE. Cess (on tax) thereon	3.09%	1.5% + 2% E.Cess & 1% SHE Cess thereon	1.545
2	01.06.2015 to 14.11.2015	3.5%	3.5%	1.75%	1.75
3	15.11.2015 to 31.05.2016	3.5% + 0.125% SB Cess	3.625%	1.75% + 0.0625% SB Cess	1.813
4	01.06.2016 to 30.06.2017	3.5% + 0.125% SB Cess + 0.125% KK Cess	3.75%	1.75% + 0.0625% SB Cess + 0.0625% KK Cess	1.875

10.12 The rate of Service and levy of Secondary and Higher Education Cess, Swachh Bharat Cess, Krishi Kalyan Cess, for the period covered under the Show Cause Notice is as under;

Sr.No.	Period	Service Tax Rate	Total Service Tax Rate (including Cess)
1	01.01.2015 to 31.05.2015	12% + 2% E.Cess + 1% SHE Cess	12.36%
2	01.06.2015 to 14.11.2015	14%	14%
3	15.11.2015 to 31.05.2016	14% + 0.5% SB Cess	14.5%
4	01.06.2016 to 30.06.2017	14% + 0.5% SB Cess + 0.5% KK Cess	15%





10.13 Rule 4A of the Service Tax Rules, 1994 reads as under;

4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan -
 (1) Every person providing taxable service [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, shall 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 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.

10.14 Further Rule 6 of the Service Tax Rules, 1994 reads as under;

"6. Payment of service tax (1) The service tax shall be paid to the credit of the Central Government, -
 (i) by the 6th day of the month, if the duty is **deposited electronically** through internet banking; and
 (ii) by the 5th day of the month, in any other case, immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard:

Provided that where the [assessee] is a one person company whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, or is an individual or proprietary firm or partnership firm or [Hindu Undivided Family], inserted vide Notification 19/2016-service tax the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the quarter in which the service is deemed to be provided as per the rules framed in this regard."

Rule 6 of Service Tax Rules 1994 stipulates that Service Tax shall be paid to the credit of the Central Government, by the 5th of the month immediately following the period, when the tax is due. The Service Tax shall be paid to the credit of the Central Government by the 5th day of the month, immediately following the quarter in which the payments are received, towards the value of taxable services."

10.15 As per Rule 7 of the Service Tax Rules, 1994,

"(1) Every assessee shall submit a half yearly return in Form 'ST-3"

"(2) Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year. " ..

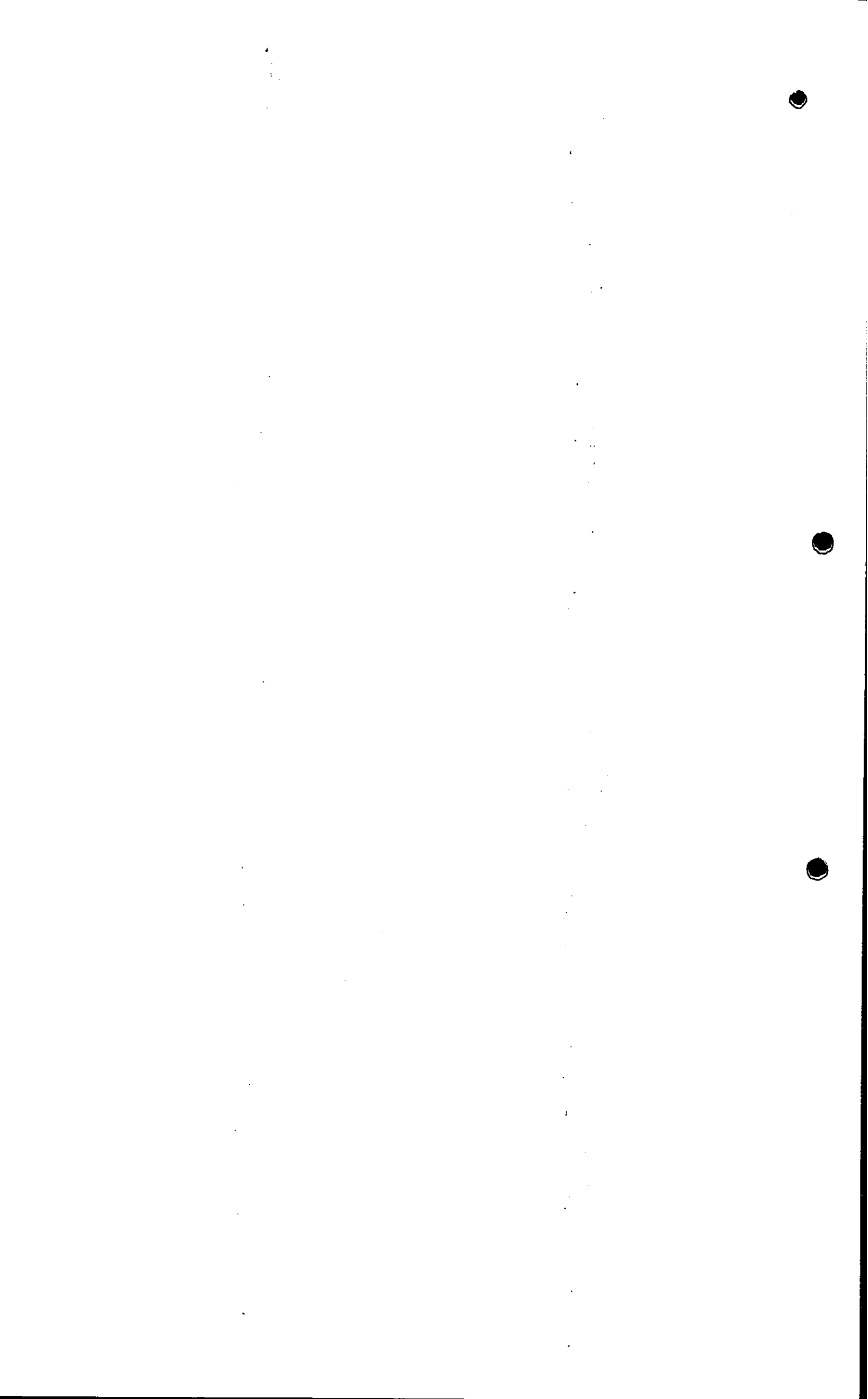
(3) Every assessee shall submit the half-yearly return electronically.

In this regard, it is submitted that as per Service Tax Notification No. 43/2011-ST dated 25.08.2011 E-filing of Service tax returns has become mandatory for all assesses from 01.10.2011 but they have filed the ST-3 returns for the period from April-2014 to June-2017 online after 09.04.2017.

10.16 Rules 4 of Cenvat Credit Rules 2004 reads as under:

Conditions for allowing CENVAT credit (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacture or in the premises of the provider of output service [or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacture or the provider of output service, as the case may be]:

2] PROVIDED ALSO that the manufacture 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.]



10.17 Rules 6 of Cenvat Credit Rules 2004 reads as under

“Rule 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services. –

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely: -

(i) the manufacturer of goods shall pay an amount equal to five per cent of value of the exempted goods and the provider of output service shall pay an amount equal to six percent of value of the exempted services; or

(ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A)

Explanation I.- If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year

Explanation II -For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service.

10.18 Rule 9 of Cenvat Credit Rules, 2004 relating to Documents and accounts is as under:

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely: -

(a) an invoice issued by-

(b) a supplementary invoice,

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(e) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

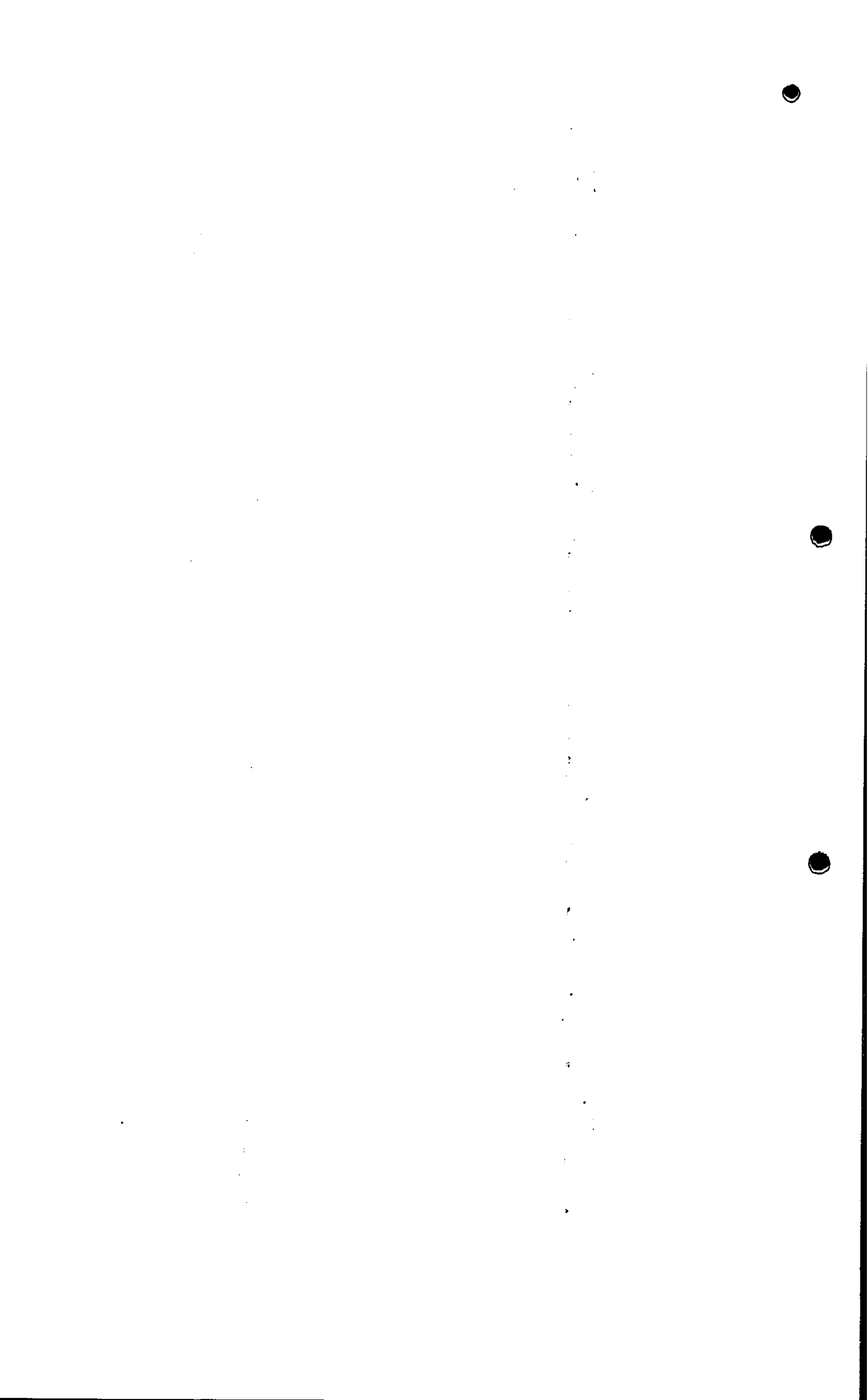
(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or

(g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

(2) **No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:**

.....
(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.**



10.19 Rule 14 of the CENVAT Credit Rules 2004 read as under.

Rule 14. Recovery of CENVAT credit wrongly taken or erroneously refunded.
Where the CENVAT credit has been taken and utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries.

10.20 Section 70 of the Finance Act, 1944 provides that every person liable to the Service Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such a manner and at such frequency as may be prescribed. Rule 7 of the Service Tax Rules, 1994, prescribes that every assessee shall submit a half-yearly return in Form ST-3, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly returns. Further sub-rule [2] thereto also states that every assessee shall submit the half yearly return by the 25th of the month following the particular half year.

10.21 Section 77 1(b) of the Finance Act 1994 reads as under:

SECTION 77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. (1) Any person,

(a) ...

(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made there under, shall be liable to a penalty which may extend to [ten thousand rupees];

(c) who fails to ... (ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to ten thousand rupees;

(e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ten thousand rupees.

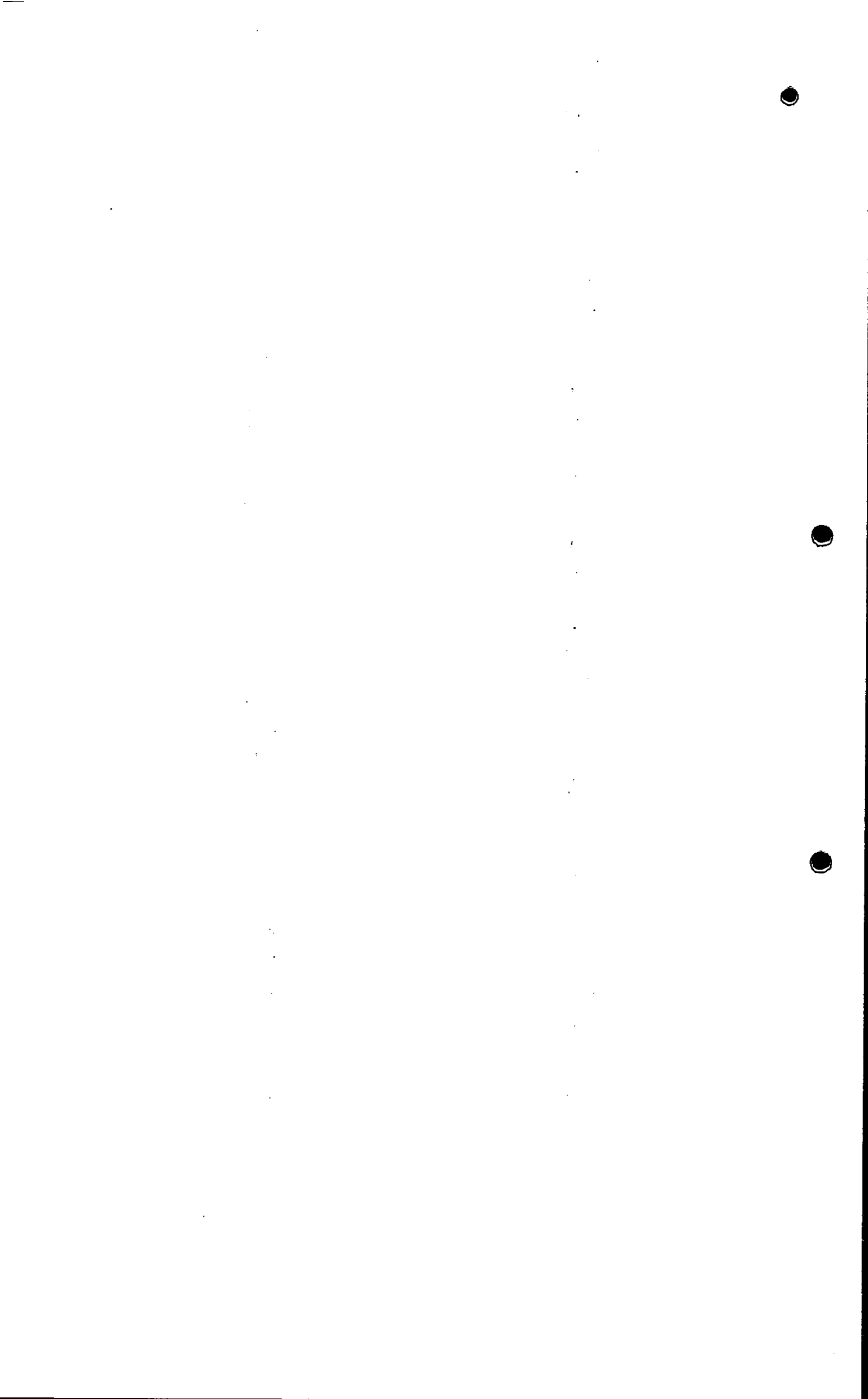
Saving Clause:

11. It further appeared that even after the enactment of the Central Goods and Service Tax Act, 2017 (CGST Act, 2017), with effect from 01.07.2017, the provisions of the Central Excise Act, 1944 and also the Finance Act, 1994 and rules made thereunder pertaining to investigation, inquiry, assessment proceedings, adjudication etc., remains unaffected and are saved by virtue of Section 174 (2) of the Central Goods & Services Tax Act, 2017.

Outcome of investigation:

11.1 The PLI premium amount deducted from the salary of their employees were also taxable and the details thereof had been submitted by them vide their letter dated 15.10.2019 and the same was found to be not included in monthly Cash Account "Part-II (Receipt)". Thus, it appeared that they had failed to account for the taxable value and the service tax collected through PLI in respect of the staff of the Postal Department and had not paid service tax thereon.





