


Ground

आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1 <sup>st</sup> Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-53/2019

DIN : 20211264WT000000A5CC

आदेश की तारीख

/ Date of Order : 16.12.2021

जारी करने की तारीख

/ Date of Issue : 20.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव

/ UPENDRA SINGH YADAV

आयुक्त

/ COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-40/2021-22

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

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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।

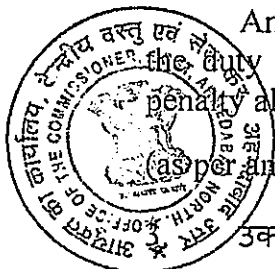
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax 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 है।

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

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

उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) 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 क) प्रतियाँ संलग्न की जाएंगीम 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 1.00रुपया 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. /AZU/Gr.A/36-98/2019-20 dated 19.10.2019 issued to M/s Poojan Decor Pvt. Ltd., 1, Darpan Society, St. Xavier's High School Road, Naranpura, Ahmedabad .



**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-40/2021-22**

M/s PDPL, having their registered office at 1, Darpan Society, St. Xaviers High School Road, Naranpura, Ahmedabad- 380013 and their three directors were issued with SCN DGGI/AZU/Gr.A/36-98/2019-20 dated 19.10.2019 by the Additional Director General, DGGI, Zonal Unit, Ahmedabad.

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

1. M/s Poojan Decor Pvt. Ltd., having their registered office at 1, Darpan Society, St. Xaviers High School Road, Naranpura, Ahmedabad (present address - Plot 630/1, opp. Baliadev Temple, Mummatpura Gam, SG Highway, Ahmedabad) (herein after referred to as "M/s. PDPL" or "the assessee" for the sake of brevity) are engaged in providing "Pandal or Shamiana service for various function like Marriage, Corporate events and other social events". They were registered with the erstwhile service Tax Commissionerate, Ahmedabad and they had held valid service Tax registration no. AAFCP4576JSD001.

2 M/s PDPL had provided Pandal or Shamiana service to various clients for various functions like Marriage, Corporate events and other social events during the period April 2014 to June 2017.

3 Based on the intelligence that the M/s. PDPL were involved in suppressing the taxable value by collecting the cash and not accounting the same in their books account, search was conducted at the premises of M/s PDPL from which they were operating. During the search it was revealed that the assessee were maintaining their regular account(s) in Tally and were recording all the cash receipts in separate .xis files. The regular tally account(s) was not having any data pertaining to the cash receipts. All such .xis files were stored either in pen drives of key persons or on Google Drives of such key persons. The printout of said data from the pen drives and Google drive was taken on the spot and withdrawn/seized along with pen drives under Panchnama dated 19/20.08.2019.

4 It appeared that M/s PDPL had issued invoices to the clients only to the extent of the amounts which were received through cheque and recorded such consideration in their Tally account(s). No invoices were raised/issued towards the consideration received in cash and maintained in .xis files (Excel file). Further M/s PDPL had calculated their Gross taxable Turnover only on the basis of invoices issued to the clients and consideration recorded in their Tally account. The transactions corresponding to the amount received in cash were not included in the Gross Taxable value of M/s PDPL. Therefore, no service Tax was being discharged on the portion of taxable value of such services which was received in cash and which was being accounted in the .xis sheets.

5 Further, investigation in the case, revealed that by resorting to such modus-operandi, M/s PDPL had willfully mis-stated and suppressed the actual quantum of their taxable turnover during the period from April 2014 to June 2017 with the sole intention to evade the payment of applicable service tax. Shri Pinkal Dandwala, Director of M/s PDPL in his voluntary statements admitted that they had short-paid/not paid service tax on the above referred services provided by them. Investigation further revealed that M/s PDPL had evaded payment of service tax to the tune amounting to Rs. 5,81,03,467/- (Rupees Five crore eighty one lakh three thousand four hundred sixty seven only) by way of non-accounting the consideration received in cash, towards the services provided by them, and by



suppressing the actual turnover in the periodical Returns filed by them. Thus, it appeared that M/s PDPL had contravened the provisions of Section 67 of the Finance Act, 1994.

**The detailed facts & circumstances pertaining to the subject case are as follows:**

6 A search was carried out, in the presence of independent panchas, at the office premises of M/s PDPL situated at Plot 630/1, Opp. Baliadev Temple, Mummatpura Garn, SG Highway, Ahmedabad on 19/20.08.2019 under the reasonable belief that documents/records and data maintained in digital form relevant to the inquiry were available at the said premises.

7 During Panchnama proceedings, Shri Bharatbhai Modi, Director of M/s PDPL was present at the above premises. Shri Bharatbhai Modi explained to the officers that M/s PDPL was a Private Limited Company engaged mainly in providing Mandap Keeper services in various events, marriage ceremonies, parties etc and the items/goods placed in the godown were for use in their business. He informed that he handled the godown management of M/s. Poojan Decor Pvt. Ltd. and Shri Pinkal Dandwala, another Director, handled marketing, finance, accounting and other day-to-day operations of M/s. Poojan Decor Pvt. Ltd.

8 Further, one pen drive was recovered during search proceedings and the same was withdrawn under the Panchnama dated from 19/20.08.2019 from the possession of Shri Kirit Manubhai Prajapati, Accountant of M/s PDPL. On verification of the data stored in the said pen drive, it was found that it contained year-wise records of payments to various vendors and receipts from various parties (both cash and cheque). Shri Kirit Manubhai Prajapati was maintaining the said data on the directions of Shri Bharatbhai Modi, Director of M/s PDPL. The printouts of the contents of the said pen drive were taken on the spot and withdrawn under the Panchnama proceedings [RUD-2]. The officers also resumed printouts of the data maintained in the google drive account of Shri Shaiyal Ranchodbhai Patel, an Executive in M/s PDPL. Subsequently, the officers segregated and withdrew certain records from the office premises of M/s PDPL under the reasonable belief that the same would aid in investigation of the case, as mentioned in Form-GST-INS-02.

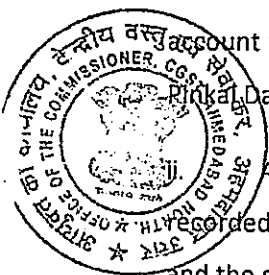
9. Statement of Shri Pinkal Dandwala, Shri Bharatbhai Modi, both Directors of M/s PDPL, Shri Kirit Manubhai Prajapati, Accountant of M/s PDPL and Shri Shaiyal Patel, an Executive of M/s PDPL, were recorded on 20.08.2019 under the provisions of Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and the CGST Act, 2017.

**10. STATEMENT DATED 19-20.08.2019 OF SHRI KIRIT MANUBHAI PRAJAPATI, ACCOUNTANT OF M/S PDPL [RUD-3]:**

In his statement dated 19-20.08.2019, Shri Kirit Manubhai Prajapati, stated that:

- i. He was working as an accountant in the M/s PDPL wherein his role was to maintain the books of account for the firms. He was working under the supervision and direction of M/s PDPL's Director, Shri Pinkal Dandwala.

All the books of accounts including the income and expenses of the company/firm were being recorded in the Tally software, which were further being used for preparation of Annual Financial Report and the same was audited annually by the statutory auditor.



iii. He maintained the accounts related to data of M/s PDPL in the pen drive that was recovered from his possession and seized under Panchnama proceedings. He further stated that these accounts were actual transaction documents of M/s PDPL. The said pendrive contained year-wise and venue wise excel workbooks. Each row in a worksheet contained the details of individual functions. He explained the printout of Excel Sheet for the venue YMCA Glorya Banquet placed at page No. 433 of Annexure A/42. Explaining the row shown below, he stated that for the function organized at the venue namely - YMCA Glorya Banquet on 20<sup>th</sup> June, 2014, the client Mr. Ankit Mehta, paid Rs. 60,000/- in advance as cash. The said pen drive also contained the excel workbooks containing the grand total of all the party-wise receipts and expenses made, both in the form of cash and cheque, in a given financial year.

iv. The venues for which M/s PDPL had received payment directly from the client included YMCA Glorya Banquet and various venues for outdoor services (represented as 'Misc income', say, a birthday party at a residential address). On the contrary, for the venues like - Andaz, YMCA Gracia Banquet, YMCA Lawn, Green Earth, Forum, etc- the client paid to Green Leaves Management, who in turn, paid M/s PDPL for the decoration services rendered by them.

v. The excel sheets stored in the pen drive were prepared to record all the receipt of transactions in respect of services provided by their firm. These sheets were maintained venue-wise and the details of each events were recorded in a single row. He explained the contents of the printouts of the said excel sheets as follows:

- Party Name and Contact No.: Contact details of the clients.
- Function: Name/Date of the event
- Estimate: estimated cost of the function, to be charged from the clients.
- Cash Deposit 1, 2, etc: The successive instalments of the portion of total bill amount which was received in cash
- Cheque Deposit 1, 2, etc: The successive installments of the portion of total bill amount which was received through cheque.
- Outstanding: The amount outstanding to be taken from a client for a particular function.

**11. STATEMENT DATED 20.08.2019 OF SHRI SHAIYAL PATEL OF M/s PDPL :**

In his statement, Shri Shaiyal Patel, staff member of M/s PDPL confirmed that the documents available in annexure file A-43 resumed under Panchnama dated 19-20.08.2019 was printout of data downloaded from his personal google drive with id [sesspatel@gmail.com](mailto:sesspatel@gmail.com) and contained the day-to-day transactions (both inward and outward) in cash as well as cheque, for the FY. 2018-19 and 2019-20.

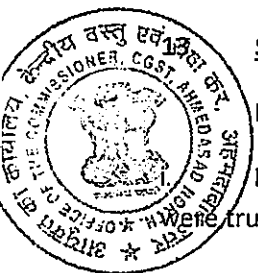
**12. STATEMENT DATED 20.08.2019 OF SHRI BHARATBHAI MODI, DIRECTOR OF M/S PDPL**

In his statement, Shri Bharatbhai Modi, informed that he was operating from firm's godown-cum-office in Mummatpura and his role was limited to general supervision of godown. He further stated that the business was actually being run by Shri Pinkal Dandwala and his son Shri Yash Modi.

**STATEMENT DATED 20.08.2019 OF SHRI PINKAL DANDWALA, DIRECTOR OF M/s PDPL**

In his statement Shri Pinkal Dandwala, Director of M/s PDPL inter alia stated that:

He had perused his statement dated 20.08.2019 and confirmed that the facts narrated therein were true and correct.



- ii. He was one of the Directors of M/s. Poojan Decor Pvt. Ltd. (along with Shri Bharat Modi and Shri Yash Modi) and handled marketing, finance, accounting and other day-to-day operations of M/s. Poojan Decor Pvt. Ltd while, the godown management of M/s. Poojan Decor Pvt. Ltd. Godown operations were managed by Shri Bharat Modi, another Director of M/s. Poojan Decor Pvt. Ltd.
- iii. M/s PDPL, since its inception in 2010, was engaged in providing the services falling under the category of Venue Event/Event Management. They took party plots on lease and organized various functions like marriage, corporate events, exhibition and all kinds of social events. It was registered with the erstwhile service Tax and was holding service Tax Registration No. AAFCP4576JSD001 and the GSTIN is 24AAFCB4576J1Z4.
- iv. He perused the Made-up file No. 1 & 2 withdrawn from the said premises under said Panchnama. Having perused the Made-up files No. 1 & 2, he confirmed that the documents filed in the said files pertained to his company M/s. PDPL. On being asked to explain the documents filed in the said files he explained the documents as under:

**Made-up file no. 1:**

- a. The file contained documents bearing page no. 1 to 437 which were the .xis worksheets of transactions made by M/s. Poojan Decor Pvt. Ltd.;
- b. These documents were segregated financial year-wise and such documents were available for the financial years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19.
- c. These documents gave the details of receipt of cash and cheque by M/s PDPL. For example: the page no. 437 of said file was a consolidated work-sheet of receipt of cash and cheque in the accounts of M/s PDPL during the financial year 2014-15. The worksheet showed the receipt of cash/cheque on account of their transactions at Shankus' Water park, Miscellaneous income, money received by M/s PDPL from M/s. Green Leaves Management Pvt. Ltd., his other company, Income (received directly from the clients) on account of events organised by M/s PDPL at YMCA's Pool side lawn and two restaurants, funds received from his housing society M/s. Aryaman, certain misc. funds received from one or other source and funds received from one Shri Saurabh Agarwal. The details of total money received on account of these heads was as given below:

Page no. 437 of Made-up file no. 1 resumed vide Panchnama dated 19/ 20.08.2019 detailing amounts received during 2014-15			
Head	Total Cash received	Total Cheque received	Total amount received
Event organised at Water Park	5666300	0	5666300
Misc. Income	47532800	0	47532800
Money received from M/s Green Leaves Management P Ltd	28035000	0	28035000
Event organised at small banquet room of M/s YMCA	1188175	0	1188175
Event organised at Poolside lawn M/s YMCA	56200	0	56200
Event organised at Aryaman	3249500	0	3249500
Funds received from Shri Saurabh Agarwal	3500000	0	3500000
<b>Total</b>	<b>89227975</b>	<b>0</b>	<b>89227975</b>

The above mentioned figures were consolidated from detailed Head-wise work sheets appearing at page no. 405 to 433 of the said file covering the period of FY. 2014-15;

Said made up file No.1 also contained a party-wise worksheet giving details of payments made their vendors (suppliers), for the FY 2017-18 and 2018-19. These documents also gave details of payment made in cash and cheque;

f. All these documents were the printouts of data retrieved from the pen-drive resumed from the possession of Shri Kirit Prajapati, his accountant in M/s PDPL.

g. He confirmed that the data maintained by Shri Kirit Prajapati gives true and correct details of transactions made by his company M/s PDPL.