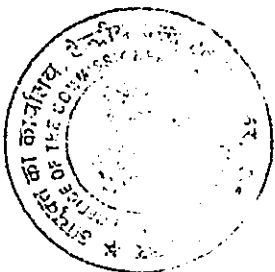
11.2 GPO-Ahmedabad had filed ST-3 returns for the period from April-14 to June-2017 after 09.04.2017. In the ST-3 Returns filed they had self-assessed their liability of the service tax amounting to **Rs. 1,16,52,255/-** (not being considered for demand in view of Provisions under Section 73(1B) ibid, being admitted liability except the inadmissible Cenvat credit. They had shown payment of **Rs.65,56,119/-** of service tax through book Adjustment, payment of **Rs.32,00,416/-** through Cheque and payment of **Rs.18,92,802/-** by way of debit of CENVAT Credit availed by them. Though they had filed ST-3 Returns only after 09.04.2017, they had shown credit/debit of this CENVAT Credit in their ST-3 returns for the period April-2014 to June-2017. They have also not determined the tax liability correctly and appeared to have short-paid the service tax on the taxable income which are mentioned in their Part II (Receipt) cash account. Therefore, GPO-Ahmedabad were liable to pay the service tax which was short paid/not paid for the period from April-2014 till June, 2017 along with applicable interest and penalty.

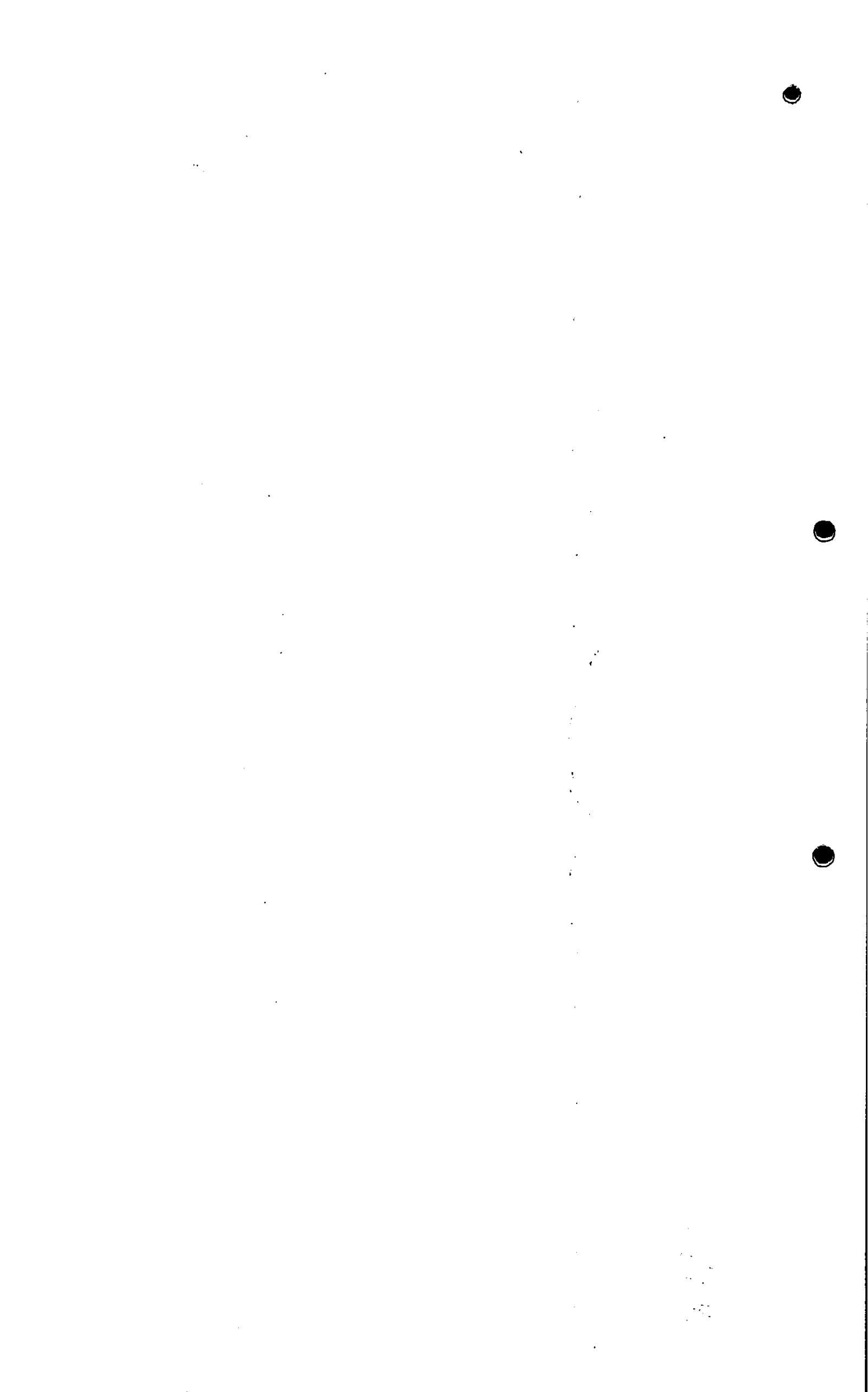
11.3 GPO-Ahmedabad had shown Cenvat amount in ST-3 return for the period from April-2014 to June-2017 as per the following Table 'A'. It was noticed that they had filed ST-3 Returns after 09.04.2017. Further, they had credited/debited this Cenvat amount of Rs. 18,92,802/- in the ST-3 Return after a period of more than six month/one year from the date of invoice. They had failed to produce any record and documents on the basis of which they had availed Cenvat credit and as such had contravened the provisions of Rule 4, 9 of the Cenvat Credit Rules. Moreover, they had provided both taxable as well as non-taxable services but had not followed proper procedure as provided under Rule 6 (3) of the CENVAT Credit Rules, 2004. They had not maintained and produced the separate records as required under Rule 6 of the CENVAT Credit Rules, 2004. As such Cenvat of Rs.1892802/- availed by them was not proper and same was liable to be treated as inadmissible.

Table A

Name of HPO	STC No.	Service	Comm'rate	Division	Range
Chief Post Master GPO, Ahmedabad 380009	AAAGC0117SD001	Business Auxiliary Service, Life Insurance Service	Ahmedabad - North-New	02 (Naroda Road)	II

FY	Period	Return filed/Not Filed	Days delay ed	Gross Taxable Value	Tax Payable	Cenvat Availed	Tax Paid		
							Book Adjustmen t	Challan/C heque	Cenavt
2014- 15	Apr- Sept	Filed on 10.04.201 7	878	5712167	706024	133369	572655	0	133369
	Oct- March	Filed on 11.04.201 7	717	13101072	1622247	157776	1461516	0	157776
2015- 16	Apr- Sept	Filed on 11.04.17	534	18108042	2407821	167257	2240564	0	167257
	Oct- March	Filed on 11.04.17	347	11186284	1608188	452984	1155243	0	452984
2016- 17	Apr- Sept	Filed on 12.04.17	169	11493410	1520681	394540	1126141	0	394540
	Oct- March	Filed on 14.06.17	45	13006832	2432825	371182	0	2061642	371182
2017- 18	Apr- Sept	Filed on 24.08.17	9	9029772	1354469	215694	0	1138774	215694
	Total			81637579	11652255	1892802	6556119	3200416	1892802





Late Filing of ST - 3 Returns:

11.4 Further, it is observed that GPO-Ahmedabad had filed ST-3 Return late for the period April-2014 to June-17 which was in contravention of provisions of Rule 7 of the Service Tax Rules 1994 read with Section 70(1) of the Finance Act 1994.

11.4.1 SECTION 70 of the Act ibid stipulates as under:

Section 70. Furnishing of returns.

(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

11.4.2 Rule 7C of the Service Tax Rules, 1994 which is in relation to the amount to be paid for delay in furnishing prescribed returns makes the person liable to furnish the return according to the period of delay. Rule 7C(1) of the Service Tax Rules 1994 reads as under;

"7C. Amount to be paid for delay in furnishing the prescribed return.

(1) Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central government, for the period of delay of-

(i) fifteen days from the date prescribed for submission of such return, an amount of five hundred rupees;

(ii) beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and

(iii) beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return."

11.4.3 As such it appears that there was delay in filing of the ST-3 returns. The returns prescribed under rule 7 was not furnished by GPO-Ahmedabad on the due date prescribed for submission of such return, and therefore GPO-Ahmedabad rendered themselves liable to pay the late fees as prescribed under Rule 7C of Service Tax Rules 1994.

12. **Conclusion:** From the above said discussion, it appeared that:

(i) Services provided by GPO-Ahmedabad listed in Part II (Receipt) cash account, were taxable except those which are in negative list;

(ii) GPO-Ahmedabad had provided Life Insurance Services under various Postal Life Insurance schemes on which GPO-Ahmedabad were liable to pay Service Tax w.e.f. 01.01.2015;

(iii) GPO-Ahmedabad were also liable to pay service tax on the PLI premium amount deducted from the salary of their employees, which was not reflected in Part-II (Receipt) cash account, as per details provided by them;





Small, illegible text or markings in the bottom right corner of the page.

(iv) The Cenvat amount adjusted against liability shown in ST-3 returns was not admissible to them as they had not filed ST-3 Returns in time, they had not produced documents, they had not availed the Cenvat Credit within six month/one year from the date of invoice and had not maintained the accounts as required under the law in contravention of Rule 4, 9 and 6 of the Cenvat Credit Rules 2004;

(v) GPO-Ahmedabad had not paid/ short paid the service tax during the period from 01.04.2014 to 30.06.2017 and they were liable to pay the differential amount of tax not paid/ short paid by them.

(vi) GPO-Ahmedabad had filed the ST-3 Returns for the period April-2014 to June-2017 late and had held themselves liable to pay the late fees as prescribed under Rule 7C of Service Tax Rules, 1994.

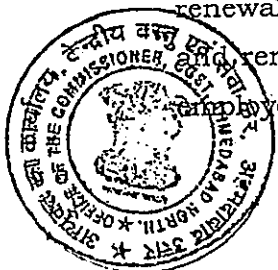
Service Tax Calculation

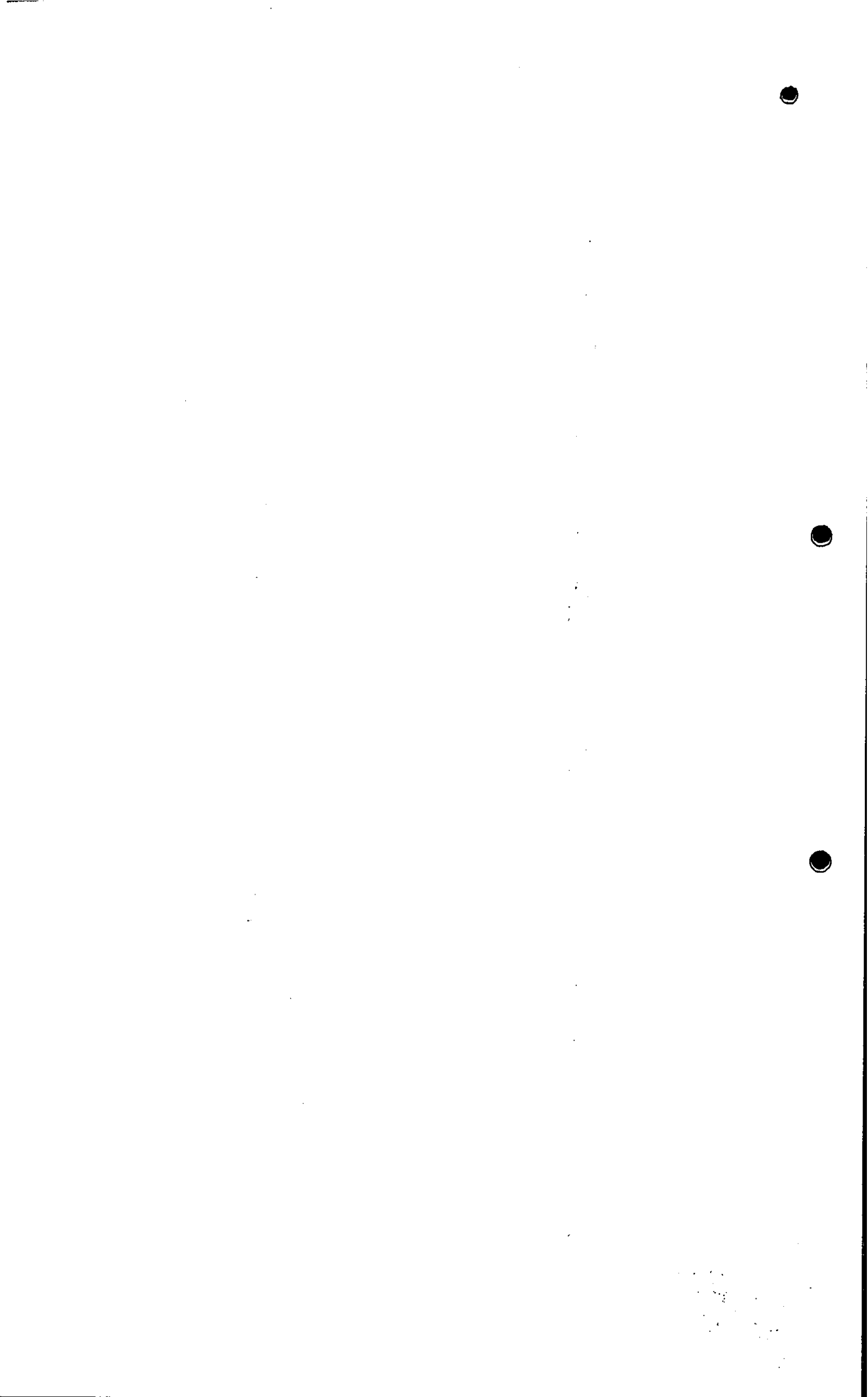
13.1. GPO-Ahmedabad were liable to pay service tax at appropriate rate on the Account Heads as mentioned in **Annexure B** (list of taxable services which were not covered under negative list of services). The service tax payable by them on services other than postal life insurance was worked out in Table B as under; (The details of services of postal life insurance and tax liability thereon has been detailed in Table-C)

Period	Speed Post Revenue, BNPL(S Post) SPCOD Fee, EPCOD Fee, BPCOD Fee, EPP Revenue, Business Post etc.		Unclassified Receipt			Total Taxable Value	Total Service Tax Payable
	Taxable value taken from the Monthly Cash Account and duly verified by Chief Post Master, GPO, A'bad	Service Tax Payable	Total Value under unclassified receipt (UCR) head	Value Under Considered as Taxable	Service Tax Payable		
2014-15 (Apr - Mar)	97222859	12016745	1946368724	8489794	1049339	105712653	13066084
2015-16 (Apr Mar)	90151841	12748911	2222453191	10407979	1458470	100559820	14207381
2016-17 (Apr Mar)	110809289	16466516	2868786737	10037101	1499521	120846390	17966037
2017-18 (Apr June)	19079923	2861988	477666006	1209863	181479	20289786	3043467
Total	317263912	44094161	7515274658	30144737	4188809	347408649	48282970

*Excluding the amount in respect of entries relating to salary, pension, advances, assistance etc. as per schedule of Unclassified receipt (UCR) provided by The Senior Post Master, GPO-Ahmedabad vide letter dated 01.11.2019 (RUD6).

13.2. GPO Ahmedabad were liable to pay service tax from January-2015 on the PLI premium amount shown in the Cash Accounts towards premium and towards renewal of the policy. They were also liable to pay Service tax on PLI premium amount renewal premium collected towards policy and deducted from the salary of their employees, which was not shown in "Part II Receipt" of Cash Accounts. The details on





the taxable value and the tax amount on which GPO-Ahmedabad were liable to pay Service Tax was worked out in Table C, shown hereunder:

Table - C
Life Insurance services

Period	Taxable value for First Year Premium	Service Tax payable on column A	Taxable value for Renewal	Service Tax payable on column C	Amount of premium deducted from the salary of DOP Employee Employee	Service Tax Collected but NOT Paid	Total Taxable Value	Total S. Tax payable
	[PLI FY, [PLI FY, Mccamish FY, RPLI FY, MACC PLI FY, etc]		[PLI Renew, PLI [PLI Renew, PLI Mccamish Renew, RPLIMAC Renew, PLI Rural, E-Post PLI, PLI etc]					
	A		C					
2014-15 (W.E.F. 01.01.2015)	35774617	1105436	2629834	40631	3615251	0	42019702	1146067
2015-16	73345055	2531533	55619749	977534	14402124	351709	143366928	3860776
2016-17	15897337	589175	120102401	2238706	14133279	343772	150133017	3171653
2017-18	1805194	67695	37440442	702008	3736250	79105	42981886	848809
Total	126822203	4293838	215792426	3958879	35886904	774587	378501533	9027305

taken from the Monthly Part II Receipt and as provided by Chief postmaster, duly verified

13.3 In view of the above, the total Service Tax payable by them and Service Tax payment made through Book Adjustments/through Cheque as per details submitted by them duly verified by the Chief Post Master, GPO-Ahmedabad for the period April- 2014 to June-201 are detailed in Table D hereunder. Detailed list of the services provided, taxable value, rate of tax for the different periods and tax amount month wise has been attached as Annexure C to the SCN.