**Made-up File no. 2:**

a. This file contained documents bearing page no. 1 to 89. All these documents were the .xis worksheets of transactions made by M/s PDPL;

b. The documents placed at page no. 1 to 63 gave the party-wise details of payment made and payment received, in cash, by M/s PDPL during the Financial Year 2019- 20;

c. The documents placed at page no 65-89 gave the party-wise payment received in cash by M/s PDPL during the financial year 2018-19.

d. These documents were the printouts of xis sheets maintained by his employee Shri Shaiyal Patel in Google Drive having id [sesspatel@gmail.com](mailto:sesspatel@gmail.com) and password as 'prayash2002'.

e. He confirmed that these documents were also the actual transactions records of his company M/s PDPL.

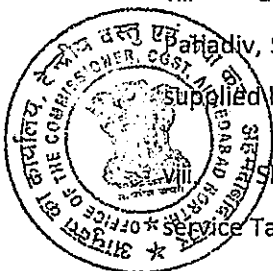
v. He stated that M/s PDPL during the course of its business of providing services of "Event Management" had made certain transactions over the period for which either the invoices was not raised or for which the invoices were raised for substantially low value so as to avoid payment of applicable service tax/GST. Such cash transactions were not accounted in their regular account statements and no service Tax or GST as the case may be was paid on such transactions. Further, these cash transactions were neither recorded in GST returns nor in erstwhile ST-3 returns for the respective period.

vi. He perused worksheet (shown in table given below) prepared on the basis of the documents available in Made-up file no. 1 withdrawn under Panchnama dated 19-20.08.2019 drawn at the premises of M/s PDPL, giving the tentative amount of service tax and amount of Goods and service Tax evaded by M/s PDPL. Accepting his responsibility for suppression of facts, he further stated that he would work out the exact duty evaded figure and inform this office along with detailed working.

Year	MIS unaccounted Income	Income in respect of events Water Park Income	PDPL Outdoor Service Income	Income in respect of events organized by us at Gloria& Glamour banquet of YMCA Income	Tentative unaccounted Income liable to ST/GST	Tentative Duty evaded
2014-15	37317800	5666300	0	1188175	44172275	5459693
2015-16	33682000	0	9627381	1719420	45028801	5565560
2016-17	44784350	0	0	1100128	45884478	5671321
2017-18	83211290	0	0	1596728	84808018	10482271
2018-19	9212300	0	4570500	707000	14489800	1790939
2019-20	0	0	10245900	0	10245900	1266393
					244629272	30236178

vii. day-to-day labourers were provided to M/s PDPL by a person named Shri Anaji (resident of Patadi, Sirohi, Rajasthan, Mobile no. 9909003780), who was paid according to the number of persons supplied by him.

Shri Anaji was neither registered with service Tax or GST and that M/s PDPL had not paid any service Tax or GST on such payments made to Shri Anaji.



14. Therefore, it appeared from a conjoint reading of all the three statements that:

i. M/s PDPL was recovering taxable value in cash over and above their invoice value, wherever they had issued invoices, or had received the entire taxable amount in cash. This cash amount was not considered for computing the taxable value declared in their ST-3 returns and no service tax was paid on such amount.

ii. On directions of Shri Pinkal Dandwala, Director of M/s PDPL, Shri Kirit Manubhai Prajapati and Shri Shaiyal Patel, Accounts Manager and staff member of M/s PDPL, were maintaining actual accounts (wherein all unaccounted cash transactions along with accounted transactions was recorded) in .xis sheets stored in their pendrive or google drive, to avoid detection of such unaccounted cash transactions with an intent to evade payment of service tax.

iii. M/s PDPL had received man power supply services from Shri Anaji and made payment to him in cash and such transactions were not recorded in their regular books of account, and they had also evaded payment of service tax on such expenses under reverse charge mechanism

15. Further, during the course of investigation, M/s PDPL had submitted certain documents vide letter dated 03.10.2019 including hard copies of tally-related documents for the period from F.Y. 2014-15 to 2018-19, including sales registers, P & L Accounts, Sales register, Bank book, vendor ledger, etc.

16. The documents withdrawn vide Form GST-INS-02 during the course of Panchnama proceeding dated 19-20.08.2019 at the premises of M/s PDPL were carefully scrutinized and consequent to such scrutiny, certain observations have been made which are summarized as under:

**[A]. Receipt of consideration in cash for services provided by M/s PDPL during the period from FY 2013-14 to FY 2017-18:**

17 Scrutiny of the pen drive seized under Form GST-INS-02 of the Panchnama dated 19/20.08.2019 drawn at the office premises of M/s PDPL, revealed that M/s PDPL were maintaining the records of payments received from their clients and payments made against procurements to various parties in a pen drive available with the accountant of the office. The contents of the said pen drive were printed on the spot and resumed under Panchnama proceedings. The contents of the pen drive for each financial year (and hence, the corresponding printouts) contained 2 files in excel format viz. '*Payment.xis*' and '*Update Work.xis*'.

18. The file 'Update Work.xis' contained sheets with names like 'GLM', 'YMCA Small Banquet', 'Aryman', 'YMCA Pool Side Lawn', 'Misc Income', 'Bharatbhai Borrowed Fund', 'Pintubhai Borrowed Fund', 'Grand Total' etc. The worksheet 'Grand Total' contained the data which is actually consolidation of data of each of the other worksheets such as 'YMCA Pool Side Lawn', 'GLM', 'Misc. Income', 'Bharatbhai Borrowed Fund' etc. This worksheet viz. 'Grand Total' gives the details of amount received by M/s PDPL in cash and cheque. Whereas the feeder worksheets such as YMCA Small Banquet', 'Aryman', 'YMCA Pool Side Lawn', 'Misc Income', 'Bharatbhai Borrowed Fund', 'Pintubhai Borrowed Fund' (the worksheets whose cash and cheque receipts are consolidated in 'Grand Total' worksheet) capture the details of receipts both in cash and cheque for each party, usually with date of function, estimate amount and Outstanding.





19. A clear picture of the Grand total worksheet for the Financial Year 2016-17, is explained as under:

The printout of this worksheet is available at page no. 369 of the made-up file listed at Sr. no. 42 of the INS-02 appended with the Panchnama dated 19-20.08.2019 drawn at the premises of M/s PDPL. This worksheet reflects the total of the amount received through cheque as well as that received in cash by M/s PDPL on various accounts, during the financial year 2016- 17. The heads under which the amount is received by M/s PDPL are 'GLM', 'YMCA Samii Banquet', 'YMCA Pool Side Lawn', 'YMCA Glamour Banquet', 'Mis Income', 'Aryaman', 'Bharatbhai Borrowed Fund', 'Old Outstanding', 'Pintubhai Borrowed Fund', 'Mis Borrowed Fund', 'PDPL Out Dares Sales', 'Poojan Out Dore Sales', 'Bhoomi Out Dore Sales'. As mentioned above, each of the above given heads have a separate detailed worksheet wherein partywise data for amount received in cash and cheque is maintained for entire financial year 2016-17. Printout of all these worksheets is available at page no. 327 to 363 of the made-up file listed at Sr. no. 42 of the INS-02 appended with the Panchnama dated 19-20.08.2019 drawn at the premises of M/s PDPL. It is pertinent to note that the entire cash part of the receipt was not found to be accounted in the regular books of accounts of M/s PDPL.

20.. The worksheet 'Mis Income' details cash and cheque income for the decoration work done for various events (Eg. 'Udaipur RED Event') or clients (Eg. 'Parita Parekh') or locations ('Surat'). The columns 'cash Deposit 1', 'cash Deposit 2', 'Cheque Deposit 1', etc. indicate different installments.

21. The analysis of one such entry (on page 3) in the above 'Mis Income' worksheet was done on sample basis for better appreciation of all the above documentary evidences and the same was as under:

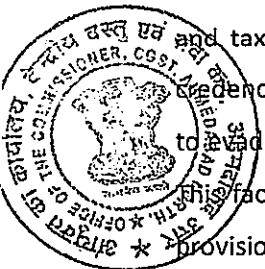
22. In this case, M/s. Poojan Decor Pvt. Ltd., had provided their services to their client 'Bharat Kotak' of a function held on 06.01.2017. For providing the said services they received Rs. 5,00,000/- in cash which was recorded under heading 'Cash Deposit 1' column and they had also received Rs. 11,50,000/- through cheque which they recorded under heading 'Cheque Deposit 1'. It is pertinent to note that only the receipt of Rs. 11,50,000/- was recorded in their sales ledger.

23. Further, M/s Poojan Decor Pvt. Ltd., had raised an invoice number 33 dated 13.02.2017 to Shri Bharat Kotak and even in the invoice the total taxable value of services provided by them to Shri Bharat Kotak, inclusive of service tax, was mentioned as Rs. 11,50,000/- only. The receipt of Rs. 5,00,000/- in cash was not included in the taxable value of said services so provided by them to Shri Bharat Kotak.

24. Thus, from the above, it was evident that M/s PDPL had suppressed their actual taxable value by recovering the part of consideration, for the service they provided, in cash, which was neither accounted for in their regular books of accounts nor such cash consideration so received was considered for computation of taxable value in their invoices or for computation of taxable value declared in their ST-3 returns. The fact that the details such as the name of the service recipient, venue and date of function

and taxable value declared in invoices matched with the data available in the said .xis sheets lends credence and authenticity to said .xis sheets. This modus was adopted by M/s PDPL with sole intention to evade payment of appropriate service tax leviable on said services provided by them to their clients.

This fact was also confirmed by Shri Pinkal Dandwala in his voluntary statements recorded under the provisions of Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.



25. On the basis of the above documents available in made-up file listed at Sr. No. A-42 of the INS-02 appended with the Panchnama dated 19-20.08.2019 drawn at the premises of M/s PDPL, the total unaccounted income for taxable services provided by M/s PDPL to their clients on which service tax was not paid is tabulated as below. The total unaccounted income liable to service Tax amounts to Rs. 38,45,86,349/-.

Fin.Year	Month(s)	Misc. Unaccounted Income(1)	Income from Water Park Events (2)	Old Outstanding Income (3)	Events at Gloria & Glamour banquet of YMCA Income (4)	Aryaman (5)	Pool Side (6)	Outstanding (7)	GLM (8)	Unaccounted income liable to ST (9=1+2+3+4+5+6+7+8)
14-15		4,75,32,800	56,66,300	--	11,88,175	32,49,500	56,200	--	5,48,22,800	11,25,15,775
15-16	Apr-May	63,30,000	--	--	2,28,390	1,25,000	--	--	54,34,000	1,21,17,390
	June-15Nov	1,59,23,500	--	--	7,01,030	3,55,000	--	--	57,55,500	2,27,35,030
	15Nov-Mar	3,93,97,000	--	--	7,90,000	3,40,000	1,16,000	--	4,36,33,300	8,42,76,300
16-17	Apr-May16	51,35,350	--	35,35,000	3,73,528	8,000	--	--	19,58,000	1,10,09,878
	Jun-mar 17	4,11,24,000	--	--	7,26,600	--	2,52,000	2,76,51,500	5,13,91,748	12,11,45,848
17-18	Apr-Jun 17	88,69,100	--	73,45,000	3,34,828	19,000	--	1,84,500	40,33,700	2,07,86,128
	Total	16,41,31,750	56,66,300	1,08,80,000	43,42,551	40,96,500	4,24,200	2,78,36,000	16,70,29,048	38,45,86,349

[B] Non-payment of service tax under reverse charge mechanism on manpower supply services received by M/s PDPL from Shri Anaji during the period FY 2013-14 to FY 2017-18:

26. During the course of scrutiny of the records viz. the documents available in made up file listed at Sr. no. 42 of INS-02 to the Panchnama dated 19-20.08.2019 drawn at the premises of M/s PDPL, it was found that M/s PDPL had made certain payments to one person namely Shri Anaji. On being asked, Shri Pinkal Dandwala in his statement dated 20.08.2019 informed that said payments were made to Shri Anaji, as Shri Anaji had provided them labourers for day-to-day work of the company. He further stated that Shri Anaji was not registered for service tax purpose. The relevant portion of Shri Shaiyal Patel's statement is reproduced in Section 5.2 of the SCN. Shri Pinkal Dandwala confirmed the duty liability of M/s PDPL under Reverse Charge Mechanism (RCM) as per the worksheet annexed to his statement, which is shown as below:

(Amt. in Rs.)

Month	14-15	15-16	16-17	17-18	18-19	19-20
Apr	225000	300000	500000	800000	1156000	500000
May	430000	535000	350000	430000	500000	1000000
Jun	565000	965000	220000	250000	350000	50000
Jul	315000	0	175000	1025000	600000	200000
Aug	160000	225000	400000	250000	160000	100000
Sep	421310	220000	500000	150000	400000	
Oct	510000	525000	1100000	500000	1050000	
Nov	1250000	1200000	2120000	2300000	800000	
Dec	770000	2280000	857780	3000000	4217428	
Dec Cheque	0	0	600000	0	0	
Jan	1500000	1300000	1400000	1671600	1000000	
Feb	1310000	2000000	500000	2250000	4000000	
Feb Cheque	0	0	150000	0	0	
Mar	705000	1500000	1850000	250000	2730000	
Total Payment	8161310	11050000	10722780	12876600	16963428	1850000
Year-wise ST liability under RCM	1008737.916	15,74,706	1604167	2317788	3053417.04	333000
Total Service Tax Liability for April 2014 to June 2017 under Sec. 68(2) of Finance Act, 1994 readwith notification No. 30/2012-ST					44,09,610.916	

27. It appeared that in terms of Section 68(2) of the Finance Act 1944 read with Notification no. 30/2012-ST dated 20.06.2012, as amended, the liability to pay service tax in case of procurement of manpower supply services, provided by an individual, lies upon the recipient of services if the service recipient is a company. In the present case the service provider was an individual and the service recipient was a private limited company. Consequently, M/s Poojan Decor Pvt. Ltd. was liable to pay service tax on taxable value of manpower supply services received by them from Shri Anaji.

#### Investigation at M/s PDPL's clients' end

28. With a view to confirm the modus operandi adopted by M/s PDPL to evade the payment of service tax statement of one Shri Sunny Patel, to whom M/s PDPL had provided their services, was recorded on 16.10.2019. In his statement Shri Sunny Patel confirmed that he had procured services of M/s PDPL for organizing a function at Infocity, Gandhinagar on 19.01.2017. He further confirmed that for the said services, M/s PDPL had raised invoice no. 31 dated 10.02.2017 for total value of Rs. 5,00,000/- (inclusive of service tax). He further stated that this payment was made by cheque to M/s PDPL. He also stated that he had made a payment of Rs. 4,93,500/- in cash to M/s PDPL over and above the invoice value, as additional consideration for the said services. He further stated that he had not made outstanding payment of Rs. 30,00,000/- to M/s PDPL as the services provided by them was substandard and insufficient. He further stated that he will not pay said Rs. 30,00,000/- to M/s PDPL. He also stated that the amount of Rs. 73,06,500/- shown as outstanding against his name was incorrect as only Rs.30,00,000/- was outstanding. He had also perused the said worksheet and put his dated signature on the page where his account is maintained (page 333 of the made-up file listed at Sr. A-42 of the INS-02 to the Panchnama dated 19-20.08.2019 drawn at premises of M/s PDPL).

29. The above statement tendered by Shri Sunny Patel, client of M/s PDPL very clearly indicated that M/s PDPL was receiving certain amount of their taxable value in cash and service tax was not being paid on such cash receipts.

#### 30. Statement of Shri Pinkal Dandwala, Director of M/s PDPL recorded on 14.10.2019 [RUD-8]:

A summons dated 14.10.2019 was issued to Shri Pinkal Dandwala, Managing Director of M/s PDPL, under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and Section 174 of the CGST Act, 2017 to give his statement. Accordingly, voluntary statement of Shri Pinkal Dandwala, Director of M/s PDPL was recorded on 14.10.2019, wherein he interalia stated that:

i. He had perused the page no. 403 of the made up file listed at Sr. No. A-42 of the INS-02 of the (picture of said page reproduced below) and confirmed that the data available on said page gives the total receipt by M/s Poojan Decor Pvt. Ltd. on various accounts, in cash as well through cheques for the entire financial year of 2015-16.

The worksheet was prepared on the basis of the data available in page no 373 to page no. 401 of made up file listed at Sr. No. A-42 of the INS-02 of the Panchnama dated 19-20.08.2019. He highlighted a totaling error in 'Total cash+ Cheq' column of 'Poojan Outdore Sale'. Instead, he gave the correct details of such payments in concise form, as available on page 403, as given below.

	Total Cash Amount (in Rs.)	Total Cheque Amount (in Rs.)	Total Cahs+ Cheque Amount (in Rs.)
GLM	5,44,07,800.00	3,61,32,717.00	9,05,40,517 .00
YMCA Small Banquet	17,19,420.00	5,47,482.00	22,66,902.00

Misc. Income	6,16,50,500.00	63,12,009.00	6,79,62,509.00
Aryaman	8,20,000.00	1,92,983.00	10,12,983.00
YMCA Pool Side Lawn	1,16,000.00		1,16,000.00
PDPL Out Door Sales		96,27,381.00	96,27,381.00
Poojan Out Door Sales		48,02,054.00	48,02,054.00
Bhoomi Out Door sales		59,37,779.00	59,37,779.00
Total	11,87,13,720.00	6,35,52,405.00	18,22,66,125.00

ii. amount of Rs. 5,44,07,800/- was provided by M/s Green Leaves Management Pvt. Ltd for day to day functioning of the M/s Poojan Decor Pvt. Ltd., and this could be ascertained from the fact that this cash receipt was accounted as 'Rojmail' [an informal term used by them for recording the daily cash transactions with M/s GLM] in the documents, available in Sr. No. A-42 of the INS-02 of the Panchanama dated 19-20.08.2019, of M/s Poojan Decor Pvt. Ltd. and was not accounted for as income.

iii. the receipt of Rs. 6,16,50,500/- in cash on account of Misc. Income head, was actually the income of his firm for providing taxable services as mandap decorator to various clients and this cash income was not recorded in their books of account.

iv. this income was neither considered for computing the taxable value of services, provided by them, declared in ST-3 returns nor any service tax was paid on said income of Rs.6,16,50,500/-.

vi. Similar modus was adopted in case of receipt shown on account of 'YMCA Small Banquet', 'Aryaman' 'YMCA Pool Side Lawn'.

vii. that similar worksheets for financial year 2014-15, 2016-17, 2017-18 and 2018-19, as given in page 403 discussed above, are also available at page no. 437, page no. 369, page no. 323 and page no. 267 respectively, of the made up file listed at Sr. No. A-42.

viii. On the basis of the data available on above mentioned pages, the year wise cash & cheque receipt was as given in the following tables:

Total receipt for the financial year 2014-15 prepared on basis of data available on page 437 of made file listed at Sr. A-42

Name	Total Cash Amount (in Rs.)	Total Cheque Amount (in Rs.)
Water Park	5666300	0
Mis Income	47532800	0
GLM	28035000	0
YMCA Small Banquet	1188175	0
Ymca Pull Side Lawn	56200	0
Aryaman	3249500	0
S.A.	3500000	0
	89227975	0

Total receipt for the financial year 2016-17 prepared on basis of data available on page 369 of made file listed at Sr. A-42

Name	Total Cash Amount (in Rs.)	Total Cheque Amount (in Rs.)	Outstanding Amount (in Rs.)
GLM	5,33,49,748.00	4,18,56,500.00	-
YMCA Small Banquet	10,54,128.00	1,53,750.00	-
YMCA Pool Side Lawn	2,52,000.00	-	-
YMCA Glamour Banquet	46,000.00	26,450.00	2,76,51,500
Mis Income	4,62,59,350.00	1,92,81,041.00	-
Aryaman	8,000.00	80,000.00	-
Bharatbhai Borrowed Fund	47,38,820.00		
Old Outstanding	35,35,000.00	30,00,000.00	
Pinabhai Borrowed Fund	68,69,050.00		
Mis Borrowed Fund	23,73,000.00		
PDPL Out Dore Sales	-	42,25,000.00	-
Poojan Out Dore Sales	-	24,07,417.00	-

Bhoomi Out Dore Sales	-	7,43,500.00	-
<b>Total</b>	<b>11,84,85,096.00</b>	<b>7,17,73,658.00</b>	<b>2,76,51,500</b>

Correction made in the above table: On page no. 369, 'cash deposit 5' column of 'YMCA Pool Side Lawn' was erroneously mentioned as Rs. 20,50,000/- while it should have been 0/- and hence, the total cash for YMCA Pool Side Lawn comes out to be Rs. 2,52,000/-. The same can be confirmed from page no. 347, which gives the corresponding entries for YMCA Pool Side Lawn.

Total receipt for the financial year 2017-18 prepared on basis of data available on page 323 of made file listed at Sr. A-42

Name	Total Cash Amount (in Rs.)	Total Cheque Amount (in Rs.)	Outstanding Amount (in Rs..)
GLM	3,94,17,645.00	1,82,31,144.00	-
YMCA Gloriya Banquet	12,94,978.00	3,05,840.00	15,000
YMCA Glamour Banquet	3,01,750.00	-	13,000
YMCA Pool Side Lawn	1,95,500.00	-	-
Mis Income	10,99,66,290.00	5,73,82,175.00	1,56,500
Old Outstanding	73,45,000.00	5,00,000.00	-
Bharatbhai Borrowed Fund	41,53,500.00	-	-
Pintubhai Borrowed Fund	13,50,000.00	-	-
Mis Borrowed Fund	61,01,000.00	-	-
PDPL Out Dore Sales	-	15,80,435.00	-
Poojan Out Dore Sales	-	91,720.00	-
Bhoomi Out Dore Sales	-	5,25,000.00	-
<b>Total</b>	<b>17,01,25,663.00</b>	<b>7,86,16,314</b>	<b>1,84,500</b>

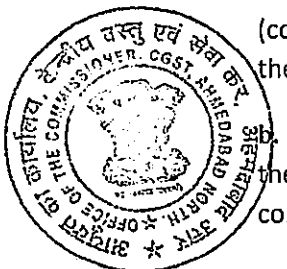
viii. from the financial year 2016-17 onwards they had started to mention the funds borrowed separately- the funds borrowed by him were entered as 'Pintubhai Borrowed Fund', funds borrowed by Shri Bharat Modi, another director in M/s Poojan Decors Pvt. Ltd., were entered as 'Bharatbhai Borrowed Fund' and the funds borrowed by both or other Yash Modi were entered as "Mis Borrowed Funds". For the financial year 2014-15 and 2015-16 they used to record borrowed fund under 'Misc Income' head.

ix. the receipt mentioned under head 'Old Outstanding' was the recovery of outstanding from their clients to whom they have provided taxable services in past.

x. He had perused the worksheet prepared in his presence from the documents available on page 247 to page 437 in made-up file listed at Sr. no. A42 of the INS-02 appended with the Panchnama dated 20-19.08.2019 drawn at the premises of M/s Poojan Decor Pvt. Ltd. and confirmed the correctness of the same. However he did not agree with the service tax liability because of following two reasons:

a. to compute the service tax liability of Rs. 3,05,15,789/- even the outstanding amount (consideration that was not even received by them) i.e. Rs. 2,78,36,000/- was also included in the taxable value.

The consideration received in cash by them, towards the taxable services provided by them, should have been inclusive of the service tax leviable. Whereas the same was being considered exclusive of service tax.



Therefore, he had requested to consider that the total taxable amount worked out in the worksheet as inclusive of service tax and accordingly the said taxable value worked out be considered as cum-duty value. Also, he requested that for the year 2014-15 and 2015-16 there were some entries in "Misc Unaccounted Income" that pertained to certain short term loans taken in cash from their friends, as during 2014-15 and 2015-16, they were not recording such loans separately as they were doing from financial year 2016-17 onwards.

Fin. Year	Month(s)	Misc. Unaccounted Income(1)	Income from Water Park Events (2)	Old Outstanding Income (3)	Events at Gloria & Glamour banquet of YMCA Income (4)	Aryaman (5)	Pool Side (6)	Outstanding (7)	Unaccounted income liable to ST (8=1+2+3+4+5+6+7)	Rate of duty (in %)	Service Tax Liability
14-15		4,75,32,800	56,66,300	--	11,88,175	32,49,500	56,200	--	5,76,92,975	12.36	71,30,852
15-16	Apr-May	63,30,000	--	--	2,28,390	1,25,000	--	--	66,83,390	12.36	8,26,067
	June-15Nov	1,59,23,500	--	--	7,01,030	3,55,000	--	--	1,69,79,530	14.00	23,77,134
	15Nov-Mar	3,93,97,000	--	--	7,90,000	3,40,000	1,16,000	--	4,06,43,000	14.50	58,93,235
16-17	Apr-May16	51,35,350	--	35,35,000	3,73,528	8,000	--	--	90,51,878	14.50	13,12,522
	Jun-mar 17	4,11,24,000	--	--	7,26,600	--	2,52,000	2,76,51,500	6,97,54,100	15.00	1,04,63,115
17-18	Apr-Jun 17	88,69,100	--	73,45,000	3,34,828	19,000	--	1,84,500	1,67,52,428	15.00	25,12,864
	Total	16,41,31,750	56,66,300	1,08,80,000	43,42,551	40,96,500	4,24,200	2,78,36,000	21,75,57,301	Total	3,05,15,789

xi. He had perused the page no. 245 of the made up file listed at Sr. no.A-42 of the INS-02 of the Panchnama dated 19-20.08.2019 drawn at the premises of M/s Poojan Decor Pvt. Ltd, which reflected the details of payments made in cash by his company to Shri Anaji Marwadi, Shri Prashant Mistri, Shri Niraj Mistri, Shri Mangal, Faimbhai, Shri Mohan, Samir Mordabad, 'Labour Final pay' and Ghanshyambhai Surat Cloth'

xii. Shri Anaji Marwadi was their labour supplier, Shri Prashant Mistri and Shri Niraj Mistri were the carpenters who work on freelance basis as and when required, Shri Mangal was the person they call for specialized decorations, Faimbhai was their fresh flower supplier, Shri Mohan was their transport vehicle driver, Samir Mordabad was their vendor who used to supply candle stand, 'Labour Final pay' was the payment given to irregular labourers they engaged for loading and unloading goods, 'Ghanshyambhai Surat Cloth' gave details of payment made to cloth broker Shri Ghanshyam bhai.

xiii. service tax under reverse charge mechanism was to be paid by them on the payments made to Shri Anaji Marwadi.