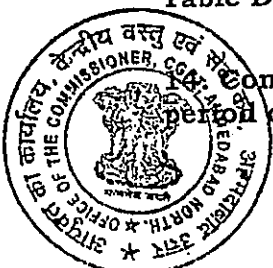
Table- D

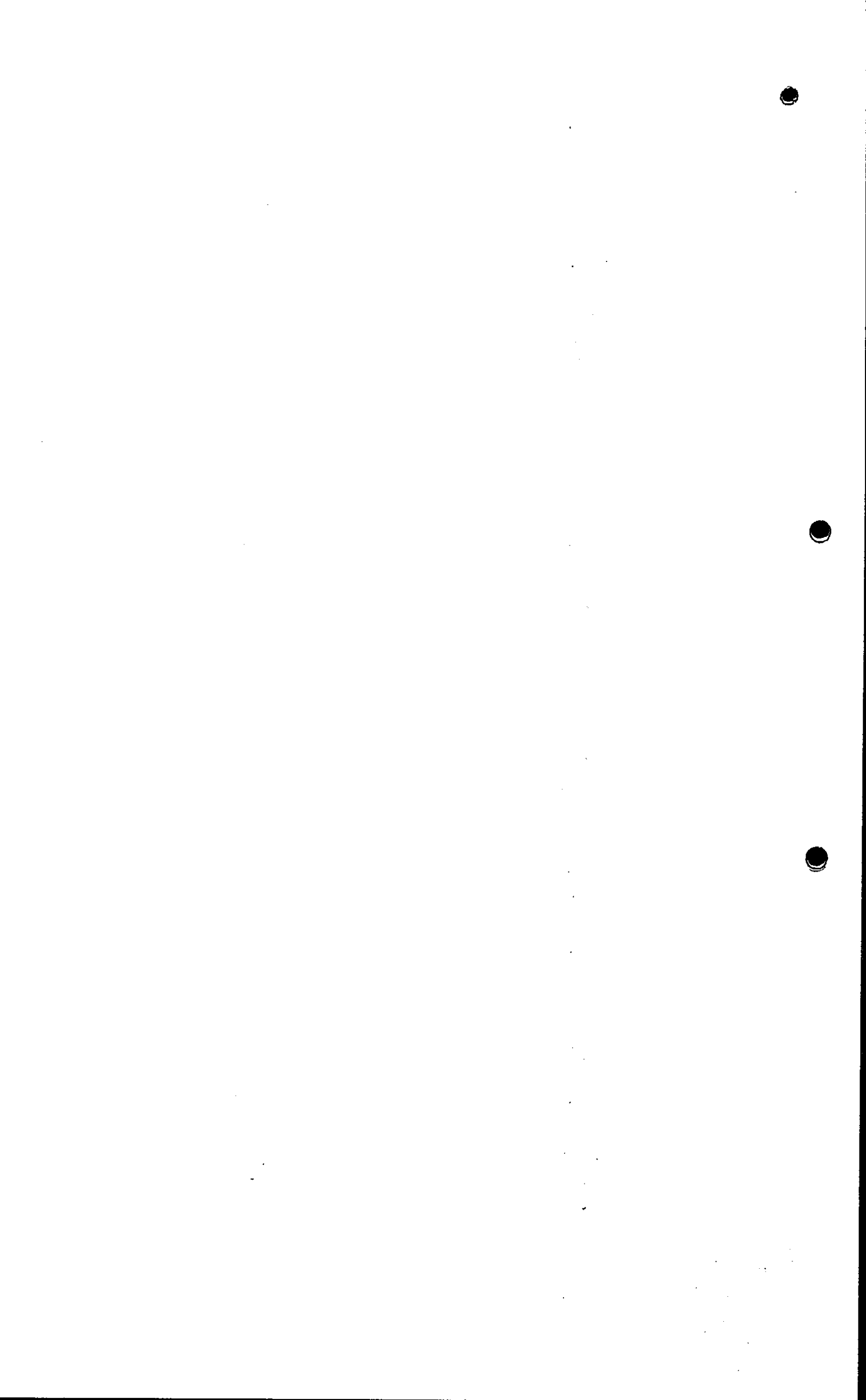
Period	Total Taxable Value	Total Service Tax Payable	Total Service tax liability self-assessed and admitted as per details submitted	Irregular CENVAT credit availed	Service Tax Service Tax short paid/ not paid	Total liability including CENVAT and Service Tax required to be recovered
	A	B	C	D	E (B-C)	F (D+E)
April 2014 to June-2017	725910182	57310274	11652255	1892802	45658019	47550821

*Rs. 347408649/- from Column E of Table 'B' and Rs. 378501533/- from Column G of Table 'C'
Rs 48282970/- from Column F of Table 'B' and Rs. 9027305/- from Column Hof Table 'C'.

13.4 In view of the above facts, GPO-Ahmedabad have made short payment of Service Tax amounting to Rs.4,56,58,019/- and have irregularly availed the CENVAT Credit of Rs.18,92,802/-, during the period from April-14 to June-17 as detailed in Table D as above in para 13.3.

contraventions of legal provisions and justification for invoking extended period of demand under the provisions of Section 73 (1) of Finance Act, 1994:





14.1 GPO-Ahmedabad have failed to assess their correct taxable value and Service Tax liability thereof, failed to file ST-3 Returns on time. It appeared that GPO Ahmedabad have contravened the following provisions:

- Rule 4, 6(3) and 9 of Cenvat Credit Rules, 2004 in as much as GPO-Ahmedabad have availed and utilized inadmissible Cenvat but failed to maintain proper documents/ST-3 not filed on time;
- Sections 66B of Finance Act, 1994 read with Rule 4A of Service Tax Rules 1994 in as much as GPO-Ahmedabad have not charged and collected Service Tax at applicable rate on invoice;
- Section 67 of the Finance Act 1994 in as much as GPO-Ahmedabad have failed to ascertain the correct taxable value;
- Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules 1994 in as much as GPO-Ahmedabad have failed to deposit Service Tax liability in the government exchequer;
- Section 70 of the Finance Act 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as GPO-Ahmedabad have failed to file the ST-3 returns electronically on time;

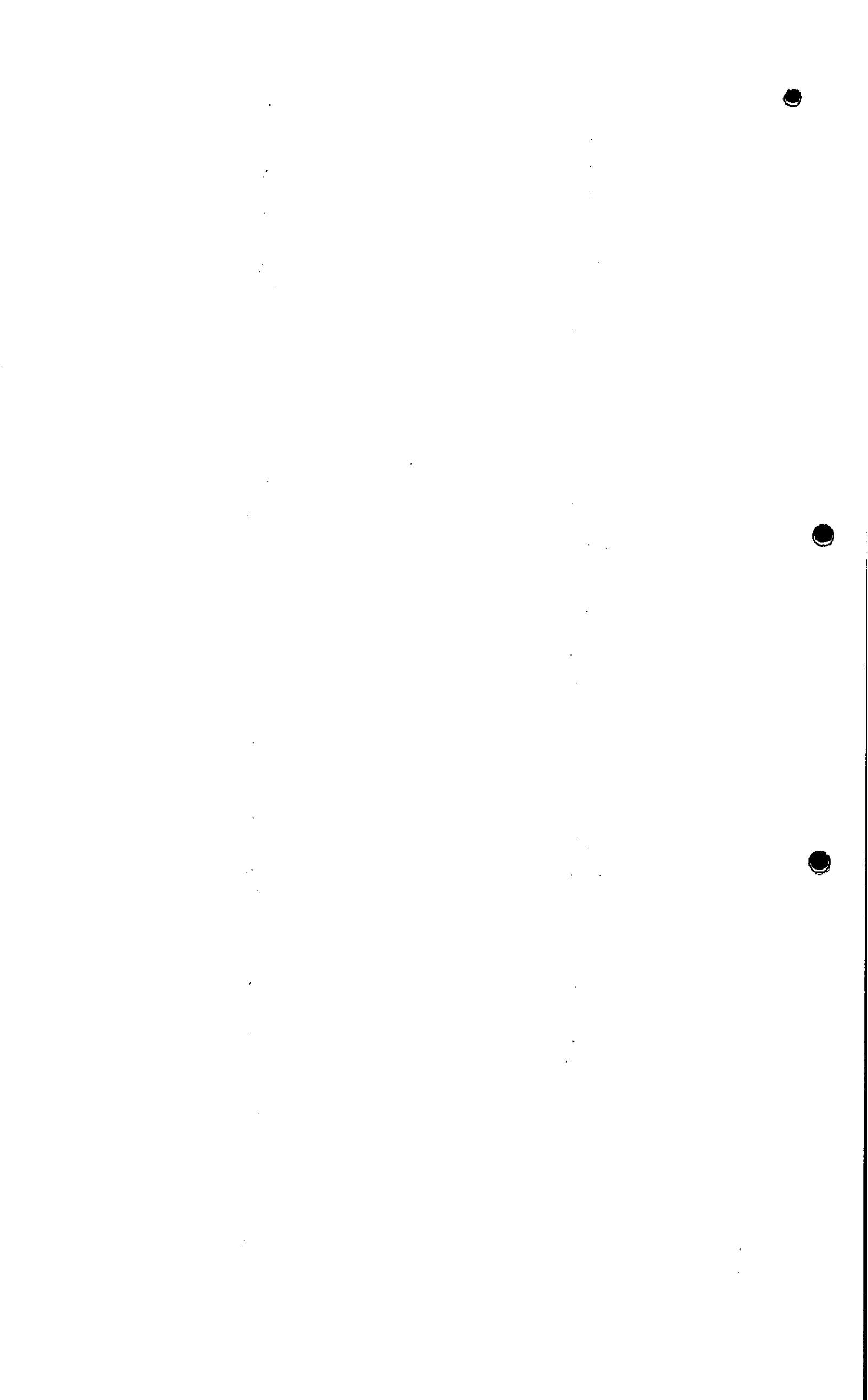
14.2 It is pertinent to mention here that the system of self-assessment is in vogue in respect of Central Excise as well as Service Tax. In the scheme of self-assessment, the department comes to know about the tax liability and payment made only during the scrutiny of the statutory returns filed by the service providers. It was seen from the facts emerging during the investigation of the instant case that GPO-Ahmedabad had contravened the provisions under the Finance Act, 1994 and rules made thereunder.

14.3 GPO-Ahmedabad had never sought any clarification/ correction from the department about their service tax liability and compliance procedures and had not submitted the complete information of the services rendered and tax paid on it. The information about the services on which tax was not charged, collected and paid provided by them was never declared to the department. Therefore, extended period of limitation under proviso to Section 73(1) of the Finance Act appeared to be invokable. In view of these acts of omission and commission done by them by way of contravention of the provisions of Section 66B, 67 and 68 and 70 of the Finance Act, 1994 and Rules made there-under, GPO-Ahmedabad had rendered themselves liable for the penalty under the provisions of Section 76 and/ or 78 of the Act ibid read with Rule 15 (1) and Rule 15 (3) of Cenvat Credit Rules, 2004.

14.4 Whereas it further appeared that GPO-Ahmedabad had failed to maintain accounts in accordance with rules and failed to produce the documents on the basis of which they took the Cenvat and had also failed to pay service tax electronically through internet banking and also failed to maintain the books of account and other documents as prescribed under the Act and Rules made thereunder. Therefore, penalty under Section 77(1) (b) of the Finance Act, 1994 appeared to be leviable on GPO-Ahmedabad.

Therefore, it appeared that, GPO-Ahmedabad had provided taxable service and amounts realized was not correctly declared/shown to the department in





ST-3 returns and they had failed to file ST-3 Returns in time and they were liable to pay the late fee as prescribed under Rule 7C of the Service Tax Rules, 1994. The ingredients for invoking the extended period under proviso to Section 73(1) of the Finance Act, 1994, exist for demanding and recovering Service Tax including CENVAT Credit amounting to **Rs. 4,75,50,821/-** (Rupees Four Crore Seventy Five lakhs Fifty Thousand Eight Hundred Twenty One only) including Cess under proviso to Section 73 along with interest under Section 75 of the Finance Act, 1994 and penalty under the provisions of Section 76 and/or 78 of the Act ibid read with Rule 15 (1) and Rule 15 (3) of Cenvat Credit Rules, 2004. They also appeared to be liable to penalty under Section 77 (1) (b) of the Act.

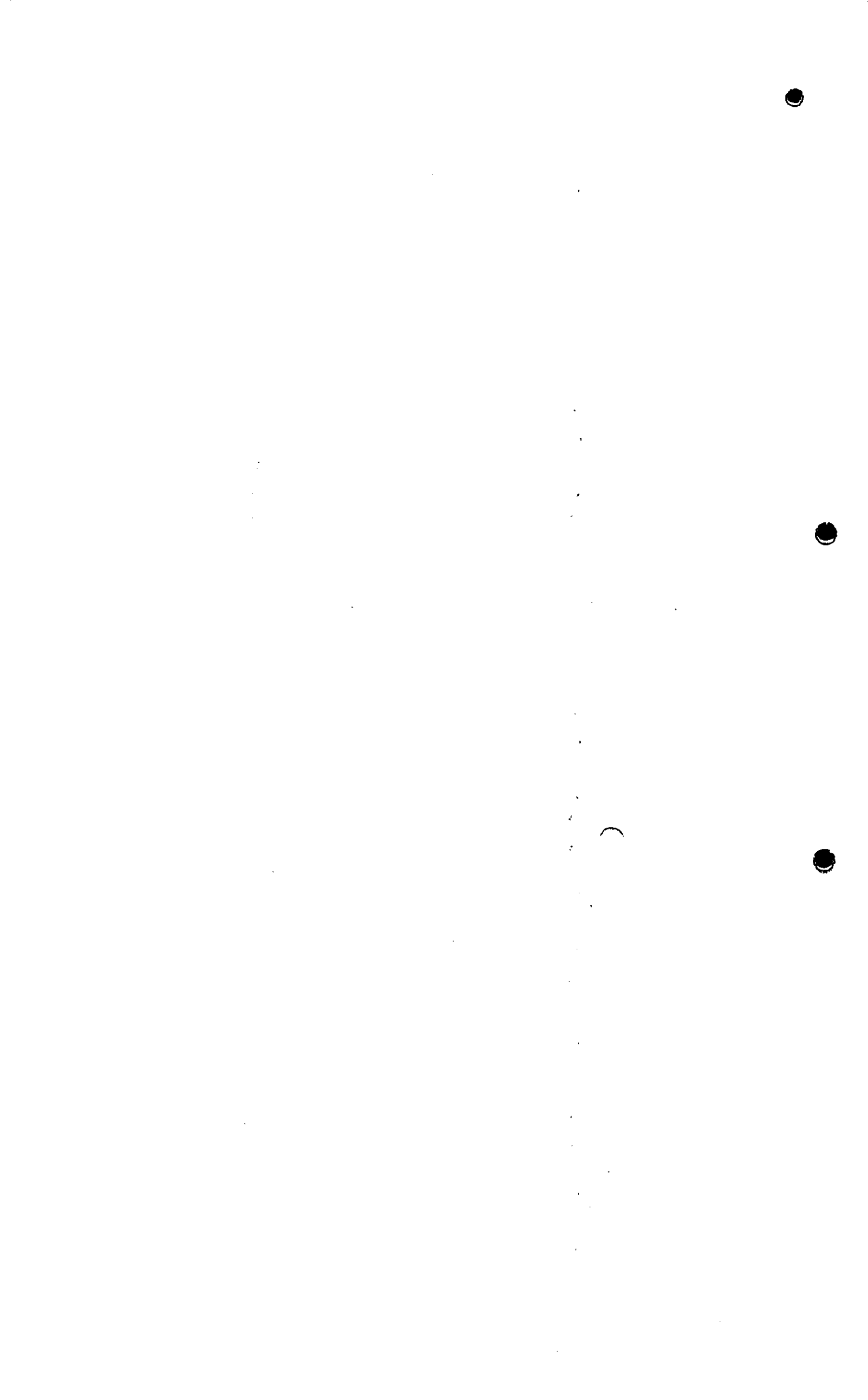
16. Therefore, the Show Cause Notice No. DGGI/AZU/Gr.B/36-141/2019-20 dated 08.11.2019 was issued to "**CHIEF POST MASTER GPO-Ahmedabad**" for showing the cause as to why:

- A) The receipt shown under the various Account Heads in Part II Receipt of Cash Account should not be considered as taxable for charging of service tax in terms of Section 67 of the Finance Act, 1994; Service Tax amounting to **Rs. 4,56,58,019/-** (Rupees Four Crore Fifty-Six Lakhs Fifty-Eight Thousand Nineteen only) including cess (as detailed in Annexure C to SCN), should not be demanded and recovered from them under proviso to Section 73 (1) of the Finance Act, 1994 also read with Section 174 of the CGST Act, 2017;
- B) Interest at the appropriate rates should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 in respect of demand at 'A' above read with Section 174 of the CGST Act, 2017.
- C) Penalty should not be imposed on them separately under Section 76 and/ or 78 read with Section 174 of the CGST Act, 2017;
- D) The amount of **Rs.18,92,802/-** (Rupees Eighteen lakhs Ninety-Two thousand Eight hundred Two only) Cenvat Credit availed by them should not be denied/demanded under Rule 14 of Cenvat Credit Rules, 2004 read with proviso to Section 73 (1) of the Finance Act, 1994;
- E) Interest at the appropriate rates should not be demanded and recovered from them under rule 14 of Cenvat Credit Rules 2004 read with Section 75 of the Finance Act, 1994 in respect of demand at 'D' above read with Section 174 of the CGST Act, 2017.
- F) Penalty should not be imposed upon them under Rule 15 (1) and Rule 15 (3) read with Section 78 for incorrect availment of Cenvat Credit as mentioned at D above.
- G) Fees for Late filing of ST-3 returns for the period April-2014 to June, 2017 should not be imposed upon them under Rule 7C of the Service Tax Rules, 1994 for contravention of provisions of Section 70 (1) of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.
- H) Penalty under Section 77(1)(b) of the Finance Act, 1994 should not be imposed upon them.

DEFENCE REPLY:

The Joint Director, DGGI, AZU, Ahmedabad vide letter F.No. DGGI/AZU/ 12(3) 016-17/ GPO dated 12.06.2020 forwarded the replies F.No. Acctt/Service Tax/

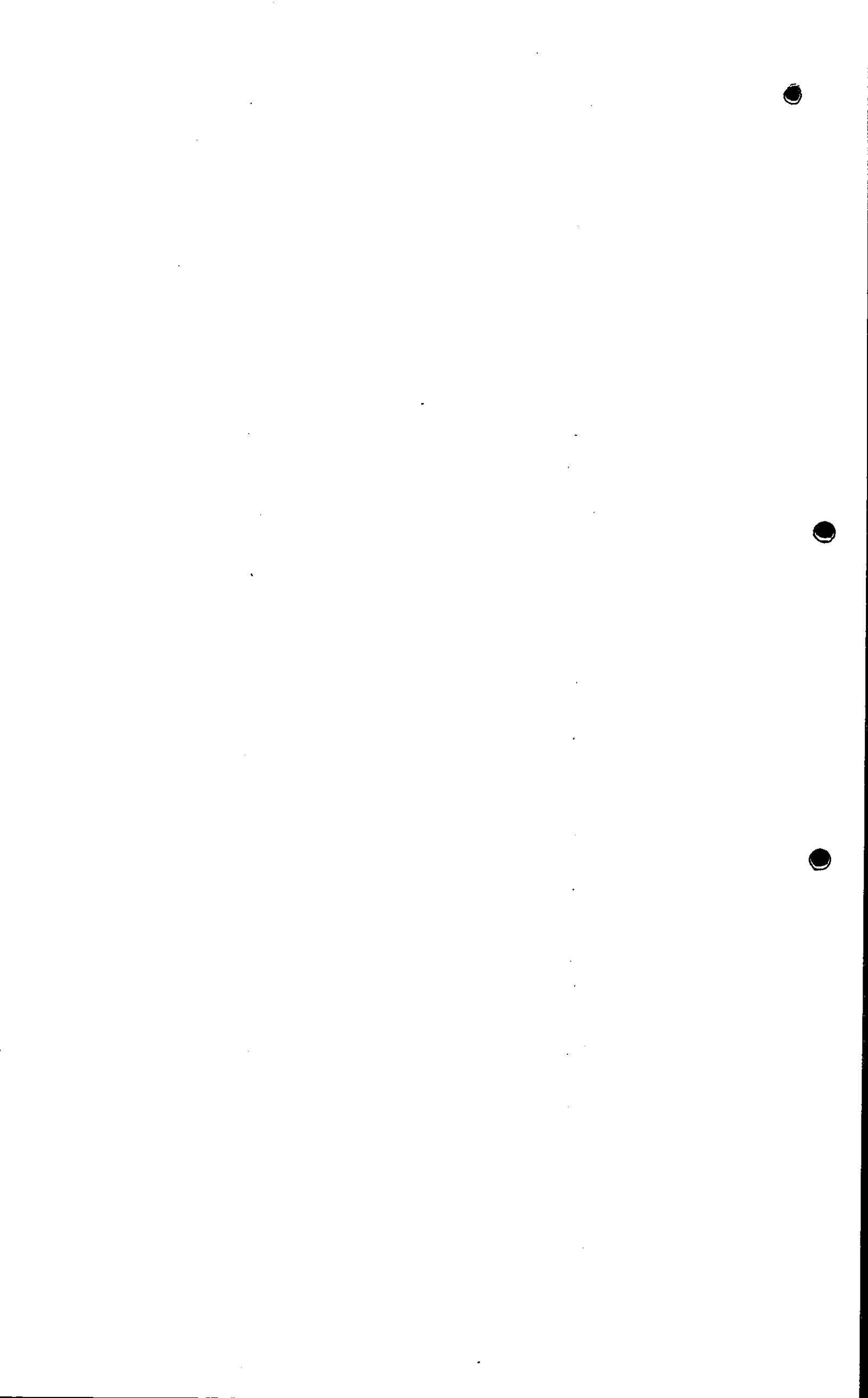




Notice/Corr/2019-20 dated 23.03.2020 and 03.12.2019 of the assessee received by them. The Gist of the replies is under:

- In respect of late filing of Service tax for the period from April 2014 to September 2016, they submitted the copy of letter F.No. PA/BK-I(c)/ST/VII/2019-20 of GOI, Min. Of Communication, Deptt. Of Post (PA Wing) dated 15.11.2019 and Letter No. Book/Service Tax/2019/570 dated 27.11.2019 of O/O GM Finance, Postal Account, Ahmedabad regarding booking of service tax collected between April 14 to Sep 2016 through Book Transfer and accounting the same in the head of Service tax. Therefore, they contended that there is no issue of late filing of service tax as alleged in the notice.
- In respect of inadmissible Cenvat Credit amounting to Rs. 18,92,802/-, the data of service tax collected at their office was being submitted to DAP and the Circle office, Gujarat in monthly statement . In each statement the input credit was calculated and shown accordingly. All the statements were available in their office. The same facts are mentioned in the SCN. Hence, it can not be said that the data of input and output data was not maintained at their office, and cenvat credit availed can not be said to be wrongly availed.
- In respect of non payment of service tax collected on PLI premium from the salary of DOP employees (Rs. 774587/-) they stated that the total PLI premium collected from the salary during the period 01.01.2015 to June 2017, was Rs. 3,58,86,904/- against which the due service tax of Rs. 774587/- had been recovered @ rates existing at the relevant time. No service tax was collected for the period Jan 2015 to April 2015, but the same has been recovered in Lump sum of Rs. 88725/- for the salary paid. Hence, there is no question of non recovery of service tax for the period. Their office was submitting the service tax collected on the PLI Premium recovered from the salary, to the O/O GM (Finance) by way of monthly schedules, as there was no orders to their office to pay the said service tax directly during that period, and the said service tax had been credited through Book Transfer during the period concerned.
- In respect of non payment of service tax against the revenue earned under various heads of UCR (Unclassified receipt) amounting to Rs. 3,01,44,737/-. They stated that they are not under the purview of collection of service tax as per the norms /SOP to provide the service. There is no orders issued to their office from the competent authority to claim service tax against these services provided. Therefore, it can not be said that their office had failed to collect/ pay service tax amounting to Rs. 41,88,809/- against the said revenue.
- In regard to short recovery of service tax against insurance services amounting to Rs. 34,26,14,629/- , they stated that the service tax component was auto generated through software and was charged from the insurant accordingly. The rate of service tax was modified time to time and corrections were updated in the software accordingly. As there was no procedure of calculation of service tax manually, there would be no error in the amount of tax collected. Further, the mechanism online software was available with effect from 01.04.2015 and





service tax on the premium collection was made as per the receipt generated through systems. Hence, no short payment of service tax was done at their end.

- As regard, short recovery of service tax on Speed Post, BNPL, Business Post etc. They stated that Speed Post booking was being done in the Meghdoot Millennium Software during the period under reference. The rate of service tax was updated in the system as and when modified by the competent authority and calculation was made by software accordingly. The service tax amount generated from the system was only recovered from the customer, and as there was no manual calculation, there would be no error in the recovery of service tax on the speed post services provided. For BNPL, they stated that the amount recovered from the customers after debiting the due service tax from customers was only BPPL. The service tax as collected was also accounted under the head service tax in the Cash Account. For Business Post, they stated that there is no order to claim service tax from the customers availing business post services therefore the amount earned under business post service is not in the ambit of service tax as per the SOP provided for providing the service.
- At the end, they stated that their office had collected the service tax and credited the same as required and as per the orders prevailing at that time. All the records of service tax collection and credit through book transfer were shown to the officers who inspected the records.

The assessee forwarded further defence replies to the SCN, vide their letter No. ACCT/Service Tax/ Notice/Corr/2020-21 dated 27.10.2020 AND dated 03.08.2021. Gist of their reply is reproduced below:

- As regard non registration & non filing of ST Returns, they stated that the PAN based service tax registration of Ahmedabad GPO No, AAAGC0117PSD001 was registered on 19.02.2015. The filing details of ST-3 was as under.

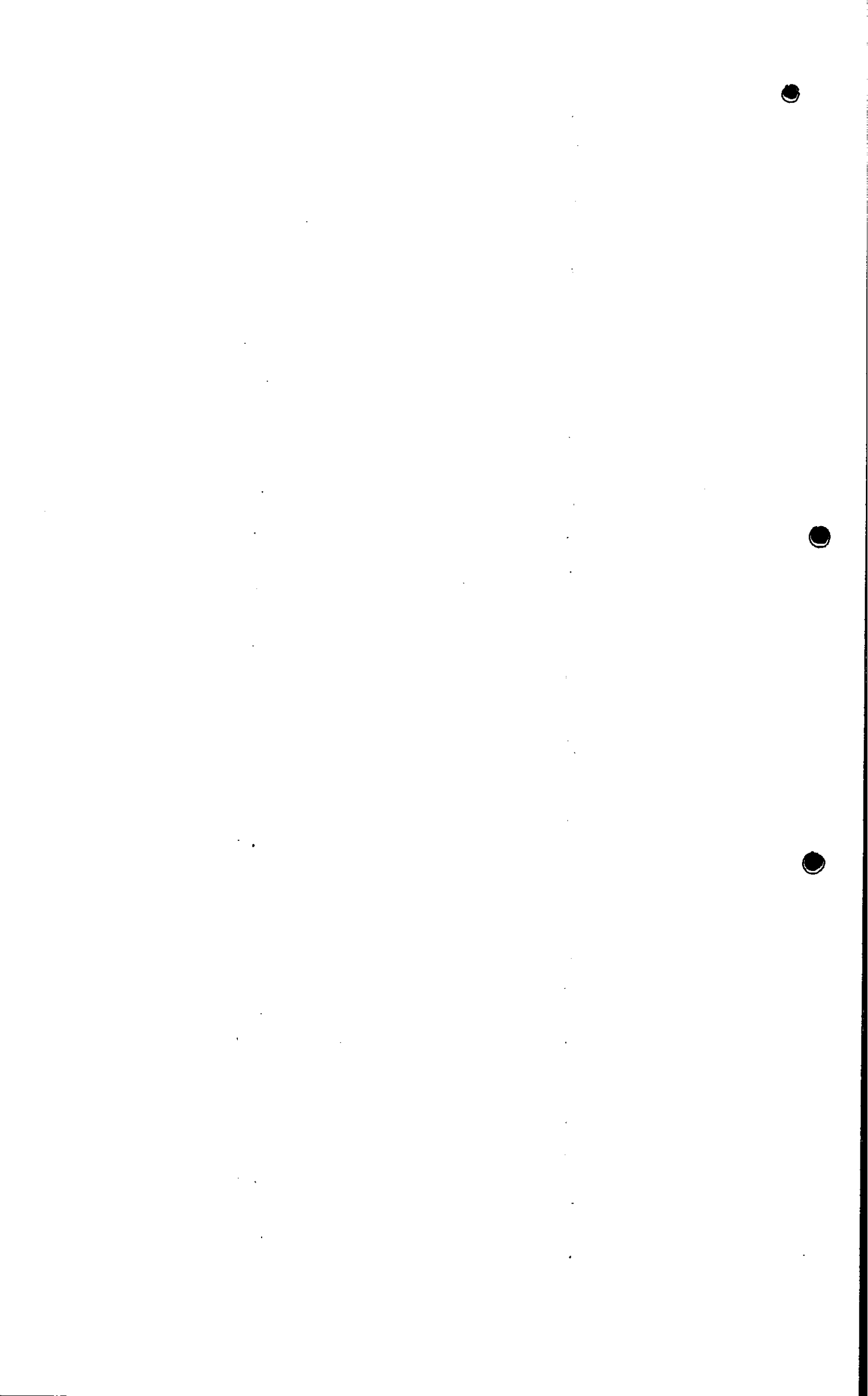
Period	Date of filing
Apr- 2014 to Sept -14	10.04.2017
Oct-2014 to Mar-2015	11.04.2017
Apr-2015 to Sep-2015	11.04.2017
Oct-2015 to Mar-2016	11.04.2017
Apr-2016 to Sep-2016	12.04.2017
Oct-2016 to Mar-2017	14.06.2017
Apr-2017 to Jun-2017	24.08.2017

They submitted that the booking of service tax collected between April 2014 to Sept-2016 through book transfer /adjustment and accounting the same in head service tax under MH-0044. The book adjustment made by O/o GM(Finance) (DDO wise and Year Wise) list of amount was submitted by them.

Year	Description	Receipt
2014-15	CPM, Ahmedabad GPO	Rs. 20,34,286/-
2015-16	CPM, Ahmedabad GPO	Rs. 42,72,252/-
2016-17	CPM, Ahmedabad GPO	Rs. 12,85,514/-

Above amount was transferred and same has been acknowledged by Pr. CCA, CBIC, New Delhi through letter No. Pr. CCA/CBIC/GST & IT/06/Misc/2015-16/551 dated 24.10.2019 addressed to Member (ST). The same was





communicated vide O/O DAP, Gujarat Circle No. Book/Service tax/2019/570 dated 27.11.2019.

- As regard Remittance of service tax through cheque, from Oct,2016 onwards the service tax was remitted to the service tax authority through cheque. They had credited the same through cheque as under. The bank authorities were not accepting the cheques and were insisting on e-payments

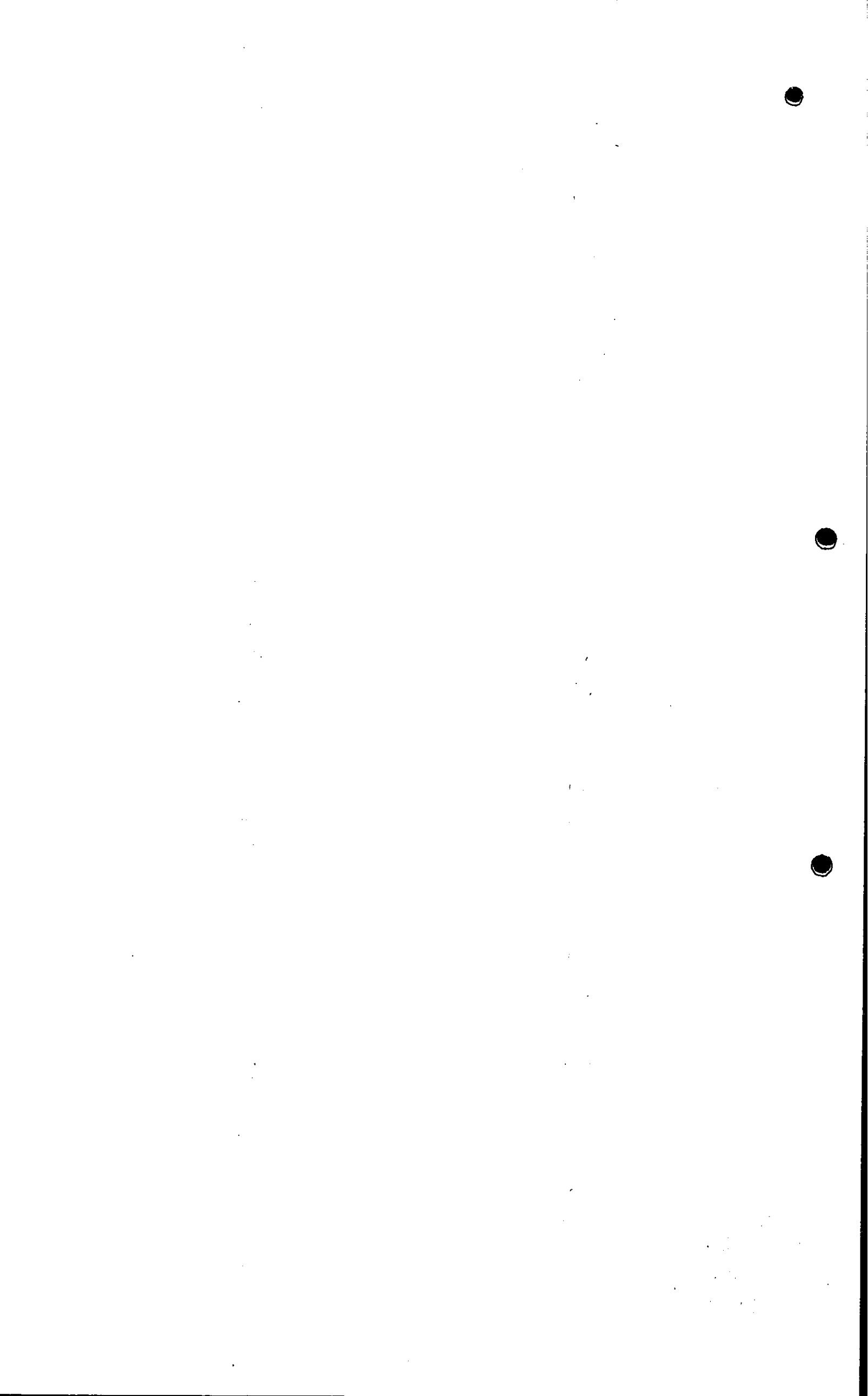
Month	Amount (in Rs.)	Cheque No.
Oct -2016	20677.89	Cheque No.
Nov-2016	233293.33	955414 dtd.
Dec-2016	304904.34	16.05.2017
Jan-2017	792077.05	Cheque No.
Feb-2017	361869.90	955415 dtd.
Mar-2017	348820.34	16.05.2017
Apr-2017	221310.85	Cheque No.
May-2017	38110.16	941514
June-2017	536353.47	dtd.15.07.2017
Total	3200417.33	

- As regard, the cenvat credit amounting to Rs. 18,92,802/- availed by them, the invoices were required to be sent to PAO for audit, thus the credit claimed by them should be accepted as an authentic records of govt. Department and cenvat credit claim should not be denied on the basis of procedural infirmities. They stated that the Cenvat Credit availed through ST-3 Cenvat Credit was availed but at Postal Account Office (PAO) level amount transferred is more than actually required to be transferred.