31. Therefore it appeared from the statement dated 14.10.2019 of Shri Pinkal Dandwala that M/s PDPL had resorted to suppression of their actual taxable value of the services provided by them so as to evade payment of service tax. They had intentionally not added the cash portion of taxable value of their services while declaring their taxable value in their statutory records and consequently, evaded payment of appropriate service tax. Though Shri Pinkal Dandwala in his statement dated 14.10.2019 had requested to consider their unaccounted cash receipt to be inclusive of service tax, the same did not qualify to be inclusive of service tax in terms of Section 67(2) of the Finance Act, 1994 as discussed hereinafter and hence the benefit of cum tax value could not be extended to them. The statement also indicated that they had not paid service tax under reverse charge mechanism on the payment made to Shri Anaji for procurement of man power supply services.

#### LEGAL PROVISIONS

Some important legal provisions relevant to the case in the extant matter are as follows:

33. Section 65B (44) of the Finance Act, 1994 defines 'service' as any activity carried out by a person for another person for a consideration, and not falling under the categories of activities stipulated under Section 660 of the Finance Act, 1994. The term 'service' also includes declared services stipulated under the provisions of Section 66E of the Finance Act, 1994.

34. From the above provision, it is clear that services provided in this case were taxable services as the same were not covered under Negative List of activities as stipulated under Section 66D of the Finance Act, 1994.

35. Section 67 of the Finance Act, 1994 lays down the provisions for valuation of any taxable services and the same is as given below:

*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;*

*(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;*

*(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.*

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

*(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.*

*(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.*

*Explanation. For the purposes of this section,*

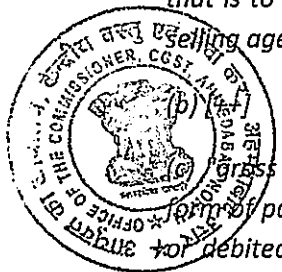
*(a) "consideration" includes*

*(i) any amount that is payable for the taxable services provided or to be provided;*

*(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;*

*(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.*

*"gross amount charged" includes payment by cheque, credit card, deduction from account and any mode of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.*



36. The provisions under Section 67(2) provide for extension of benefit of treating a value as "cum-duty" value only in cases where it is specifically established that the amount charged is "inclusive of service tax payable". In the instant case, the amount has been collected in cash and no such evidence exists on record that this unaccounted amount is inclusive of service tax payable. Therefore, the consideration received by the assessee from their clients for providing taxable services cannot be treated as "cum-duty" value and the same was required to be added to the consideration they received through cheque to arrive at the actual taxable value.

37 Section 68 of the Finance Act, 1994 stipulates that every person providing taxable service to any person shall pay service tax at the specified rate within prescribed period.

38 Section 70 of the Finance Act 1994 read with Rule 7 of the service Tax Rules, 1994 specify that every person liable to pay the service tax should himself assess the tax due on the services provided by him and file correct and proper prescribed returns.

39 Section 68 (2) of Finance Act, 1994 read with Notification No. 30/2012-Service Tax dated 20.06.2012 lays down the provision of Reverse Charge Mechanism and the same is given as below:

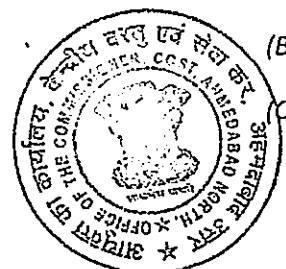
*"Notwithstanding anything contained in sub-section (1), in respect of 2[such taxable services as may be notified] by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 4[66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.]"*

Notification No.30/2012- Service Tax dated 20.06.2012 issued under Section 68(2) of the Finance Act, 1994 provides that:

*"The Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said subsection, namely:*

*I. The taxable services,*

- (i) *provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;*
- (ii) *provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,*
  - (a) *any factory registered under or governed by the Factories Act, 1948 {63 of 1948}*
  - (b) *any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;*
  - (c) *any co-operative society established by or under any law;*
  - (d) *any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;*
  - (e) *any body corporate established, by or under any law; or*
  - (f) *any partnership firm whether registered or not under any law including association of persons;*
- (iii) *provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;*
- (iv) *provided or agreed to be provided by,*
  - (A) *an arbitral tribunal, or*
  - (B) *an individual advocate or a firm of advocates by way of support services, or*
  - (C) *Government or local authority by way of support services excluding,*
    - (1) *renting of immovable property, and*





(2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994, to any business entity located in the taxable territory;

- (v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;"

40. By virtue of this notification, payment of service tax by the recipient of manpower supply services was mandated. In the present case as M/s PDPL, a private limited company, had procured man power supply services from Shri Anaji, an individual, i.e. a non-body corporate, the service tax liability lies on M/s PDPL under reverse charge mechanism.

#### 41. Miscellaneous Transitional Provisions

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

#### Outcome of Investigation and quantification of service Tax:

42. In view of the discussions in the foregoing paras, the evidences brought on record and the statements dated 20.08.2019 and 14.10.2019 given by Shri Pinkal Dandwala during the course of investigation, it appeared that:

- (i) M/s PDPL had provided Pandal or Shamiana service to various clients during the period from FY 2013-14 to FY 2017-18 (up to June-17). The above services provided by M/s PDPL were taxable services under the provisions of Section 65B (51) of Finance Act, 1994 and the definition of "service" as enunciated in Sec. 65B (44) of the Act *ibid* (w.e.f. 01.07.2012).
- (ii) M/s PDPL had filed their ST-3 returns for the period from FY 2014-15 to FY 2017-18 (up to June 2017) vide which they had disclosed the values for taxable services provided by them during the aforesaid period and their net tax liability during the period. They have reported a gross value of Rs. 11,92,30,582/- in the ST-3 Returns filed by them (Tables- 7.1 to 7.4 above) comprising of taxable services provided by them and the service tax paid by them which did not appear to be the true value of services provided M/s PDPL. In order to ascertain the correct turnover of M/s PDPL, the turnover values reported in the Balance Sheet, Profit & Loss Accounts, Sales Ledger, Invoices, pen drives, data recovered from Google Drive and hard copies of excel workbooks/sheets were examined. Post such examination, it was evident that the values reported in the ST-3 returns were suppressed and under-reported as certain portion of such taxable value, of services so provided, collected in cash was not accounted in their books of accounts during the period from F.Y. 2014-15 to FY 2017-18 (up to June 2017) and was not included in the gross taxable value declared by them in their ST-3 returns.
- (iii) M/s PDPL had issued invoices to the clients only to the extent of the amounts which are received through cheque in the book of accounts and consideration recorded in their Tally account(s). No invoices were raised/issued towards the consideration received in cash. M/s PDPL calculated their gross taxable turnover only on invoices issued to the clients and consideration recorded in their Tally account(s) and the same Gross Taxable Turnover was shown by them in their Annual Report. The consideration received in cash for providing said taxable services was neither included in the gross taxable value declared in their Invoice & ST-3 returns nor in annual Report of M/s PDPL.

(iv) With reference to the cash receipts received by M/s Poojan Decor Pvt. Ltd. from M/s Green Leaves Management Pvt. Ltd. to the tune of Rs. 16,70,29,048/-over the period April-2014 to June-2017, Shri Pinkal Dandwala, Director in M/s PDPL and M/s Green Leaves Management Pvt. Ltd., had clarified that the said amount was given to M/s Poojan Decor Pvt. Ltd. for day-to-day operations and hence the same was not being accounted under 'income head' but was being accounted under 'roj-mel' head of the said .xis files having details of cash transactions of M/s Poojan Decor Pvt. Ltd. However this explanation appeared not holding ground in as much as the accounting of the said account in the private records of M/s Green Leaves Management Pvt, Ltd., was done under expense head of M/s Green Leaves Management Pvt. Ltd. and accordingly, it was liable to be treated as income for M/s PDPL.

43. In fact, M/s Poojan Decor Pvt Ltd has supplied services to M/s GLM like "Pandal or Shamiana Service", for which they also had issued invoices in some cases. The cash provided by M/s GLM to M/s PDPL was nothing but consideration paid for taxable services provided by M/s PDPL to M/s GLM. It is apparent from the above sheet that M/s GLM had given the 'Cash Advance' towards the services provided by M/s PDPL to M/s GLM and accordingly, all the cash receipts of M/s PDPL from M/s GLM are also liable to be treated as income and added to the taxable value of M/s.PDPL.

(v) The taxable value of services, so provided by M/s PDPL to their clients, collected in cash and not considered for the purpose of computing Taxable value declared in their ST-3 returns and on which no service tax was paid is as detailed in the following Table:-

Year	Unaccounted cash receipt (Rs.)	Applicable Service Tax (Rs.)	Outstanding Amount (Rs.)	Applicable Service Tax (Rs.)	Total Service Tax Liability (Rs.)
2014-15	11,25,15,775	1,39,06,950	--	--	1,39,06,950
2015-16	11,91,28,720	1,69,00,677	--	--	1,69,00,677
2016-17	10,45,04,226	1,56,20,585	2,76,51,500	41,47,725	1,97,68,310
2017-18 (ST	2,06,01,628	30,90,244	1,84,500	27,675	31,17,919
Total	35,67,50,349	4,95,18,456	2,78,36,000	41,75,400	5,36,93,856

As per Section 67 of the Finance Act, 1994, the value of a taxable service would be the gross amount charged by the service provider. Further In the present case, M/s PDPL had very clearly accounted the amount received in cheque, amount received in cash and the amount yet to be realized for providing the said taxable services in their private records viz. data stored in pen drives and google drive. This clearly indicated that at the time of recording these details in their accounts records the gross taxable value of the services so provided or to be provided was already fixed. So the gross amount charged for provision of said services so provided by M/s PDPL would include the consideration received in cheque, consideration received in cash as well as the unrealized consideration. Further, since in none of the .xis files, the amount collected against the services rendered was mentioned as inclusive of service-tax, the claim for benefit of cum tax value seemed to be untenable. Thus in terms of Section 67(2) of the Finance Act, 1944, the said taxable value collected in cash by M/s PDPL from their clients should not be considered to be inclusive of service tax and This was also in consonance with the Rule 6 of Service Tax Rules, 1944 read with the Point of Taxation Rules, 2011. Accordingly, it appeared that M/s PDPL had knowingly and intentionally not included the consideration received by them in cash and

the unrealized part of consideration in the taxable value declared in their invoices and had thereby contravened the provisions of Section 67 of the Finance Act, 1944.

(vi) M/s PDPL had procured 'supply of manpower services' from Shri Anaji, a labour contractor, to whom they have made payment in cash, as detailed in the following table. It appeared that under the provisions of Section 68(2) of Finance Act, 1994 read with Notification no. 30/2012-ST dated 20.06.2012, as amended from time to time, M/s GLM were required to discharge service Tax liability under Reverse Charge Mechanism (RCM) for Manpower services received from Shri Anaji, as per Table shown below:

Year	Cash paid (Rs.)	Applicable service Tax (Rs.)
2014-15	81,61,310	10,08,738
2015-16	1,10,50,000	15,74,706
2016-17	1,07,22,780	16,04,167
2017-18 (ST)	14,80,000	2,22,000
<b>Total</b>	<b>3,14,14,090</b>	<b>44,09,611</b>

(vii) On the basis of the documentary evidences available on record and the discussions made in the foregoing paras, the following quantification of the service tax demand had been made which has already been discussed in Tables 7.1 to 7.4 above. For the sake of ready reference, they are being reproduced as under:

Year	Month(s)	Unaccounted Income liable to Service Tax	Rate of duty (in Rate of duty (in %) inclusive of cess	Service Tax liability for unaccounted cash receipts	Payment made to Anaji (Labour Contractor) Contractor)	Service Tax liability for cash liability for cash paid to Anaji under RCM	Total Service Tax liability of M/s PDPL (5=2+4)
2014-15		11,25,15,775	12.36	1,39,06,950	81,61,310	10,08,738	1,49,15,688
2015-16	Apr-May	1,21,17,390	12.36	14,97,709	8,35,000	1,03,206	16,00,915
	Jun-15Nov	2,27,35,030	14	31,82,904	19,35,000	2,70,900	34,53,804
2016-17	15Nov-Mar	8,42,76,300	14.5	1,22,20,064	82,80,000	12,00,600	1,34,20,664
	Apr-May-16	1,10,09,878	14.5	15,96,432	8,50,000	1,23,250	17,19,682
	Jun-Mar 17	12,11,45,848	15	1,81,71,877	98,72,780	14,80,917	1,96,52,794
2017-18	Apr-Jun 17	2,07,86,128	15	31,17,919	14,80,000	2,22,000	33,39,919
	<b>Total</b>	<b>38,45,86,349</b>	<b>TOTAL</b>	<b>5,36,93,856</b>	<b>3,14,14,090</b>	<b>44,09,611</b>	<b>5,81,03,467</b>

(viii) From the above tables, it was evident that M/s PDPL had evaded service tax to the tune of Rs. 5,81,03,467/- during the period from April-2014 to June-2017 and as such the said amount was required to be recovered from them along with applicable interest and penalty. During the course of his statements, Shri Pinkal Dandwala, Director of M/s PDPL had admitted to the short payment of service tax by his company. Also, being the Director of the company, he had taken the responsibility for the above non-payment of service tax and had agreed in principle to their service tax liability of Rs. 5,81,03,467 /-. Further, on the day of Search i.e. 19-20.08.2019 M/s PDPL had voluntarily paid service Tax liability of Rs. 4,13,035/- vide DRC-03 challan no. DC2408190234365/DI2408190323611 dated 20.08.2019 and service Tax Liability of Rs. 25,00,000/- vide DRC-03 Challan no. DC2408190429772 dated 30.08.2019, which is required to be appropriated against their aforesaid service tax liability.