Year	Amount filed in ST-3	Actual amount transferred though Book Transfer.
2014-15	Rs. 2302082.60	Rs. 2034286.00
2015-16	Rs. 3992545.61	Rs. 4272252.00
2016-17	Rs. 3877465.02	Rs. 1285514.00 (Book Transfer) + Rs. 3200417.33 (Cheques issued) = 4485931.33

- As per SCN, UCR has been completely exempted in Vadodara Region whereas in Ahmedabad the same is included in service tax liability. They stated that the UCR includes the tender fee, EMD, Post Box deposits, Pledging fee, Fee for employee/ Pensioner I-Card are shown as taxable. Most of the Items are exempted as they are related to office expenses / banking & financial services provided by the department. Banking and Financial services given by the department of post are not liable for the service tax as per the clarification of the Board (Circular No. 354/59/2006-TRU dtd. 04..07.2006- Ann-VI). All the receipt of Part-I should be exempted from taxes as the same were related to saving bank schemes of state government or local authority.
- Under the head of Retail Post, the major amount of revenue was from stamp commission on sale of revenue stamps, WFA commission & sale of non judicial stamps of Gujarat Government & Collector office. All these services are rendered to Govt. Entity (state govt.), and the same are exempted under Section 66D(a) of Financial Act, 1944.





- The service tax liability on PLI/RPLI, premium was collected from customers and remitted through book adjustment upto Sep 2016 and through cheques from Oct 2016 onwards. As per SCN, the rate of service tax on premium collected varies both for 1st year premium / renewal premium which is wrongly calculated. They have recalculated the service tax on premium collected. They submitted the annexure C-7, C-12 and C-17. As per the revised annexure, liability is as under. PLI recovered from pay of employees as per rule on the subject, the service tax amount were bifurcated and indicated clearly in the monthly accounts and sent to PAO for book transfer of service tax.

Year	Liability
2015-16	Rs. 1275719/-
2016-17	Rs. 3,35,336/-
2017-18	Rs. 44,758/-

PERSONAL HEARING:

18. The GPO Ahmedabad was granted the Personal Hearing on 26.04.2021, and 28.06.2021. The personal hearing was held on 28.06.2021 before the then adjudicating authority, during the hearing, they sought one month's time for submission of the detailed reply by them. Meanwhile, consequent upon the change of adjudicating authority, the personal hearing was again granted to the GPO-Ahmedabad on 23.09.2021. The personal hearing was attended through video conferencing by Shri D.B. Vadher and Smt. Z.P Parikh, wherein they stated that they have made detailed submission as well as submitted the additional document as requested by the department. They requested to drop the proceedings.

DISCUSSION AND FINDINGS:

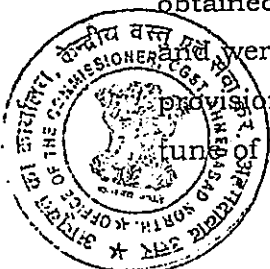
19. I have carefully gone through the Show Cause Notice, relevant case records and the assessee's submissions both, in person and written. It is evident that the demand of service tax has been raised in the SCN on the basis of the following three counts /issue:

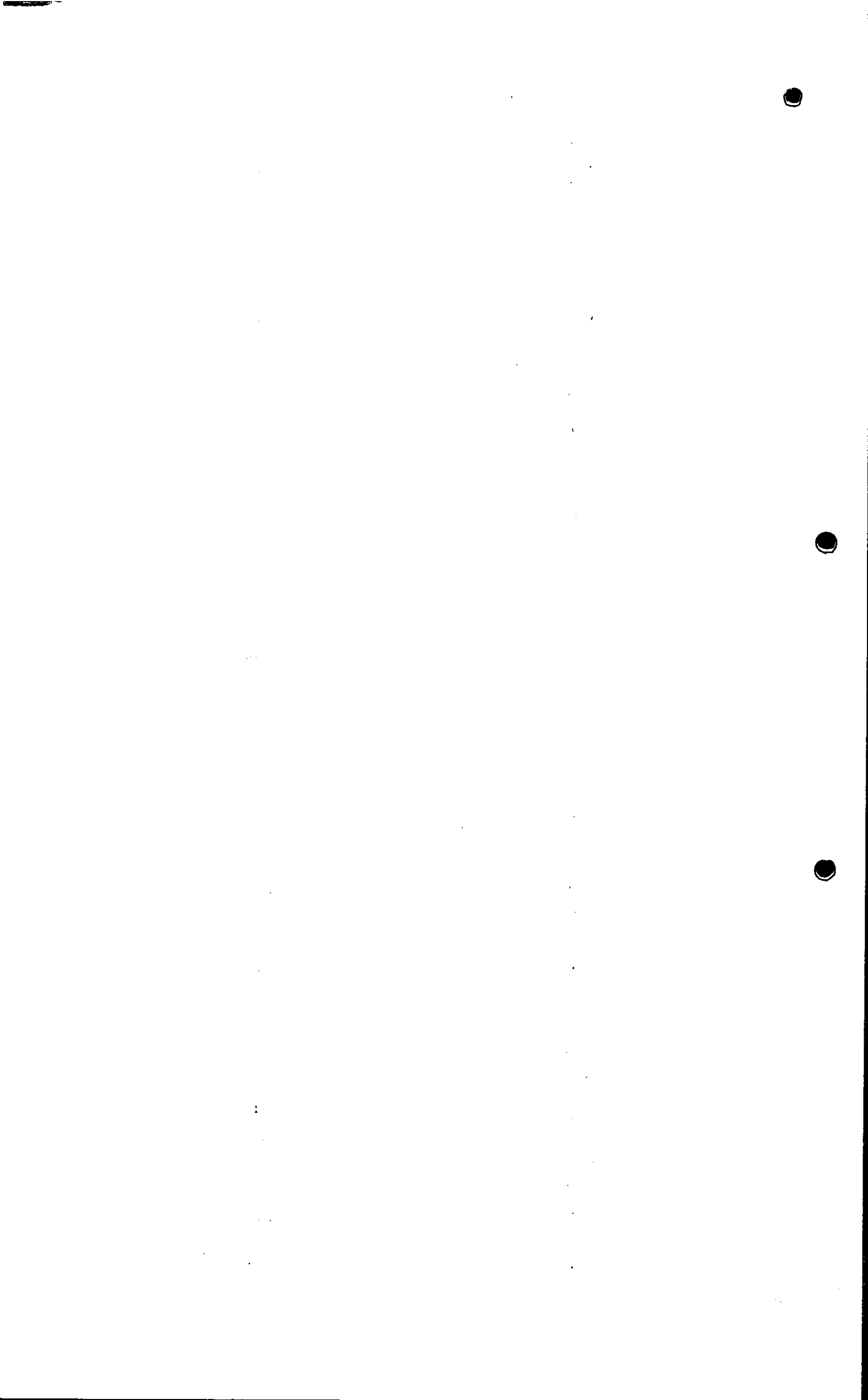
- Short-payment of service tax on account of improper assessment of various taxable services provided by the assessee;
- Wrong availment of Cenvat credit in violation of Cenvat Credit Rules, 2004; and
- Late filing of ST-3 returns.

I accordingly proceed to consider each issue individually on its merits so that a correct, fair and legally appropriate decision can be arrived at.

(a). Short payment of service tax on account of improper assessment of various taxable services provided by the assessee.

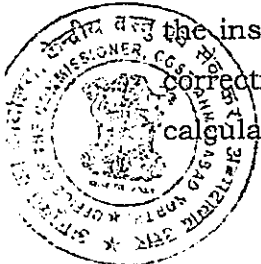
20.1 It has been alleged in the Show Cause Notice that the assessee had not obtained registration under service tax, however they were providing taxable services and were required to obtain the service tax registration to comply with the service tax provisions. Further the assessee had provided services attracting service tax to the tune of Rs. 5,73,10,274/- (as per Table -D to the SCN)) during the period from April,

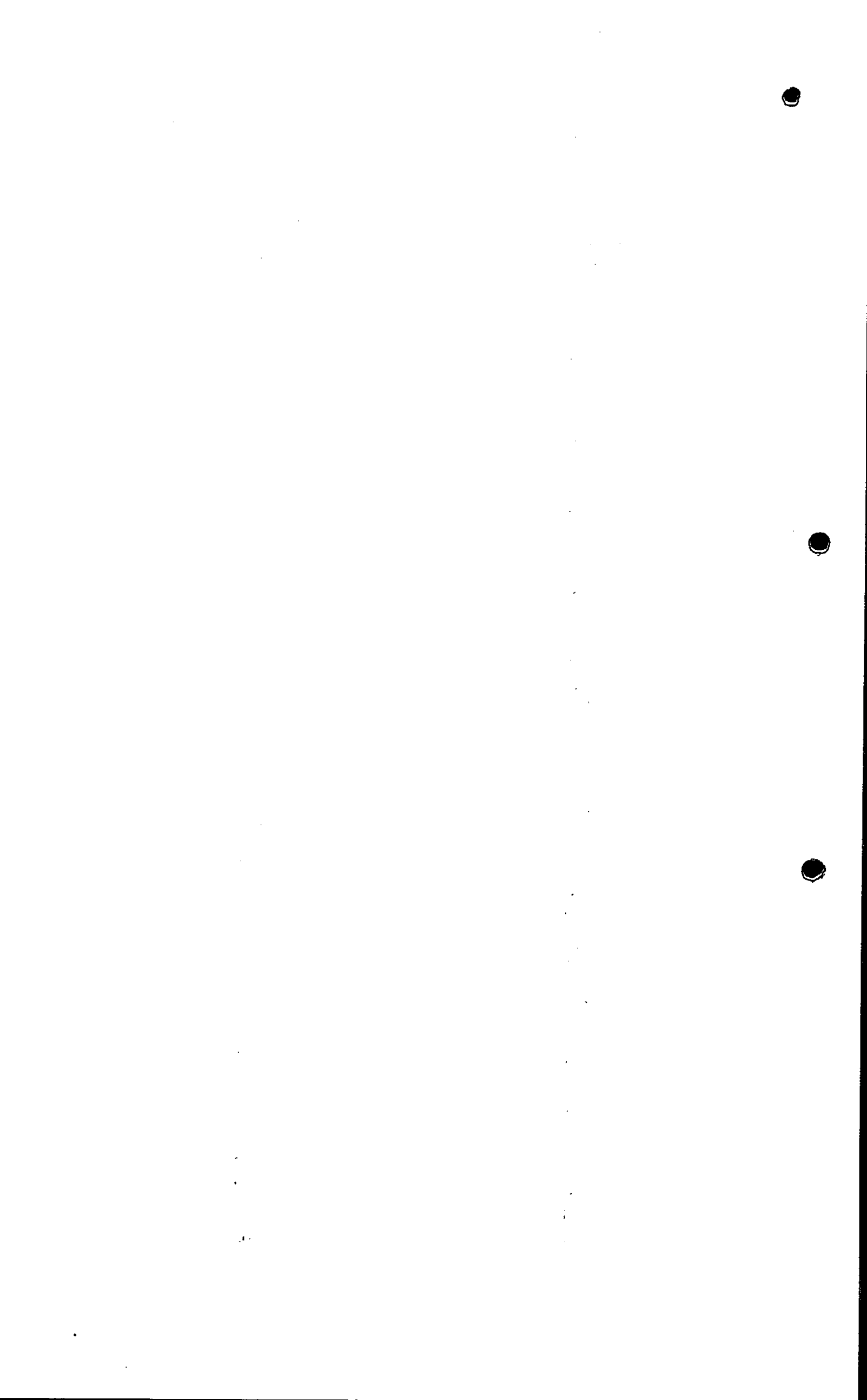




2014 to June, 2017. However the assessee had shown their self assessed tax liability of the service tax amounting to Rs.1,16,52,255/- only according to their ST-3 Returns filed. (which incidentally were filed only after 09.04.2017). They have thus as per the SCN issued have short-paid service tax amounting to **Rs. 4,56,58,019/-** during the period from April, 2014 to June, 2017.

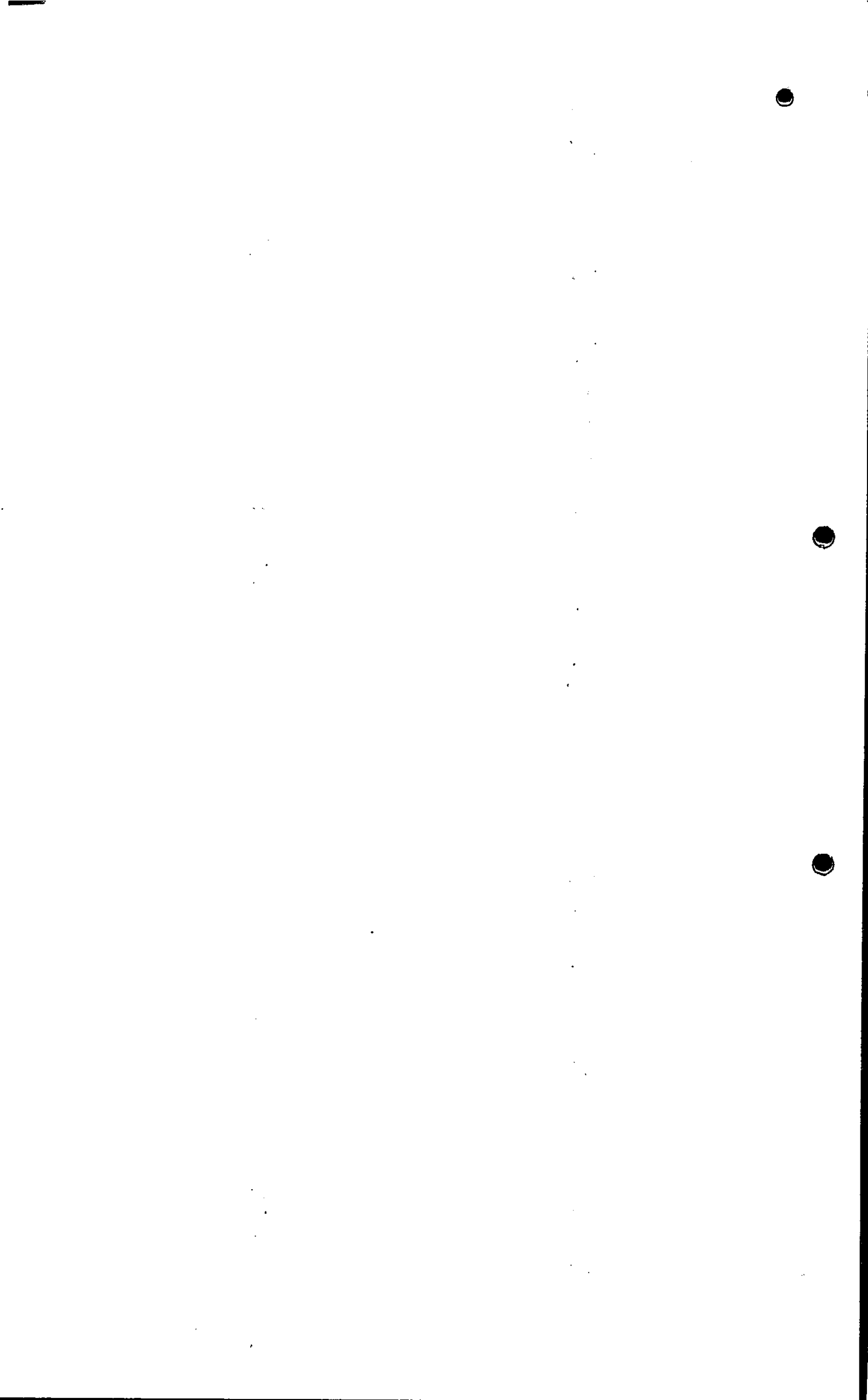
20.2 The assessee, in respect of UCR (unclassified Receipts), has stated that they are not under the purview of collection of service tax as per the norms /SOP to provide the service. There was no orders issued to their office from the competent authority to claim service tax against these services provided. Therefore, it can not be said that they had failed to collect/ pay service tax amounting to Rs. 41,88,809/- against the said revenue. They have further contended that in Vadodara Region, such income has been considered to be exempt whereas in Ahmedabad the same is proposed to be included in service tax liability. They have stated that the UCR consisted of the tender fee, EMD, Post Box deposits, Pledging fee, Fee for employee/ Pensioner I-Card etc. Most of the Items were exempted as they were related to office expenses / banking & financial services provided by the department. Banking and Financial services given by the department of post are not liable for the service tax as per the clarification of the Board (Circular No. 354/59/2006-TRU dtd. 04.07.2006-Ann-VI). All the receipt of Part-I should be exempted from taxes as the same were related to saving bank schemes of state government or local authority. In respect of short recovery of service tax on Speed Post, BNPL, Business Post etc. they stated that Speed Post booking was being done in the Meghdoot Millennium Software during the period under reference. The rate of service tax was updated in the system as and when modified by the competent authority and calculation was made by software accordingly. The service tax amount generated from the system was recovered from the customer, and as there was no manual calculation, there would be no error in the recovery of service tax on the speed post services provided. For BNPL, they stated that the amount recovered from the customers after debiting the due service tax from customers was only BPPL. The service tax collected was also accounted under the head of service tax in the Cash Account. For Business Post, they have stated that there was no order to claim service tax from the customers availing business post services therefore the amount earned under business post service was not in the ambit of service tax as per the SOP provided for providing the service. They also stated that as far as the income under the head of Retail Post is concerned, the major amount pertains to revenue stamp commission on sale of revenue stamps, WFA commission & sale of non judicial stamps of Gujarat Government & Collector office. Since all these services were rendered to Govt. Entity (state govt.), they requested to exempt the income under Section 66D(a) of Financial Act, 1944. The assessee in their defence of alleged short recovery of service tax against insurance services, argued that the service tax component was auto generated through software and was charged from the insurant accordingly. The rate of service tax was modified from time to time and corrections were updated in the software accordingly. As there was no procedure of calculation of service tax manually, there would be no error in the amount of tax





collected. Further, the mechanism of online software was available with effect from 01.04.2015 and service tax on the premium collection was made as per the receipt generated through systems. Hence, there was no short payment of service tax at their end. Further, with regard to service tax on the service tax liability on PLI/RPLI, they have contended that the premium was collected from customers and remitted through book adjustment upto Sep 2016 and through cheques from Oct 2016 onwards. As per SCN, the rate of service tax on premium collected varies both for 1st year premium / renewal premium which was wrongly calculated, the same has been now recalculated by them as per the annexure C-7, C-12 and C-17. They have further added that the PLI recovered from pay of employees was as per rule on the subject, the service tax amount were bifurcated and indicated clearly in the monthly accounts and sent to PAO for book transfer of service tax.

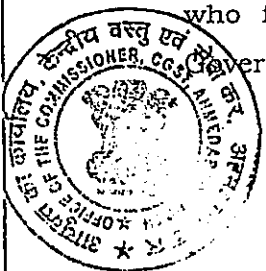
20.3 I find that the contention of the assessee by themselves give credence and legitimacy to the allegations leveled in the SCN. The assessee has not come up with any supporting evidences in their support. In respect of the contention of the assessee for having considered some of the income exempt in Vadodara Region, I find that the assessee has not supplied any information supporting their claim. Further, with regard to exemption on tender fee, EMD, Post Box deposits, Pledging fee, Fee for employee/ Pensioner I-Card, as well as income related to banking and financial service etc. I find that the assessee has not provided the break up of such income, and relevant voucher or ledger or source documents for booking of such income for deciding the exemption. The arguments have been tendered without backing of the law in force at the material time. The circular quoted by the assessee in their support pertains to the period prior to 01.07.2012 i.e prior to introductions of negative list based taxation. I find that after introduction of negative list based tax regime, the exemption on financial and banking service needs to be examined under new statute. In absence of any concrete evidence, the arguments tendered by the assessee can not be accepted. Further, I find that, in view of the provisions under Section 73(1B) of the Finance Act, 1994, the amount of book transfer, being admitted liability, has not been considered for the purpose of demand in the instant Show Cause Notice. The assessee has admitted that the tax was collected as calculated by their system /software; in this respect, I find that the assessee had not taken care to synchronise their software to make it compatible with the taxation laws and that can not be a defense against non payment. As regard the contention of the assessee for wrong calculation of tax on premium/ renewal premium income as per C-7, C-12, and C-17 of the SCN, I find that the assessee has not explained how it was wrongly calculated, they have furnished recalculated tax year wise, without pointing out the difference with respect to the annexure (C-7,12 and 17) or without any calculation sheet for reference. In view of this fact, the arguments tendered by the assessee can not be accepted. They have not taken due care to apply service tax on all of the taxable services and many of the services were left to be taxed and no service tax was collected on them. They have shown their ignorance about the taxability of some of the taxable services provided by them. Ignorance of laws cannot be an excuse or defense for contravention of law and the law has to take its own course. The calculation of short-

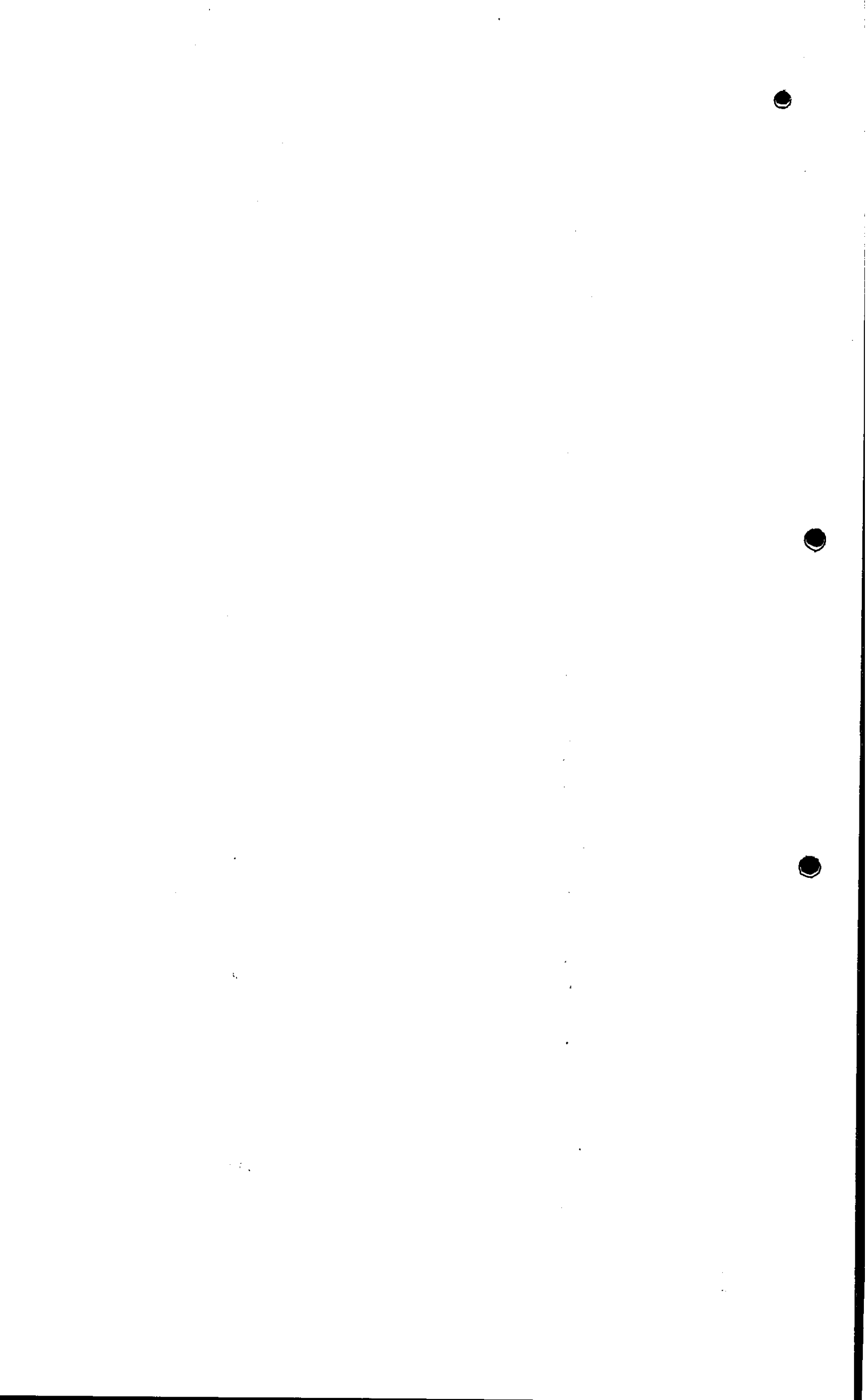


paid amount as alleged in the SCN, is based upon the data submitted by the assessee themselves and has been properly verified by the Senior Post Master, Navrangpura HO. At the adjudication stage also, they have not come up with any calculation sheet or worksheet for short-paid amount of service tax. Therefore, I can not help but hold that they are liable to pay the differential short-paid service tax amounting to Rs. 4,56,58,019/- for the period from April, 2014 to June, 2017, as alleged in the SCN and the same is required to be recovered from them under proviso to Section 73(1) of the Finance Act, 1994. Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the service tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the service tax on the assessee. The definition of "assessment" available in Rule 2(1)b) of Service Tax Rules, 1994 is reproduced as follows:

"assessment" includes self assessment of service tax by the assessee, re-assessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed."

20.4 I find that the assessee has failed to properly assess the service tax liability and also failed to file the service tax returns in time and failed to reflect the correct information in the ST-3 returns. Accordingly, I find that the amount of service tax short-paid as discussed here-in-above, is liable to be recovered by invoking the extended period of limitation as provided for under Sec. 73 of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994. As per Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 as amended, every person providing taxable service to any person is liable to pay Service Tax at the rate prescribed in Section 66, to Central Government by the 5th of the month /quarter immediately following the calendar month / quarter in which the payments were received towards the value of taxable services (except for the month of March which was required to be paid on 31st March). As per Section 70 of the Finance Act, 1994 every person liable to pay Service Tax was required to himself assess the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in ST-3 Returns. The said assessee had not disclosed full, true and correct information about the value of the service provided by them liable for payment of service tax. Thus, there was a deliberate withholding of essential and material information from the department and all these material information had been concealed from the department and thus legitimate and due payment of Service Tax was not done. Therefore, in this case all essential ingredients exist to invoke the extended period under proviso to Section 73 (1) of the Finance Act, 1994 to demand the Service Tax not paid. As per Section 75 of the Act *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68, or Rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed was liable to pay interest at the rate as was





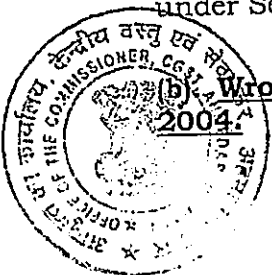
for the time being fixed by the Central Government, by Notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed.

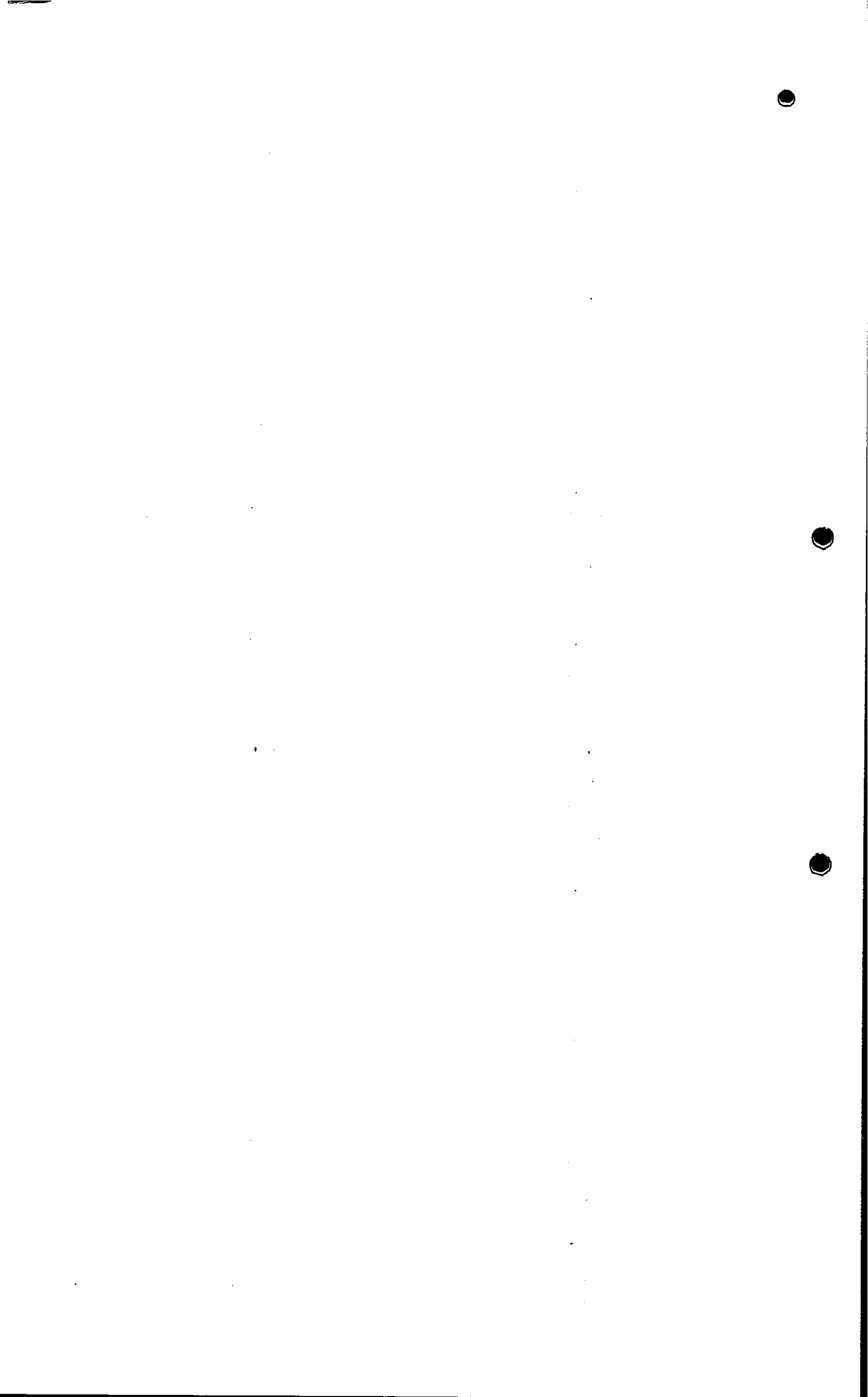
20.5 On the basis of the above facts and discussions, I hold that the said assessee has contravened the provisions of Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994, as they have failed to pay service tax at the rate specified in section 66B in such manner and within such period as prescribed. The said assessee has also contravened the provisions of Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed. All these acts of contravention of the provisions of Section 68, and Section 70 of the Finance Act, 1994 read with Rules 6 and 7 of the Service Tax Rules, 1994 are punishable under the provisions of Section 78 of the Finance Act, 1994 as amended time to time.

20.6 The Government has from the very beginning placed full trust on the service provider and accordingly measures like Self-assessments etc., based on mutual trust and confidence were in place and a considerable amount of trust was placed on the service provider and private records maintained by him for normal business purposes were accepted, practically for all the purposes of Service Tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider, no matter how innocent they are. From the evidences, I find that the said assessee has failed to file ST-3 returns in time and declare the correct value of taxable services received, in the ST-3 Returns and has also short paid the Service Tax thereon in utter disregard to the requirements of law and in breach of trust placed on them and such defiance of law has rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with intent to evade payment of Service Tax .

20.7 I find that the said assessee failed to assess Service Tax on the said service under Section 68 read with Rule 2(1)(b) of Service Tax Rules, 1994; failed to pay Service Tax as provided under Rule 6 of Service Tax Rules, 1994; failed to declare the true taxable value in their ST-3 returns under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and thereby suppressed material facts. The said acts and omission on their part appears to have been committed with an intent to evade payment of Service Tax and accordingly the unpaid Service Tax payable on taxable service is required to be recovered from the said assessee under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75. The said act on the part of the assessee has also made them liable to penalty under Section 78 of the Finance Act, 1994.

Wrong availment of Cenvat credit in violation of of Cenvat Credit Rules.