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

It appeared that they were aware of such provisions relating to service tax. However, they deliberately recovered certain part of taxable value of the taxable services provided to their clients, in and above the invoice value of such service. M/s PDPL knowingly and intentionally had not



considered such cash income while computing their service tax liability, with very clear intention of evading payment of appropriate service tax.

45 In this case, the period to be reckoned for demand of service tax was from April-2014 to June-2017. M/s PDPL had filed ST-3 returns for this period but they had never disclosed the true taxable turnover of their services to the Department. Instead, they had chosen to suppress the true details in the ST-3 returns filed by them with the malafide intention to evade payment of service tax. Had the department not noticed the fact of suppression of the actual turnover of the services, the service tax amount, so evaded would have remained uncollected.

46 It is pertinent to mention here that the system of self-assessment is in vogue in respect of service tax. In the scheme of self-assessment, the department comes to know about the service rendered and payment made only during the scrutiny of the statutory returns filed by the service providers. Therefore, it places greater onus on the party/assessee to comply with higher standards of disclosure of information in the statutory returns. It was seen from the facts that emerged during the investigation of the instant case that M/s PDPL had not filed the correct service Tax Returns and in fact they have indulged in wilful suppression and under-reporting of their actual turnover & sale of taxable services. Thus, M/s PDPL had suppressed the material facts from the Department by not filing correct ST-3 Returns. This appeared to have been done intentionally so as to hide their actual turnover of the taxable services provided by them from the Department. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. The evaluation of tax behaviour of M/s PDPL, had shown clear intent to evade payment of service tax by an act of suppression and omission in as much as M/s PDPL though being well aware of the unambiguous provisions of the erstwhile Finance Act, 1994 and Rules made there under, had failed to disclose to the department at any point of time, the correct turnover of the taxable services provided by them. Had the investigation proceedings not been conducted by DGGI, Ahmedabad Zonal Unit, these facts would not have ever come to light.

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

48. Therefore, it appeared that M/s PDPL had wilfully suppressed the taxable turnover in the ST-3 returns filed by them by way of under-reporting and mis-declaring of taxable sale of services with the intent to evade payment of service tax and the extended period of limitation of five years as envisaged under proviso to sub-section (1) of Section 73 of Chapter V of the erstwhile Finance Act, 1994 (as amended up to 30.06.2017) read with Section 174 of Central Goods And service Tax Act, 2017, for the demand and recovery of service tax (including Cess) as quantified in the subsequent paras was



payment of service tax in respect of services provided by them to various clients during the period from April, 2014 to June, 2017:

(a) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct value of taxable services viz. "Pandal or Shamiana service" by not considering the taxable value of services, so provided, that was received in cash while computing their service tax liability.

(b) Section 68 of the Finance Act, 1994 in as much as they had failed to make payment of service tax liability of Rs. 5,81,03,467/- on the services provided by them during the period April-14 to June-17, in such manner and within the period prescribed;

(c) Section 70 of the Finance Act, 1994 read with Rule 7 of the service Tax Rules, 1994 in as much as they had failed to furnish proper periodical returns mentioning the particulars of the aforesaid taxable service provided by them;

(d) Notification no. 30/2012-ST dated 20.06.2012, as amended, in as much as they failed to pay services tax on the taxable value of manpower supply services they received from Shri Anaji.

(e) Rule 4A of Service Tax Rules, 1994, in as much as they had failed to issue invoice giving correct details of the taxable value of the service provided by them by not including the cash portion of taxable value recovered by them from their clients

(f) Rule 5 of the Service Tax Rules, 1994, in as much as they had failed to maintain proper records regarding actual taxable value of the services provided by them.

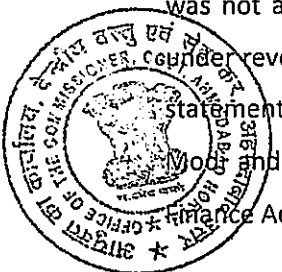
54. Further, all the above acts of contravention constitute an offence of the nature as described under the provisions of:

i. Section 76 and/or 78 of the Finance Act, 1994, for having intentionally evaded payment of service tax to the tune of Rs. 5,81,03,467/-, by adopting the modus operandi as discussed in the forgoing paras

ii. Section 77(1)(b) of the Finance Act, 1944, for their failure to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules).

M/s PDPL also appeared to be liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of service Tax.

55. From the above investigation, it appeared that the entire modus operandi of recovering certain amount of taxable value of the services provided by M/s PDPL, in cash and not considering the same for computation of taxable value declared in their ST-3 returns and consequently evading payment of appropriate service tax was established under the directions of Shri Pinkal Dandwala, Shri Bharatbhai Modi and Shri Yash Modi, Directors of M/s PDPL. Further, the fact that such taxable value recovered in cash was not being accounted in their regular accounts but was being recorded in .xis sheet and secreted in pen drives and google drives of the employees of M/s PDPL was also known to Shri Pinkal Dandwala and had his approval. Even the payment made in cash to Shri Anaji, their labour contractor, was not accounted in their regular books of accounts and no service tax was paid on such payment under reverse charge mechanism. All these facts were accepted by Shri Pinkal Dandwala in his voluntary statements. All these acts of omission and commission on part of Shri Pinkal Danadwala, Shri Bharatbhai Modi and Shri Yash Modi, constitute offence punishable under the provisions of Section 78A of the Finance Act, 1994.



56. Therefore, M/s PDPL, were issued with SCN dated 19.10.2019 calling upon to show cause to the Principal Commissioner/Commissioner, CGST, Central Excise & Service Tax, Ahmedabad North Commissionerate, having his office located at 2<sup>nd</sup> Floor, Custom House, Opposite Old High Court, Navrangpura, Ahmedabad-380015, Gujarat, within 30 days of receipt of this notice by them, as to why:

(i) The taxable value of Rs. 11,92,30,582/- declared in the ST-3 returns should not be rejected under the provisions of Rule 4 of Service Tax (Determination of Value) Rules, 2006 and the same should not be determined at Rs. 50,38,16,931/- by adding the amount of Rs. 38,45,86,349/-, recovered in cash over and above the invoice value or shown as outstanding, to the said amount of Rs. 11,92,30,582/-, under the provisions of Section 67 of the Finance Act, 1994 read with Rule 4 of the Service Tax (Determination of Value) Rules, 2006;

(ii) The service tax amounting to Rs. 5,36,93,856/- (Rupees Five crore thirty six lakh ninety three thousand eight hundred fifty six only) short/non paid corresponding to cash income received during the period from April-2014 to June-2017 as shown above, should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994;

(iii) The service tax amounting to Rs. 44,09,611/- (Rupees Forty Four Lakhs Nine Thousand Six Hundred Eleven only) on payments made to Shri Anaji during the period from April-2014 to June-2017 for supply of manpower services under Reverse Charge Mechanism (RCM) as shown above, should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994;

(v) The service tax amounting to Rs. 29,13,035/- voluntarily paid by them should not be appropriated against their above mentioned service Tax liability of Rs. 5,81,03,467/- (=Rs.5,36,93,856/- + Rs. 44,09,611/-).

(vi) Interest at the appropriate rate under Section 75 of the Finance Act, 1994, should not be demanded and recovered from them on the service Tax demanded at (ii) and (iii) above;

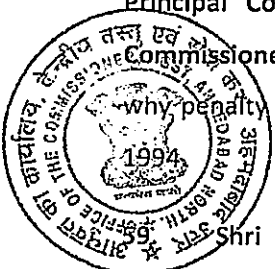
(vii) Penalty should not be imposed upon them under the provisions of Section 76 and/or Section 78 of the Finance Act, 1994 for suppressing the facts and contravention of statutory provisions with the intent to evade payment of service Tax on the service tax amount demanded at (ii) and (iii) above;

(viii) Penalty should not be imposed upon them under 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 in accordance with the relevant provisions of the Finance Act, 1994. (ix) Penalty should not be imposed upon them under the provisions of Section 77(1)(e) for issuance of incorrect invoices by way of not incorporating the unaccounted cash received by them;

57. Shri Pinkal Dandwala, Director of M/s PDPL, was called upon to show cause to the Principal Commissioner/Commissioner, CGST, Central Excise & Service tax, Ahmedabad North Commissionerate, Ahmedabad-380015, Gujarat, within 30 days of receipt of this notice by them, as to why penalty should not be imposed upon him under the provisions of Section 78A of the Finance Act, 1994.

58. Therefore, Shri Bharatbhai Modi, Director of M/s PDPL, was called upon to show cause to the Principal Commissioner/Commissioner, CGST, Central Excise & Service tax, Ahmedabad North Commissionerate, Ahmedabad- 380015, Gujarat, within 30 days of receipt of this notice by them, as to why penalty should not be imposed upon him under the provisions of Section 78A of the Finance Act, 1994.

Shri Yash Modi, Director of M/s PDPL, was called upon to show cause to the Principal Commissioner/Commissioner, CGST, Central Excise & Service tax, Ahmedabad North



Commissionerate, within 30 days of receipt of this notice by them, as to why penalty should not be imposed upon him under the provisions of Section 78A of the Finance Act, 1994.

#### DEFENCE REPLY

60. The assessee has forwarded the written submission in their defence vide their letter dated 25.05.2021, wherein, they have interalia, stated that:

Workflow of the services provided by the noticee can be understood as under:

- (i) *Prospective customer approaches to the noticee to receive the services.*
- (ii) *Noticee provides with the estimates. Such estimates are prepared in excel sheets and it is quite logical that such estimates do not form part of accounting till the service provision and consideration is finalized.*
- (iii) *The rates are negotiated by the prospective customers and then rates are finalized depending upon the date on which such services are proposed to be provided.*
- (iv) *Shri Kirit Manubhai Prajapati (Accountant) maintains billing data on the direction of Shri Bharatbhai Modi (Director).*

They stated that upon raising of invoice, no further reduction was done, and consideration was received according to the invoice raised upon the customer.

The excel working that was relied upon by the Ld. Officers of DGGI was merely the file in which estimates were prepared for prospective customers.

#### A. Except the excel sheet there is no corroborative evidence.

- At the outset they denied the allegations in the order regarding the cash receipts. The most outstanding fact to be noted was that there was no unaccounted cash seizure during the search conducted by the officers of DGGI, AZU. When a charge of collection of a huge amount of Rs. 5.81 crores appx. was under consideration, it was strange that not a single rupee of unaccounted cash was found during the search operations conducted by the department. It would be most unwise to say that such a huge amount of cash vanished in thin air. This fact points out to the inescapable conclusion that they had not indulged in any sort of cash dealing with the customers.

- They stated that apart from statements of the staff members and directors, recorded during the search proceedings, there was no further corroborative evidence with the Ld. officers regarding suppression of the value of services provided. Also, excel sheet relied upon is containing value of estimates which cannot be taken as base for the purpose of raising the demand. A statement of Shri Sunny Patel, customer was recorded, but Shri Sunny Patel, straight away denied the amount mentioned in the sheet prepared by the departmental officers during the investigation.

- They stated that for confirming demand of service tax there must be some corroborative evidence. Hence, there is no such corroborative evidence except the statement of staff members which was forcibly confirmed by the director. Hence, it can be said in investigation done by DGGI, except for the statements of accountant and directors taken forcibly, there was no evidence produced by the officers where it can be said that they had collected such extra amount from the recipient of service. It was stated by them that merely on the basis of excel working which was used for giving estimates to the prospective customers, service tax cannot be demanded.

- Similar issue was dealt by Bombay High Court in case of *Godavari Khore Cane Transport Co. Vs. Commr. of Central Excise 2013 (29) STR 31 (Bom)* wherein, it was held by Bombay High Court as under:

"2. Admittedly the service tax demand confirmed by the adjudicating authority has now been collected by the appellant-assessee and paid to the Revenue. Counsel for the appellant-assessee states that the assessee is agitating the issue of leviability of service tax not with a view to seek refund of the tax paid but with a view to agitate the levy of interest and penalty. Counsel for the appellant-assessee, on instructions, states that if on merits levy of service tax is held not leviable and consequently it is held that interest and penalty is not leviable, then, the assessee would not claim refund of service tax already collected and paid to the Revenue. The statement is accepted.

3. It is not in dispute that although the employee of the assessee during the course of recording statement had admitted and expressed willingness to pay service tax, in the affidavit-in-reply to the show-cause notice, the liability to pay service tax was specifically denied and even before the adjudicating authority it was contended that service tax was not leviable. Though documentary evidence in that behalf were not produced before the adjudicating authority, the same was produced before the CESTAT and argued that the levy of service tax for the period involved herein is unjustified.

However, the CESTAT based on the statement of the employee of the assessee has upheld the levy of service tax without considering the merits of the case and without considering the documents furnished by the assessee. It is well established in law that it is open to the assessee to demonstrate on the basis of the documentary evidence that the statement recorded is erroneous. In these circumstances, in our opinion, it would be just and proper to set aside the impugned order of the CESTAT dated 28<sup>th</sup> April 2011 [2012 (26) S.T.R. 310 (T)] and restore the appeals to the file of the CESTAT for fresh decision on merits. Accordingly, the impugned order of CESTAT in so far as it relates to confirming the duty, interest and penalty is quashed and set aside and the matter is restored to the file of CESTAT for fresh decision on merits.