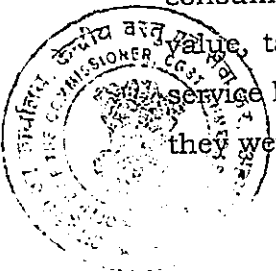


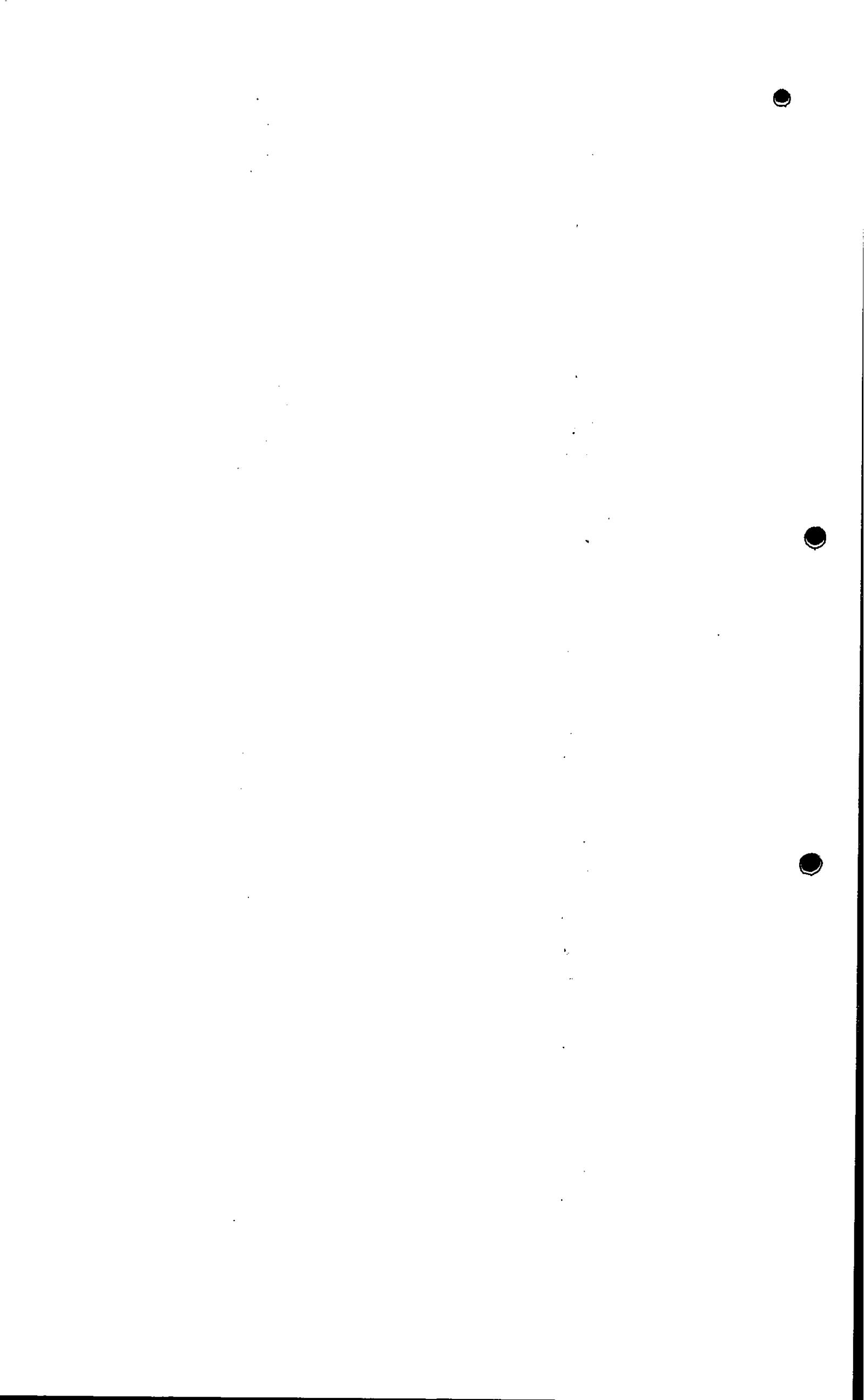


21.1 It has been alleged in the Show Cause Notice that the assessee had availed and utilized Cenvat credit amounting to Rs. 18,92,802/- during the period from April, 2014 to June, 2017. No service tax returns were filed by them till 09.04.2017. No records in respect of Cenvat Credit availed, were produced for verification when demanded by the officers of the DGGI, Ahmedabad and eligibility of the Cenvat credit availed by the assessee could not be verified. These documents were mandatory for availment of Cenvat Credit under Rule 9 of the Cenvat Credit Rules, 2004. The Assessee has not filed ST-3 returns in time, in which they were required to show details of Cenvat Credit availed and utilized as prescribed under Rule 9 of Cenvat Credit Rules 2004 and Rule 4A of Service Tax Rules, 1994. They have failed to avail the cenvat credit within months/ one year from the date of invoice as per Cenvat Credit Rules 2004, as they have filed the returns after 09.04.2017. Furthermore, GPO Ahmedabad were providing both taxable services and nontaxable/exempted services, as such they were required to maintain separate accounts of such inputs/input services and would avail credit on inputs/input services attributable to taxable services only. However, they failed to follow the provisions prescribed in Rule 6 of Cenvat Credit Rules, 2004. They have also failed to fulfill conditions envisaged under Rule 4 of Cenvat Credit Rules, 2004.

21.2 In respect of inadmissible Cenvat Credit, they have contended that, the data of service tax collected at their office was being submitted to DAP and the Circle office, Gujarat in monthly statement. In each statement the input credit was calculated and shown accordingly. All the statements were available in their office. The same facts are mentioned in the SCN. Hence, it can not be said that the data of input and output data was not maintained at their office, and cenvat credit availed can not be said to be wrong. They have further contended that the invoices were required to be sent to PAO for audit, thus the credit claimed by them should be accepted as an authentic records of govt. Department and cenvat credit claim should not be denied on the basis of procedural infirmities.

21.3 I find that the contention of the assessee themselves again reaffirms and support the allegations of the SCN. The assessee has taken the plea that the required documents had been sent to the office of their GM (Finance). But being the person liable to pay service tax on the services provided by them and being provider of service, they were liable, as envisaged under Rule 9(5) of Cenvat Credit Rules, to 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 was to be recorded. They were also liable, as envisaged under Rule 9(6) of Cenvat Credit Rules, to 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 was to be recorded. As per Rule 9(9) of Cenvat Credit Rules, they were further required to submit a half yearly return in form ST-3. They were also





required to retain books of account and other documents as required in accordance with the provisions of Service Tax Laws and produce the same when called for by the Central Excise Officer as envisaged under Section 83 of the Finance Act, 1994 read with Section 14 of Central Excise Act, 1944. I find that the said assessee by not following any of the procedures and requirements has wrongly availed and utilized credit of service tax, amounting to Rs. 18,92,802/- during the period from April, 2014 to June, 2017.

21.4 I find that the said assessee has contravened the provisions of Rule 4, Rule 6 and Rule 9 of the Cenvat Credit Rules, 2004 in as much as they have wrongly availed and utilized Cenvat credit, as discussed hereinabove, without proving the admissibility as envisaged under Rule 9 of Cenvat Credit Rules, 2004, Thus the same is required to be demanded and recovered from the said assessee under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Rule 14(l)(ii) of the Cenvat Credit Rules, 2004 by invoking the extended period of limitation along with interest under Section 75 of the Act read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004. The said assessee has suppressed the material facts from the department and such fact came to the light only when the department initiated the investigation against the assessee. Such contraventions of provision of law on the part of the assessee make them liable for penal action under Section 78(1) of the Act read with Rule 15(3) of the Cenvat Credit Rules, 2004. I find that Rule 9(5) and 9(6) of Cenvat Credit Rules, 2004 stipulates that the burden of proof regarding the admissibility of Cenvat credit of Input/ input services shall lie upon the manufacturer or provider of output services, taking such credit. I find that the assessee has failed to prove the admissibility of the cenvat credit to them.

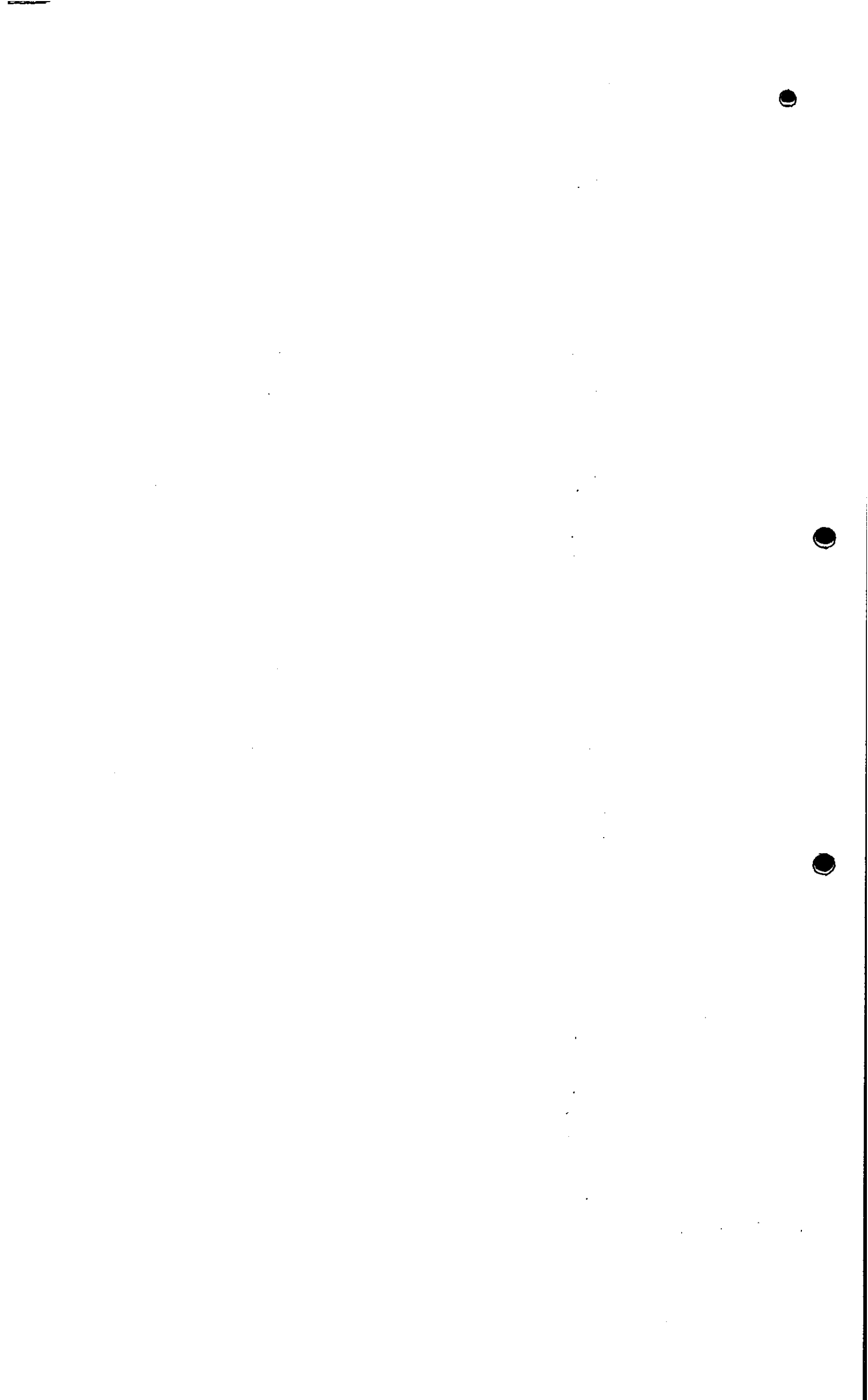
c). Late filing of ST-3 returns

22.1 It has been alleged in the Show Cause Notice that the assessee was providing taxable services during April 2014 to June 2017, but no service tax returns were filed by them till 09.04.2017, which was in contravention of the provisions of Rule 7 of the Service Tax Rules 1994 read with Section 70 (I) of the Finance Act 1994. Thus they have rendered themselves liable to pay late fees as prescribed under Rule 7C of Service Tax Rules, 1994.

22.3 I find that the assessee has stated in their defence reply that the PAN based service tax registration of Ahmedabad GPO No, AAAGC0117PSD001 was obtained on 19.02.2015. They have stated the ST-3 Returns were filed details of which were as under.

Period	Date of filing
Apr- 2014 to Sept -14	10.04.2017
Oct-2014 to Mar-2015	11.04.2017
Apr-2015 to Sep-2015	11.04.2017
Oct-2015 to Mar-2016	11.04.2017
Apr-2016 to Sep-2016	12.04.2017
Oct-2016 to Mar-2017	14.06.2017
Apr-2017 to Jun-2017	24.08.2017



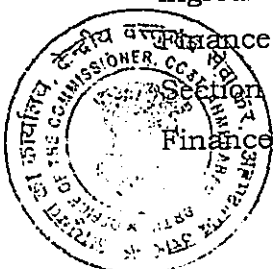


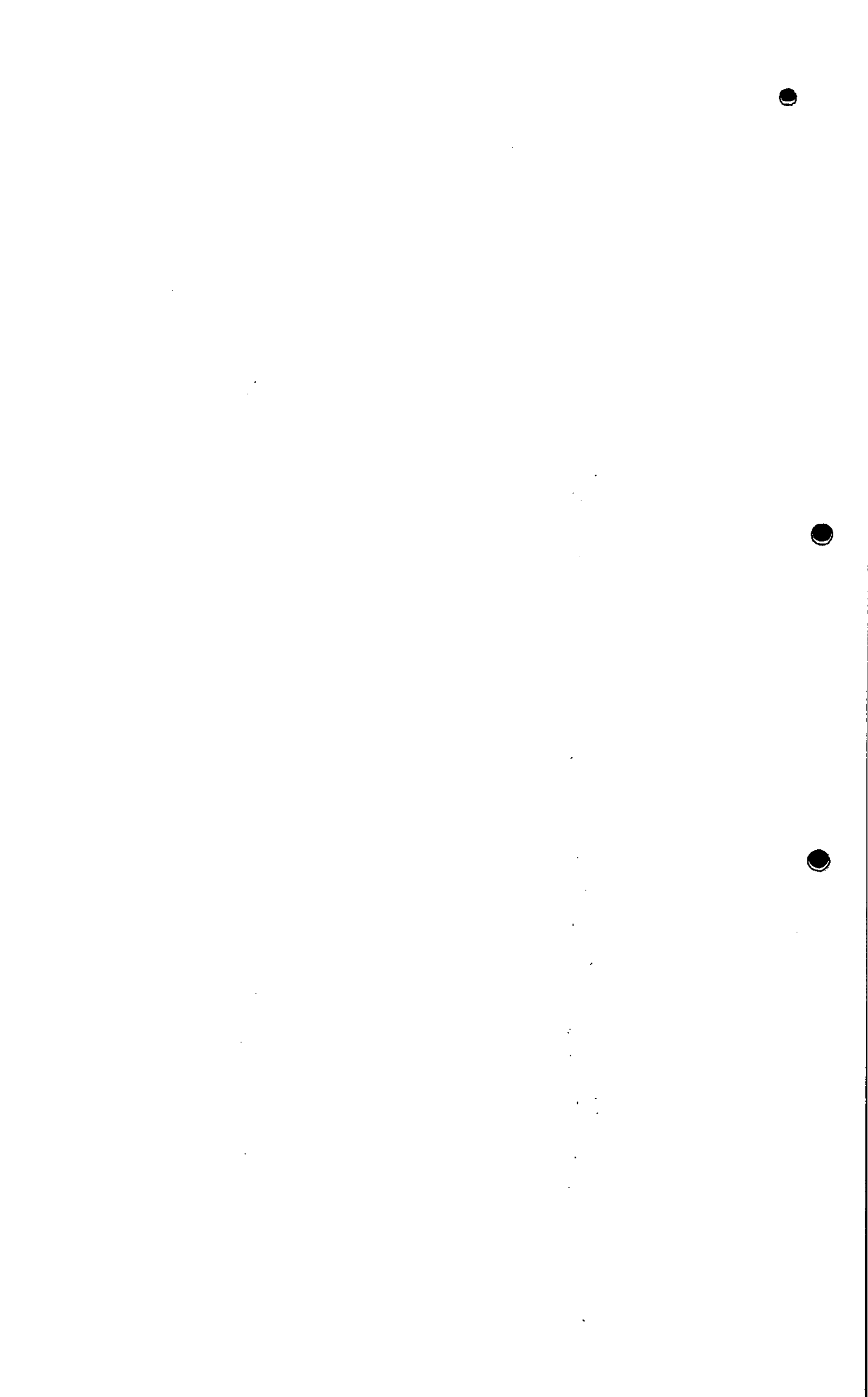
22.4 Here again I find that the contention of the assessee themselves reaffirms and substantiate the allegations made in the SCN. It is a fact that the assessee had not filed service tax returns in time i.e. after the due date as prescribed under Rule 7 of the Service Tax Rules, 1994. I also find that the Rule 7C prescribes the late fees to be paid by the assessee for delay in furnishing the returns. Thus I find that the assessee is liable to pay late fees in terms of Rule 7C of Service Tax Rules, 1994, not exceeding to twenty thousand rupees. I find that the SCN has pointed out the delay in filing of returns; accordingly the late fees to be paid by the assessee in terms of Rule 7C ibid, is Rs. 97,900/- as under:

Period	Date of filing	Days Delayed	Late fees payable (in Rs.)
Apr- 2014 to Sept -14	10.04.2017	878	20,000
Oct-2014 to Mar-2015	11.04.2017	717	20,000
Apr-2015 to Sep-2015	11.04.2017	534	20,000
Oct-2015 to Mar-2016	11.04.2017	347	20,000
Apr-2016 to Sep-2016	12.04.2017	169	14,900
Oct-2016 to Mar-2017	14.06.2017	45	2,500
Apr-2017 to Jun-2017	24.08.2017	9	500
Total Late fees payable			97,900

23. In view of discussion in the foregoing paras, I find that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are clearly established on the part of the said assessee that they have wilfully suppressed the facts about the nature and value of services provided by them and due service tax liability was not properly assessed and paid. Therefore, the above said amounts of service tax are required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras.