4. It is made clear that if on remand the CESTAT comes to the conclusion that the service tax is not leviable for the disputed period and consequently interest and penalty is not leviable, then and in that event the assessee shall not claim refund of service tax already collected and paid to the Revenue. It is further made clear that the order of the Tribunal in deleting the penalty in one appeal being not disturbed, the same would attain finality. All contentions of both the parties are kept open and the Tribunal shall not confirm the interest and penalty in the remaining two appeals merely because the assessee has subsequent to the initiation of proceedings collected and paid the service tax to the Revenue."

It must be noted that in above referred case of Godavari Khore Cane Transport co, Bombay High Court held that even though during investigation and recording of statement, the employee of the appellant admitted and expressed willingness to pay service tax, the liability of service tax was specifically denied and even before adjudicating authority, it was contended that service tax was not leviable. Hence, in the instant case as well, the noticee specifically denies the liability and would like to submit that the statement recorded by the officers of DGGI, AZU shall not be considered for these proceedings. And as submitted above, apart from statements of the directors and employees of the noticee, there is no further corroborative evidence produced by the department before raising demand of service tax.

Further, following other judgements have been relied upon by them:

Gurpreet Rubber Industries reported at 1996 (82) ELT 347 (T)

In the light of the foregoing, it cannot be concluded that the note book is an authentic private record of production so as to raise demand based on the figures indicated therein. At the most, it may raise a doubt but that cannot take a place of proof. Even, there may be certain elements of truth in the prosecution story but between 'may be true' and 'must be true' there is a



long distance to travel and the whole of the distance must be covered by the, legal reliable and unmatched evidence before a person can be convicted."

**Kashmir Vanaspati P Ltd. as reported at 1989 (39) ELI 655 (T)**

"The only evidence on the basis of which duty has been demanded and penalty has been imposed in this case is a private note book seized from Shri Desh Raj, Contractor. This note book was maintained by the labourers engaged by Shri Desh Raj. I have seen the entries made in the note book on 21-1-1986, 22-1-1986, 5-2-1986, and 11-7-1986. I find that on 21-1-1986 there is an entry of loading 1275 tins and packing 1600 tins. Whereas figure of loading is authenticated' by initial, there is no authentication of the figure of packing. On 22-1-1986 entries indicate that 1600 tins were packed and 3930 tins were loaded. The figure 1600 tins against packing is initialled, but 3930 tins in respect of loading is not authenticated by any signature. This is one of the entries in dispute. On 5-2-1986 there is an entry of packing 2000 tins which is not authenticated by any initial. There is an entry of loading 6234 tins which is authenticated by initial. The digit "6" in the above figure of 6234 is overwritten. On the same date, there is figure 3331 tins against unloading. There is correction in this figure. On 11-7-1986, the entry is in Gurumukhi. However, Shri Jain has explained that on that date there is an entry of Ghee loading 2276 tins. This figure bears overwriting and is also not authenticated by any initial. Looking to the various entries in the other pages of the note book, I find that there are innumerable entries which are not authenticated by any signature and there are over writings in many cases. Shri B.R. Sharma, an employee of the appellants, has also stated in his written statement that he made some of the entries in the note book on account of the work done by the labourers in the factory premises and that labourers used to come to him for getting the entries made in respect of the work done. In view of the fact that many of the entries are not authenticated by the signature of anybody, there is overwriting in the entries without proper attestation and note book was maintained by the labourers and not by Shri Desh Raj, contractor, personally, I am of the view that this is not a dependable record to establish clandestine removal of vegetable products manufactured by the appellants unless the same is supported by other evidence, such as, raw material consumed, goods actually manufactured and packed etc. There is no such evidence on record. There is also no co-relation between the consumption of raw materials, vegetable product manufactured, packed and cleared. In the circumstances, it cannot be held that 956 tins of vegetable products were actually manufactured by the appellants and clandestinely removed from the factory without payment of duty."

**Laxmi Engg. Works reported at 2001 (134) ELT 811 (T)**

"Therefore, in the absence of any corroborative evidence merely on the basis of the slips allegedly recovered by the Income Tax Department from the factory premises of the respondents which did not even contain the names of the customers or any other details regarding the receipt of the raw material or manufacture and clearance of the electric fans by the respondents, the duty liability as demanded through the show cause notice, could not be fastened on them."

The above judgment was approved by the High Court of Punjab & Haryana as reported at 2010 (254) ELT 205 (P&H).

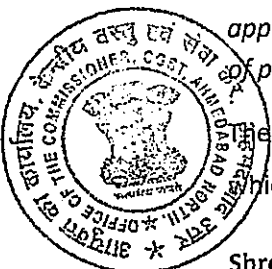
**Universal Polythelene Ind. reported at 2001 (130) EL T 228 (T)**

"It is well settled that charge of clandestine removal and clearance is a serious charge against the manufacturer which is required to be discharged by the Revenue by production of sufficient and tangible evidence. We do not agree with the Revenue's stand taken by them in the memo. of appeal that standard of proof in such cases has to be necessarily on the basis of preponderance of probabilities and not on the basis of absolute proof"

The above case was affirmed by the Patna High Court as reported at 2011 (270) ELT 168 (Pat)

which was further affirmed by the Supreme Court as reported at 2016 (342) E.L.T. A226 (S.C.)

**Shree Narottam Udyog P Ltd. reported at 2003 (158) ELT 40 (T)**



*"It is well-settled that charge of clandestine removal is a serious charge and is required to be proved by the Revenue beyond doubt on the basis of affirmative evidences. There is none in the present case, as discussed above. Accordingly, we do not find any merits in the Revenue's appeal and reject the same."*

**Brims Products reported at 2001 (130) EL T 719 (T)**

*"The adjudicating authority has mainly relied upon the records of the transport company to prove clandestine removal of pan masala. It is well settled principle of law that the charge of clandestine manufacture and surreptitious removal is required to be proved beyond doubt by the Revenue. The instant demand in question has been calculated on the basis of some raw materials received in the factory during the said period. There is no evidence of receipt of other raw materials required for the manufacture of pan masala in question. As such I find that the evidence on record may create a doubt in favour of the appellant but cannot take the place of legal evidence on record. As such extending the benefit of doubt to the appellants I set aside the impugned order and allow the appeal with consequential relief to the appellants."*

The said case was upheld by the High Court of Patna as reported at 2011 (271) ELT 184 (Pat).

**T G L Poshak Corp reported at 2002 (140) EL T 187 II)**

*"Insofar as the Revenue's grievance on the Commissioner's dropping the proceedings is concerned, we notice from the extracted portion of the Commissioner's order that Commissioner has duly considered the note books relied upon by the department that they are not in the nature of purchase and removal of goods which was only certain*

*balance sheets and certain private registers which does not prove the case of the department with regard to purchase of raw material, manufacture of final goods and clandestine removals. There is no seizure of goods or statements from the purchaser of goods who have paid money and the amounts received by them, appellants have also not recovered, nor there is any proof that amount said to have been received has flown back. Therefore, the dropping of proceedings, is proper and legal, we do not find any merit in the revenue appeal and same is rejected."*

**Durga Trading Co. reported at 2002 (148) ELI 967 (I) as maintained at 2003 (157) ELT A315 (SC)**

*"For want of any legal, tangible and concrete evidence, the duty demand of Rs. 4,64,56,058/- as confirmed by the learned Commissioner along with equal amount of penalty and interest, against the company appellant No. 1, cannot be legally sustained and is set aside."*

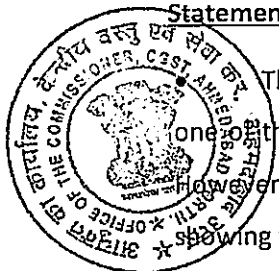
**D. P. Industries reported at 2007 (218) ELI 242 (Tri-Del).**

*"There are several decisions of the Tribunal holding that clandestine clearance has to be established beyond reasonable doubt and not on the basis of preponderance of probability. Merely on the basis of private E records, clandestine clearances can not be upheld. There should be sufficient corroborative evidences."*

- They have submitted that the demand of service tax should not be based merely upon the excel workings and statement recorded but there also need to be some other corroborative evidence. Mere allegation based on estimates prepared by the noticee should not be the only basis for demanding service tax.

**Statement of the Customer vs. Invoice produced in SCN**

They have also stated the while raising demand in the show cause notice, the invoice issued to one of their customers, Mr. Bharat Kotak was reproduced at para no 7.4 of the Show Cause Notice. However, statement of Mr. Bharat Kotak was not recorded but for recording of statement and for showing that investigation was also conducted at customers' end, the statement of Mr. Sunny Patel was

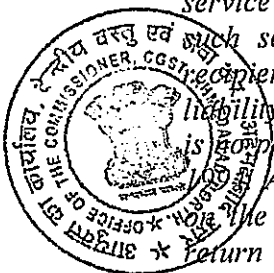


recorded. Surprisingly, the invoice reproduced was for Mr. Bharat Kotak whose statement was not recorded and invoice issued to Mr. Sunny Patel was not reproduced in SCN but his statement was recorded. Only one conclusion can be arrived at by this type of strange and selective investigation done by the department and that is that department just wanted to raise huge amount of service tax demand without giving proper evidence and without proper investigation. Hence, the investigation carried out is not proper and seems to be biased investigation to raise huge demand of service tax without proper corroborative evidence. Where demand as big as Rs. 5.81 Crore is proposed to be raised then there must be proper investigation conducted by the department. Similarly, they can point out one more incident wherein it can be deduced that this investigation was biased and just to raise huge demand of service tax without proper reasoning or evidence. In para no 10, arbitrarily, huge amount of Rs. 16,70,29,048/- (Rupees Sixteen Crore Seventy Lacs Twenty Nine Thousand and Forty Eight) was added to the value for demand of service tax. There is no discussion in entire show cause notice about how such amount can be added to the value of taxable service.

- That the revenue had merely jumped to the conclusion that they were in receipt of cash amount without even bothering to get proper confirmation from a single customer. Thus, the excel sheets cannot be considered as evidence. And where customer's statement was recorded, they were in favor of them instead of the department. The customer has categorically denied that the amount mentioned in excel sheet is incorrect amount and cannot be relied upon. Hence, the statement recorded by the department of one single customer of the noticee to prove that they had collected consideration in cash has turned out to be an evidence in their favour that the amount considered by the department cannot be relied upon and this entire demand of service tax should be dropped on this very basis.
- They have contended that if we do not take into consideration the statements of accountant and director then there was no evidence produced by the officers wherein it can be said that they had collected such extra amount from the recipient of service. The only material available was excel sheet and reliability of such excel sheet was questionable based on the statement of Shri Sunny Patel, customer.
- Merely on the basis of an excel working which was used for giving estimates to the prospective customers, service tax cannot be demanded.

They have relied upon on the judgment of Delhi CESTAT in case of **DELTAX ENTERPRISES 2018 (10) G.S.T.L. 392 (Tri. - Del.)**

*"The Revenue also could not point out excess receipt on these contracts or the taxable service which gave them the consideration escaping the tax. In the absence of specific allegation with reference to the nature of service or the service recipient it is not tenable to hold an income of the appellant even if it is admitted to be an actual income, as consideration for a taxable service. The minimum requirement to tax an assessee for service tax is to identify the nature of their taxable service along with the recipient of such service. In the present case all identified contracts for the identified service recipients have been examined and concluded by the lower authority. No service tax liability can be fastened on unidentified service for unidentified service recipient. There is no provision for such summary assumption even under Section 72 of the Finance Act, 1994. Admittedly, the said section provides for arriving at the taxable value to be based on the Assessing Officer's best judgment in case where the appellant fails to furnish Return under Section 70 or fails to assess the tax in accordance with Finance Act, 1994. In the present case the appellants did file returns under Section 70 and also made*



available all the contracts on which service tax liability will arise for them. As such, we find application of Section 72 cannot be extended based solely on the income tax return without identifying the specific taxable service or service recipient.

5. In view of the above discussion and analysis, the service tax demand made based on reasons recorded by the lower authorities is found to be unsustainable. Accordingly, the impugned order is set aside. The appeal is allowed."

- They have submitted that the demand of service tax should not be based merely upon the excel workings and statement recorded but there also need to be some other corroborative evidence. Mere allegation based on estimates prepared by them should not be the only basis for demanding service tax.

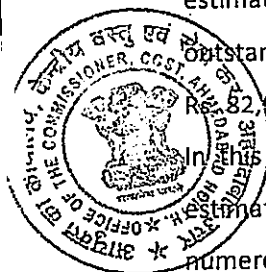
**B. Department cannot take base of erroneous Excel Sheets.**

- They have stated that there was no other evidence other than excel sheets on the basis of which demand has been raised by the officer. Further, the excel sheets which were sole base of raising the demand were containing number of errors. The said fact was mentioned in the SCN issued in para 9 (page no. 23 and 25). The director of the noticee pointed out the arithmetic error of the department in the calculation done. Hence, if such amount mentioned in the excel sheet happened to be consideration for services provided then there cannot be such type and such number of errors as one must be conscious about how much amount he had received from any person and how much was left to be received. Furthermore, in case of Shri Sunny Patel, the amount mentioned the excel sheet relied upon by the department for raising such show cause notice demanding huge amount of service tax shows Rs. 73,06,500/-; however, Shri Sunny Patel himself submitted that this amount shown in the excel sheet is incorrect and actual amount is Rs. 30,00,000/- which is less than half as mentioned and relied upon by department.