24. Moreover in the present regime of liberalization, self-assessment and filing of ER/ST returns online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about such non-payment of duty/service tax only during audit or preventive/other checks. Therefore, it is apparent that all these information had been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. In the case of Mahavir Plastics versus CCE Mumbai, [2010 (255) ELT 241 (Tri. - Mumbai)], it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In the case of Lalit Enterprises vs. CST Chennai, [2010 (17) STR 370 (Tri. - Chennai)], it has been held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, in this case all essential ingredients exist to invoke the extended period under proviso to Section 73 (1) of Finance Act, 1994 to demand the service tax not paid along with interest under Section 75 of the Act ibid. All these acts of contravention of the provisions of the Finance Act, 1994, and Rules framed there under, are committed obviously with intent





to evade payment of service tax and constitute offence of the nature and type as described in Section 78 of the Finance Act, 1994.

25. In the case of Rathi Steel & Power Ltd, [2015(321) ELT 200 (All)], The High court of Judicature at Allahabad has held that:

"32. We further find that under Rules, 2004, a burden is cast upon the manufacturer to ensure that Cenvat credit is correctly claimed by them and proper records are maintained in that regard

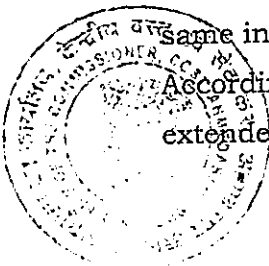
33. The assessee, in response to the show cause notice had stated that there is no provision in Central Excise Law to disclose the details of the credit or to submit the duty paying documents, which in our opinion is false and an attempt to deliberately contravene the provisions of the Act, 1944 and the rules made there under with an intent to evade the duty.

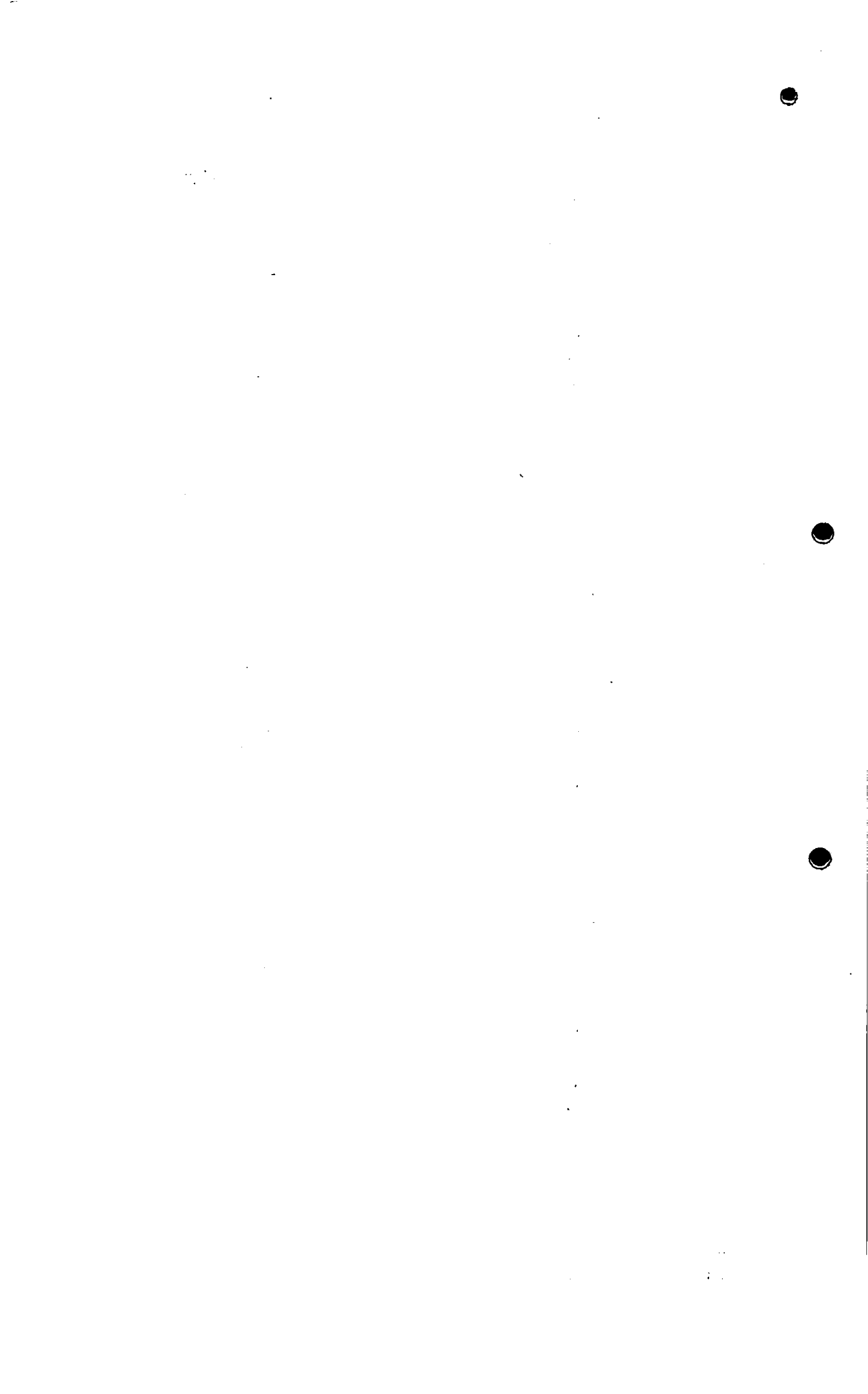
34. In our opinion, the facts of the present case clearly suggest willful suppression of material facts by the assessee as well as contravention of the provisions of the Act and rules framed there under with an intent to evade the demand of duty as would be covered by Clauses IV and V of Section 1 JA(l) of the Act, 1944. Therefore, the invocation of the extended period of limitation in the facts of the present case is fully justified."

26. Similar view was expressed by the Hon'ble High Court of Judicature for Andhra Pradesh at Hyderabad in the case of Sree Rayalaseema Hi-Strength Hypo Ltd. Versus Commissioner of Cus. & C. Ex., Tirupati [2012 (278) E.L.T. 167 (A.P.)] and held:

"9. The contention of the learned counsel for the assessee that the extended period of limitation of five years for recovery of the duty, under the proviso to Section 1JA(l) of the Central Excise Act, 1944 would not be available to the Revenue in this case, as the penalty proposed to be levied was dropped, does not hold water. The extended period of five years for recovery of duties either levied or short-levied arises under various situations such as fraud, collusion, willful mis-statement, suppression of facts or contravention of the provisions of the Act or the Rules made thereunder with intention to evade payment of duty. It is no doubt true that the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty [Union of India v. Rajasthan Spinning and Weaving Mills - (2009) 13 SCC 448 - 2009 (238) EL T.3 (S.C.)]. But merely because the ingredients for both are the same, it would not mean that in case penalty is not imposed, the duty also cannot be recovered. Once the assessee availed credit under Rule 2(k) of the Rules of 2004 without entitlement it amounts to contravention of the rule with the intention of evading payment and the extended period of limitation would be available to the Revenue, notwithstanding the decision not to propose penalty upon the assessee."

27. I find that the said assessee has mis-stated their tax liability in ST-3 return and suppressed the taxable amount from the Revenue. They have shown the transactions in their financial records but have not shown the same in their ST3 returns before the same were detected by DGGI. Therefore, I hold that they have suppressed the material facts of services provided by them and had not disclosed the full and true value of the same in their ST-3 returns filed by them, for the period from April, 2014 to June 2017. Accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' in this case. Therefore I hold that the service tax not





paid is liable to be demanded and recovered from the assessee, under the proviso to Section 73(1) of the Act by invoking the extended period of time of five years as there is a case of suppression of facts resulting in evasion of the payment of service tax. I further hold that the said assessee has not paid the service tax, as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act. I find that the said assessee has not disclosed to the Revenue that they had availed Cenvat credit in contravention of Cenvat Credit Rules, 2004. This could only have been detected during the course of investigation. Thus they have suppressed the material facts resulting in evasion of the payment of service tax. Therefore I hold that the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules is applicable for invoking the extended period of 'five years' for recovery of service tax short-paid on account of wrong availment of Cenvat credit, as discussed hereinabove along with interest under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules.

28. In the self-assessment era, the Service Providers are required to be proactive in declaring their activities to the department and getting themselves registered and fulfilling their tax obligations. Service Tax being an indirect tax requires the service provider only to collect the same from the service receiver and remit it to the Government. The Government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by them for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basic and fundamental premise of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider. These facts came to the knowledge of the Department only when the Department initiated enquiry and this act of the said assessee tantamounts to willful misstatement and suppressing the facts with an intention to evade service tax payment. The assessee is also liable for penal action as per Section 78 of the Finance Act, 1994 for making willful misstatement and suppression of facts from the department, with an intention to evade service tax payment. Therefore, the service tax not paid by the assessee is required to be demanded and recovered along with Penalty and interest at the applicable rate from them under the proviso to Section 73 (I) and Section 75 of the Finance Act, 1994 by invoking extended period of five years.

29. The above discussions amply demonstrates that the said assessee has suppressed the facts and contravened the provisions of the Finance Act, 1994 and the provisions framed there-under, as discussed hereinabove and as such the consequences automatically follow. The Hon'ble Supreme Court has settled this issue in the





case of U.O.1 Vs. Dharmendra Textile Processors reported in 2008 (231) E.L.T. 3(S.C.) and further clarified in the case of U.O.1. Vs. R. S. W. M. reported in 2009 (238) E.L.T. 3 (S.C). Essentially the Hon'ble Supreme Court has said that the presence of mala-fide intention is not relevant for imposing penalty and *mens-rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Therefore, I hold that the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act read with the provisions of rules framed there under.

30. As far as the imposition of penalty under Sec. 76 of the Finance Act, 1994 is concerned, I find that Section 78B of the Finance Act, 1994 stipulates that the provisions of the amended Section 76 and 78 will be applicable in cases where the order is passed after the date on which the Finance Bill, 2015 receives the assent of the President. The Finance Bill, 2015 received the assent of the President on 14.05.2015. Therefore, the amended provisions of Section 76 and 78 are applicable in the present case.

31. In view of the above, the penalty under Sec. 76 is imposable only in cases where the non-payment/ short-payment of service tax is on account of reasons other than fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax. In the instant case, as I have already discussed hereinabove, the non-payment/ short-payment of service tax is on account of suppression of facts and contravention of the provisions of law with an intent to evade payment of service tax and as such the provisions of Sec. 76 of the Finance Act, 1994 will not be applicable to the 'facts of the present case and no penalty can be imposed under Sec. 76 of the Finance Act, 1994.

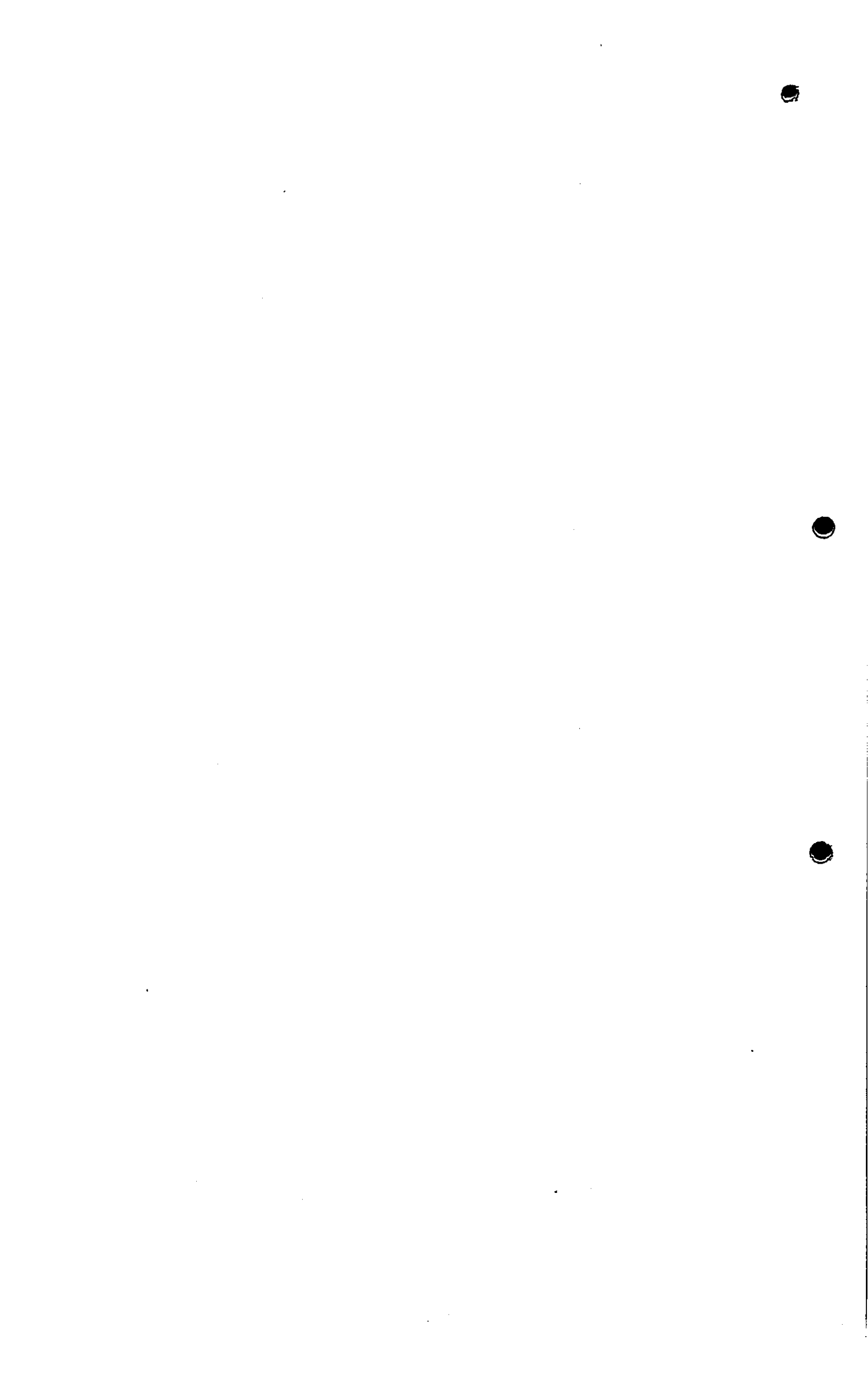
In view of my above findings, I pass the following order:

ORDER

- (A) I hereby hold that the receipt shown under the various Account Heads in Part II Receipt of Cash Account should be considered as taxable for charging of service tax in term of Section 67 of the Finance Act, 1994; accordingly, I hereby confirm the demand of Service Tax amounting to Rs. 4,56,58,019/-(Rupees Four Crore Fifty Six Lakhs Fifty Eight Thousand Nineteen only)including Cess, as detailed hereinabove and order recovery of the same in terms of proviso to Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years;
- (B) Interest at applicable rate shall be charged and recovered on the amount of service tax liability mentioned at Sr. No. (i) above in terms of the provisions of Section 75 of the Finance Act, 1994;
- (C) I hereby impose penalty of Rs. 4,56,58,019/-(Rupees Four Crore Fifty Six Lakhs Fifty Eight Thousand Nineteen only),on the assessee in terms of the provisions of Section 78 of the Finance Act, 1994.

I hereby disallow the Cenvat credit amounting to Rs. 18,92,802/- (Rupees Eighteen Lakh Ninety Two Thousand Eight Hundred Two Only)wrongly availed by the assessee, as detailed hereinabove and order recovery of the same in terms of proviso to





Section 73 (1) of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Rules, by invoking extended period of five years;

(E) Interest at applicable rate shall be charged and recovered on the amount of service tax liability mentioned at Sr. No. (iv) above in terms of the provisions of Section 75 of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004;

(F) I hereby impose penalty of Rs. 18,92,802/- (Rupees Eighteen Lakh Ninety Two Thousand Eight Hundred Two Only) on the assessee in terms of the provisions of Section 78 of the Finance Act, 1994 read with the provisions of Rule 15(3) of the Cenvat Credit Rules, 2004;

(G) I hereby hold that Late fees of Rs. 97,900/- (Rs. Ninety Seven Thousand Nine Hundred Only) be charged and recovered from them in terms of the provisions of Section 70(1) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for non filing/late filing of Service Tax Returns for the period under question;

(H) I impose a penalty of Rs. 10,000/- (Rs. Ten Thousand only) on the assessee in terms of the provisions of Section 77(1)(b) of the Finance Act, 1994 for failure to keep, maintain or retain books of account and other documents as required under the provisions of law.

(I) I do not impose any penalty on the assessee in terms of the provisions of Section 76 of the Finance Act 1994.

However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Speed Post

F.No. STC/15-66/OA/2019

Date: .11.2021

THE CHIEF POST MASTER,
GPO situated at 1st Floor,
Office of the Chief Post Master,
General Post Office,
Salapas Road, Ahmedabad, Gujarat

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Additional Director General, DGGI, AZU, Ahmedabad, Ahmedabad
3. The Assistant Commissioner, CGST & C. Ex., Division-VII, Ahmedabad North.
4. The Superintendent, Range-II, Division-II, Ahmedabad North.
5. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
6. Guard File