- Further, even though knowing the fact that the excel sheets were having such number of errors, departmental officer had taken the sole base of excel sheet for the purpose of raising the demand which is not tenable in the eyes of law. There had to be some robust evidence on the basis of which demand can be raised. Erroneous excel sheets can not be taken as a base for raising the demand.

**C. Statement of Shri Sunny Patel (customer).**

- They have also stated that in para 8 of SCN, there was mention about statement recorded of Shri Sunny Patel, a customer of the noticee. When one see entry of Mr. Sunny Patel at page no. 14, it shows total estimated amount as Rs. 1,10,00,000/- against which amount received is Rs. 9,93,500/- (5,00,000 + 4,93,000) and outstanding amount as Rs. 73,06,500/-. They argued that such excel sheets contained merely the data on estimate basis and can never be considered as final value of services provided. It can be understood by the example of data of Shri Sunny Patel. As per the sheet, the estimate amount shown was Rs. 1,10,00,000; out of which Rs. 9,93,500 was shown as received and outstanding amount is Rs. 73,06,500/-. If one add up 9,93,500 to 73,06,500 then the amount comes to Rs. 82,99,500/- and there is calculation error of Rs. 27,00,500/- (Rs. 1,10,00,000 - (9,93,500+73,06,500)). In this example two things were proved viz. (a) the sheet relied upon by department was merely estimate sheet and cannot be considered for deriving final value of services and it inherently has numerous arithmetical errors. (b) the amount considered by the department to raise demand of service



tax in this particular case of Shri Sunny Patel was clearly denied by Sunny Patel himself as an incorrect amount and further to it, he even mentioned that he was not paying any further amount to them as the services provided by them were substandard and insufficient.

- Further, Mr. Sunny had stated that the outstanding amount on his account was only Rs. 30,00,000/- and amount of Rs. 73,06,500/- mentioned in excel sheet is wrong. Thus, once again it is established that the excel sheet can not be taken base of raising the demand.

- They have stated that Mr. Sunny Pate in his statement had stated that he had paid Rs. 9,93,000/- to the noticee and amount of Rs. 30,00,000/- was pending to be paid. He had further stated that he would not pay said amount of Rs. 30,00,000/- to them as the services provided by them is substandard and insufficient. When any service provided by any person were not up to the mark then customer generally deducts the part of the amount payable (nominal amount) at the time of making payment. Here, Mr. Sunny Patel had made payment of around 25% of the total amount and remaining 75% amount was not paid by him as per his statement due to substandard service. One does not deduct 75% of the total amount payable of due to sub standard service provided.

- During investigation, they had not suggested the statement to be recorded of Shri Sunny Patel, the department selected the customer and called upon to give statement and it turned out to be in their favor when it was found that there was huge difference in the estimates prepared by them for event and final settled amount as per the statement of Mr. Sunny Patel.

- Also, statement of only single client was taken by the department which ultimately poses a big question mark on the excel sheet relied upon by the department and amount of consideration alleged by department as collected in cash by them.

**D. There can be no selective reliance on excel sheet by the department.**

- They have also stated the notwithstanding anything submitted above, where department was relying upon any material / document / excel sheet found at their premises, such material / document / excel sheet needed to be relied upon entirely and selective reliance on such excel sheet in a biased manner can result into botched up investigation. Instances of such selective reliance on the excel sheet were as under:

(1) Calculation errors being pointed out by the director were considered only in one instance and were not taken into consideration for entire calculation sheet and example is amount receivable from Shri Sunny Patel shown in the sheet and considered for raising demand is incorrect.

(2) It was specifically requested by the director Shri Pinkal Patel in his statement that the amount shown as outstanding should not be considered as the same is not received and will not be received in future and from statement of Shri Sunny Patel, it can be understood that there are instances of nonpayment of agreed upon amounts by the customers in case of deficient services. As per Rule 6 (3) of Service Tax Rules, in case of reduction in value of services on account of deficient provision of service, such amount should not be considered for payment of service tax.



Hence, as mentioned on page no 26 of Show Cause Notice, Shri Pinkal had specifically requested not to consider this outstanding amount of Rs. 2,78,36,000/- (para no 9 (x) (a) of SCN)

(3) Further, in para no 9 (x) (b) of SCN, it was further requested to consider the amount shown as received in cash as inclusive of service tax as the amount received by cheque is also accounted as inclusive of tax and hence, entire demand of service tax needs to be considered as inclusive of tax. An illustration of income booked in books of account as inclusive of tax can be taken from the ledger reproduced on page no 18 of SCN where the amount of Rs. 5,00,000/- received from Shri Sunny Patel was booked as inclusive of tax. They also stated that all the entries in the ledger for the amount collected by them were always inclusive of tax and hence, demand in this notice should also have been raised inclusive of tax calculation.

(4) In his statement recorded on 14-10-2019, Mr. Pinkal had specifically mentioned that the amount shown against the name Green Leaves Management Pvt Ltd (GLM) where Mr. Pinkal was also one of the director, was not towards any service but such amount was given by M/s Green Leaves Management Pvt. Ltd for day to day functioning of the M/s Poojan Decor Pvt. Ltd., and this could be ascertained from the fact that this cash receipt was accounted as 'Rojmail' [an informal term used by them for recording the daily cash transactions with M/s GLM] in the documents, available in Sr. No. A-42 of the INS02 of the Panchanama dated 19-20.08.2019, of M/s Poojan Decor Pvt. Ltd. and was not accounted for as income.

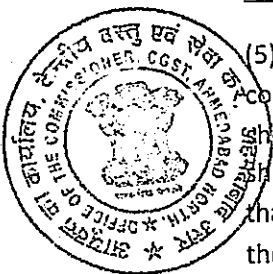
They have further stated that they would like to draw attention towards the biased approach adopted by department in issuing this show cause notice. It was mentioned every where in the show cause notice that director Shri Pinkal and his accountant had accepted in statements recorded that they had received the consideration in cash and department had relied on these statements then:

- (a) Why this fact was not accepted that amount received from GLM was not towards any services?
- (b) Why was it not accepted that the amount received by them should be considered as inclusive of taxes?
- (c) Why is it not accepted that amount shown as outstanding was not received and should not be considered for calculation of tax?

They have submitted that these were alternate argument presented by them, reserving the arguments that the excel sheet should not be relied upon in its entirety and demand should be vacated entirely. The arguments presented in this para was to draw attention towards the selective approach adopted by DGGI, AZU with the only objective of creating a huge demand of service tax without any proper investigation, biased approach and without any corroborative evidence.

(5) Statement of Sunny Patel showed that the amount shown as outstanding and consideration received in cash is not correct and hence, statement of another customer should have been recorded. Shri Sunny Patel stated that amount payable of Rs. 73,06,500/- shown in the calculation sheet is incorrect and actual amount is Rs. 30,00,000/- which is less than half as mentioned and relied upon by department. Hence, by this trend of incorrectness the demand of service tax should be reduced to half as arrived at in point no (4) above.

**E. No Cash was found at the premises of the noticee.**



- Notwithstanding anything submitted above, they have submitted that in show cause notice, it was alleged everywhere that there was receipt of cash from its customers. However, during search proceedings by DGGI at their premises, no cash was found based on which such allegation of non-payment of service tax is made.
- Hence, it could be deduced that the amount received in cash as alleged by the officers based on statement recorded and excel working should not be accepted.

**F. Statements of the personnel taken under pressure and stress cannot be taken base for raising demand.**

- Notwithstanding anything submitted above, they have contended that one would argue that in statements recorded by DGGI of Mr. Pinkal Dandwala, Mr. Bharatbhai Modi, Mr.Kirit Manubhai Prajapati and Mr. Shaiyal Patel, everything mentioned by officers of DGGI was agreed upon and even Rs. 29,13,035/- were also deposited against the so-called liability of Rs. 5.81 Crore. As per the panchnama, the investigation proceedings started at 4:00 PM on 19-08-2019 and went on for whole night and concluded at 6:00 AM on 20-08-2019. It can be observed from the panchnama that as many as Eight (8) officers of DGGI were present whole night at the premises of the noticee and such statements were recorded under stress and duress. In recent case of M/s. Bharat Acid and Chemicals, Proprietor Kanubhai Manilal Patel by Gujarat High Court, Hon'ble High Court vide SCA 2426 of 2021 observed for the manner in which investigation is conducted by DGGI, as under:

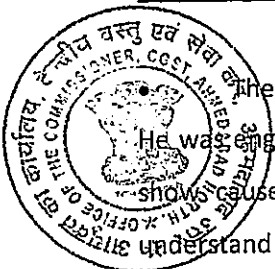
*"2 The facts of this case are very gross and shocking. Serious allegations have been levelled against the respondents Nos.2 and 3 respectively. The matter needs to be looked into urgently.*

*3 The mode and manner in which the respondents Nos.2 and 3 are alleged to have coerced and pressurized the writ applicant to transfer an amount of almost Rs.9 Crore to the account of the department is shocking. It is brought to our notice that the writ applicant was summoned and under the guise of interrogation was kept under detention for almost a period of 33 hours. No wonder, the State of C/SCA/2426/2021 ORDER Gujarat has topped the list of States with the highest collection of tax under the GST Act in the country for the year 2020-21."*

- They have stated that if statements recorded by the DGGI, AZU during the investigation proceedings on 19/20-08-2019 are not considered then apart from the excel files, there was no corroborative evidences with department to allege about the so-called unaccounted cash and evasion of service tax liability to the tune of Rs. 5.81 Crore as mentioned in the show cause notice.

**G. Receipt of services from Shri Anaji Marwadi does not fall within the ambit of "Manpower Supply Service".**

The Ld. Officer had erred in identifying the type of service provided by the Shri Anaji Marwadi. He was engaged in providing labour service as it was mentioned in table no 7.2 on page no 21 of the show cause notice and was not providing manpower supply service. It was very important to understand difference between providing labour service and providing manpower services and it is



pertinent to note that Reverse Charge Mechanism (RCM) is applicable only providing manpower services and RCM is not applicable on providing labour services. CBEC has issued Circular No.190/9/2015 - Service Tax dated 15.12.2015 which clarifies and explains the difference between manpower supply service and job work service.

- The service provided by Shri Anaji Marwadi was in nature of job work service and not in nature of manpower supply service and hence RCM was not applicable on the same. Thus, the demand raised on the job work services received by them was baseless and not tenable.

H. Taxable Value of services should be considered inclusive of Service Tax.

- Section 67 of the Finance Act, 1994 provides for valuation of taxable services for charging service tax. Section 67(2) of the Finance Act, 1994 provides that value of services should be considered as inclusive of taxes when only gross amount has been collected from the recipient of services. They stated that when service tax was not collected by them from service recipient, the same should have been considered as inclusive of tax without seeing any further condition. However, the said benefit had not been extended to them by the Ld. officer in Show Cause Notice issued.
- They had been denied benefit because of non-availability of evidence that they had collected tax from the customers. On the basis of tally data and returns filed by them and invoices issued by them it was clear that they had not collected tax from any of the customer and the same fact had also been mentioned by Ld. officer in para the 7.4 and 8 in the Show Cause Notice issued. In the said para it was mentioned that they had issued invoices to the customer having value inclusive of tax. Thus, it is clear that they had not collected tax from any of its customer.

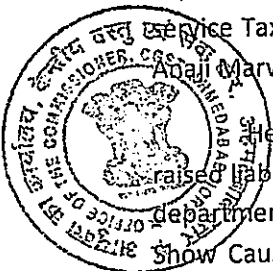
I. They have placed reliance on the following judgements:

- i. *Commr. of Cen. Excise & Cus., Patna Versus M/S Advantage Media Consultant & Anr. 2008 (10) TMI570—SC*
- ii. *Commissioner of Service Tax, Mumbai-I Versus Allied Aviation Ltd. 2017 (4) TMI 438 - CESTAT Mumba*
- iii. *Commissioner of Central Excise, Delhi v. Maruti Udyog Ltd. [2012 (141) EL T 3 (SC)]*

J. SCN is issued by the department in haphazard manner.

- They have produced the following extract of para 10(vi) of the SCN:
  - vi) M/s PDPL has procured 'supply of manpower services' from Shri Anaji Marwadi, a labour contractor, to whom they have made payment in cash, as detailed in the following table. It pertinent to mention that under the provisions of Section 68(2) of Finance Act, 1994 read with Notification no. 30/2012-ST dated 20.06.2012, as amended from time to time, M/s GLM are required to discharge Service Tax liability under Reverse Charge Mechanism (RCM) for Manpower services received from Shri Anaji Marwadi, as per Table shown below:

Here, noticee is M/s. PDPL, whereas in the above-mentioned para of SCN, department has raised liability on account of RCM on M/s GLM instead of M/s. PDPL which shows the carelessness of the department. It can be seen that department officials have just copy pasted the matter from some other Show Cause Notice and demand has been raised on the noticee based on the this copy pasted SCN which is not tenable.





There are two tables numbered as 7.1 in the Show Cause Notice issued, one is in para 7.5 and other is in para 9. Also, both the tables are different, and details are not the same. If there are different data, then tables should be numbered differently.

They stated the these had made it clear that department official had not done the reliable investigation in order to raise such a big demand which becomes clear from the errors in Show Cause Notice.

**L. Show Cause Notice issued without following process as defined in Master Circular no. 1053/02/2017-CX dated 10-03-2017 needs to be set aside:**

- The principle of law laid down in these judgements is that a show-cause notice issued without following the requirement of the Pre-notice Consultation as mandated by the Board is rendered illegal.

**N. As Regards Penalty u/s 77, 78 and 78A:**

- They have contended that Penalty under section 78 can be levied only if there is a fraud; collusion; willful misstatement; suppression of facts or contravention of any provisions with intend to evade payment of service tax and it can be imposed by invoking larger period or extended period for issue of show-cause notice, only if the assessee has deliberately done an action with an intention to hide certain facts from the department and department has confirmed it beyond doubt with aid of corroborative evidence that there was a deliberate act on part of assessee to evade tax. No penalty shall be imposable on assessee for any failure referred to in the said provisions if assessee proves that there was reasonable cause for said failure. {*CCE, Meerut-II v. On Dot Couriers & Cargo Ltd. (2006) 6 STJ 337 (CESTAT, New Delhi)*}

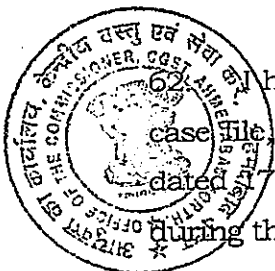
- Lastly they had requested to crave leave to add, alter or amend all or any of the submissions mentioned hereinabove and to lead such oral and / or documentary evidence as may be considered necessary.

#### **PERSONAL HEARING**

61. Personal Hearing was granted to the notice on 23.09.2021 and 21.10.2021, but the assessee had sought extension. Thereafter, the personal hearing was granted and fixed on 27.11.2021. Shri Amish Khandhar, CA and Shri Rashmin Vaja, CA appeared for personal hearing. They have submitted a brief summary of case /their say dated 17.11.2021. They had nothing further to add to what has already been submitted in the written reply dated 25.05.2021 and they requested to decide the case on merits.

#### **DISCUSSION AND FINDINGS:**

have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 25.05.2021 and summary dated 17.11.2021, documents submitted and oral submission made by the assessee during the personal hearing.

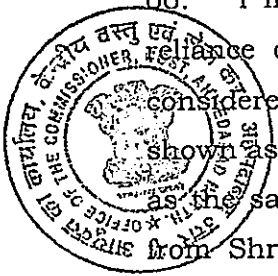


63. On going through the SCN, I find that the SCN has been issued on the basis of investigation carried out by the officers of the DGGI, Ahmedabad Zonal Unit. I find that the SCN has alleged that the assessee had received the cash amount towards Pandal and Shamiana Service Provided to various customer and to their other related company viz. M/s. Green Leaves Management Company (GLM). The assessee had neither issued any invoice nor had accounted the said consideration in their books of account for the provision of services. The assessee had not discharged their service tax liability of Rs 5,36,93,856/- on receipt of cash amount during the period from April 2014 to June 2017. Further, SCN has also alleged that the assessee had not paid service tax of Rs. 44,09,611- for April 2014 to June 2017, under reverse charge mechanism on manpower supply service provided by Shri Anaji.

64. I find that the assessee has vehemently contested the charges levelled against them in their written defence submission dated 25.05.2021. They have stated that the department has totally relied upon the excel sheet data while alleging the short/non payment of service tax. The assessee has stated that the estimates given to their prospective customer were prepared in the excel sheets, and they could not form the part of the accounting till the provision of service and consideration was finalised. They have contended that the excel file is merely the file in which estimates were prepared for their prospective customers. There was no cash seizure during the search which substantiate their case that they had not indulged in any sort of cash dealing with customers. I find that the assessee has further contested that the excel sheet alone can not be relied upon, as there was no corroborative evidence indicating the cash transaction. They have also pointed out that one of their customer whose statement was taken and relied upon by DGGI, Shri Sunny Patel had straight away denied the amount mentioned in the excel sheet.

65. I find that assessee has also alleged that the investigation was not carried out in proper manner and was selective and biased. They have also alleged that the statement of Shri Bharat Kotak was not recorded though their invoice was discussed in the SCN, in the same way, statement of Shri Sunny Patel was recorded but invoice issued to him was not discussed in the SCN. Further, as per Para 10 of the SCN the huge amount of Rs.16,70,29,048/- was added arbitrarily to demand, but there was no discussion in the SCN. They have also contended that if statement of director and accountant are not considered, then, there is no evidence produced by the department to buttress their say. Excel sheet is questionable and hence the same can not be relied upon by the department to demand such a huge sum of service tax.

66. I find that the assessee has also argued that there can not be selective reliance on excel sheet. The errors pointed out by their director Shri Pinkal was considered in one instance only but not considered for entire calculation. The amount shown as outstanding should not have been considered for computation of tax liability as the same were not received. They have also argued that the amount receivable from Shri Sunny Patel was not to be received for being substandard/ defective service, as per his statement, though the same was considered in computation. The

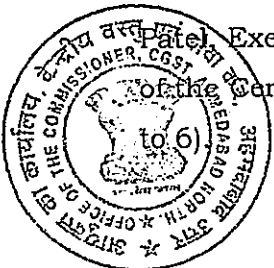


same should not have been considered as per Rule 6(3) of Service tax Rules. Further, they have stated that all amount collected by them and booked were inclusive of tax, but while calculating the demand the same has not been considered. Their director has also stated that the amount shown against the name Green Leaves Management Pvt Ltd (GLM) where Mr. Pinkal Patel is also one of the director, was not towards any service but such amount was given by M/s Green Leaves Management Pvt. Ltd for day to day functioning of the M/s Poojan Decor Pvt. Ltd., and this could have been ascertained from the fact that this cash receipt was accounted as 'Rojmail'. The Statements of their personnel were taken under pressure and stress therefore they cannot be taken as a base for raising demand.

67. I also find that the assessee has also objected that the service provided by Shri Anaji Marwadi was in nature of job work service and not in nature of manpower supply service and hence RCM was not be applicable on the same. CBEC has issued clarifying Circular No.190/9/2015 - Service Tax dated 15.12.2015 on the same. Thus, the demand raised on the job work services received by noticee is baseless and not tenable. Further, they have stated that the SCN has been issued without pre SCN consultation, hence not sustainable. They have also argued the as per section 66B, service tax can be levied where activity is done by one person for another person. However, it was alleged that services had been provided by for the difference amount mentioned in the excel sheets but there was no mention about the person who had received such services. Without mention of the person who has received services, there can be no levy of service tax.

68. Now perusing all the records pertaining to the subject case, I find that, it is an undisputed facts that the noticee was engaged in providing taxable service akin to Pandal or Shamiana Service as defined under the erstwhile Section 65(67), 65(77b) of Finance Act, 1944. I find that a search was carried out at the office premises of the assessee by the officers of the DGGI, Ahmedabad Zonal Unit. It is evident that the officers of DGGI had recovered one pen drive in possession of Shri Kirit Manubhai Prajapati, Accountant of the noticee; it also found the data stored on personal google drive account of Shri Shaiyal Patel, Executive of the noticee. The data stored were in excel files, the print out of the data was taken out on the spot and withdrawn under panchnama dated 19/20.08.2019 in presence of the independent panchas. It was also evident that Shri Bharatbhai Modi, one of the director of the noticee was present during the panchnama proceedings.

69. I find that Statement of Shri Pinkal Dandwala, Shri Bharatbhai Modi, both Directors of the assessee, Shri Kirit Manubhai Prajapati, Accountant and Shri Shaiyal Patel Executive were recorded on 19/ 20.08.2019 under the provisions of Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. (RUD 3

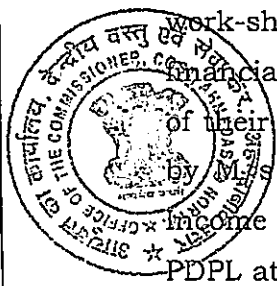


70. On perusing the statement dated 19/20.08.2019 of Shri Kirit Manubhai Prajapati, Accountant, I find that he has stated that he was working under the supervision of Shri Pinkal Dandwala, Director. I find that he had confirmed the recovery of pen drive from him. He had stated that he had maintained the accounts related to data of M/s. Poojan Décor P L in the said pen drive. He has also stated that the said accounts were actual transaction documents of M/s PDPL. The said pen drive contained year-wise and venue wise excel workbooks. Each row in a worksheet contained the details of individual functions. He admitted that the said pendrive had contained the excel workbooks containing the grand total of all the party-wise receipts and expenses made, both in the form of cash and cheque, in a given financial year. He had further stated that the venues for which M/s PDPL had received payment directly from the client included YMCA Glorya Banquet and various venues for outdoor services (represented as 'Misc income', say, a birthday party at a residential address). On the contrary, for the venues like - Andaz, YMCA Gracia Banquet, YMCA Lawn, Green Earth, Forum, etc- the client had paid to Green Leaves Management, who in turn, had paid to M/s PDPL for the decoration services rendered by them.

71. I also find on perusing the statement dated 19/20.08.2019 of Shri Shaiyal Patel, staff member of M/s PDPL, wherein he has inter alia confirmed that the documents available in annexure file A-43 were resumed under Panchnama dated 19-20.08.2019 was printout of data downloaded from his personal google drive with id [sesspatel@gmail.com](mailto:sesspatel@gmail.com) which had contained the day-to-day transactions (both inward and outward) in cash as well as cheque, for the FY. 2018-19 and 2019-20.

72. In his statement dated 19/20.08.2019, Shri Bharatbhai Modi, Director, informed that he was operating from firm's godown cum-office in Mummatpura and his role was limited to general supervision of godown. He had further stated that the business was actually being run by Shri Pinkal Dandwala and his son Shri Yash Modi.

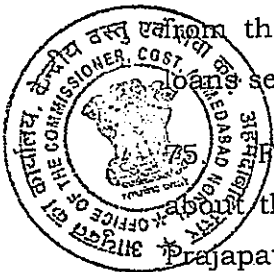
73. Shri Pinkal Dandwal, in his statement dated 19/20.08.2019 inter alia stated that he used to look after (along with Shri Bharat Modi and Shri Yash Modi) and handled marketing, finance, accounting and other day-to-day operations of M/s. Poojan Decor Pvt. Ltd; that they were providing service of Venue Event/Event Management; that they have taken party plots on lease and organized various functions like marriage, corporate events, exhibition and all kinds of social events. He had confirmed the the documents filed in the Made Up file No. 1 and 2 files pertained to his company M/s. PDPL. On being asked to explain the documents filed in the said files he stated that the documents gave the details of receipt of cash and cheque by M/s PDPL. For example: the page no. 437 of Made up file No. 1 was a consolidated work-sheet of receipt of cash and cheque in the accounts of M/s PDPL during the financial year 2014-15. The worksheet showed the receipt of cash/cheque on account of their transactions at Shankus' Water park, Miscellaneous income, money received by PDPL from M/s. Green Leaves Management Pvt. Ltd., his other company, income (received directly from the clients) on account of events organised by M/s PDPL at YMCA's Pool side lawn and two restaurants, funds received from his housing society M/s. Aryaman, certain misc. funds received from one or other source and



funds received from one Shri Saurabh Agarwal. He confirmed that all these documents were the printouts of data retrieved from the pen-drive resumed from the possession of Shri Kirit Prajapati, his accountant in M/s PDPL. He had also stated that the printout contained in made up file No. 2 are print out of .xls file maintained in google drive by Shri Shaiyal Patel, his employee. He had also confirmed that these documents were the actual transactions records of his company M/s PDPL. He also confirmed that they had made certain transactions over the period for which either the invoices was not raised or for which the invoices were raised for substantially low value so as to avoid payment of applicable service tax/GST. Such cash transactions were not accounted in their regular account statements and no service Tax or GST as the case may be was paid on such transactions. Further, these cash transactions were neither recorded in GST returns nor in erstwhile ST-3 returns for the respective period. He had also admitted his responsibility for suppression of facts, he further stated that he would work out the exact duty evaded figure and inform the office along with detailed working. Shri Pinkal had also stated that Shri Anaji had provided day to day labourers and they had paid to Shri Anaji according to the persons supplied.

74. Further, on perusing the statement dated 14.10.2019 (RUD-8) of Shri Pinkal Dandwala, which was also recorded under section 14 of Central Excise Act read with Section 83 of the Finance Act, 1944. I find that Shri Pinkal had stated that the amount of Rs. 5,44,07,800/- provided by M/s. M/s Green Leaves Management Pvt. Ltd (GLM) for day to day functioning of their firm, and this could be ascertained from the fact that this cash receipt was accounted as 'Rojmail' ; that the receipt of Rs. 6,16,50,500/- in cash on account of Misc. Income Head, was actually the income his firm for providing taxable service as mandap decorator to various clients and this cash income was not recorded in their books of account; that they had not paid service tax on it; that they had adopted similar modus operandi in case of receipt shown on account of 'YMCA Small Banquet', 'Aryaman' 'YMCA Pool Side Lawn'; that from FY 2016-17 onwards, they had started mentioning the funds borrowed separately- the funds borrowed by him were entered as 'Pintubhai Borrowed Fund', funds borrowed by Shri Bharat Modi, another director in M/s Poojan Decors Pvt. Ltd., were entered as 'Bharatbhai Borrowed Fund' and the funds borrowed by both or other Yash Modi were entered as "Mis Borrowed Funds"; that for the financial year 2014-15 and 2015-16 they used to record borrowed fund under 'Misc Income' head; that they had not agreed with the liability worked out as the outstanding amount of Rs. 2,78,36,000/- had been added to the taxable value and the income was considered as exclusive of tax; that for the year 2014-15 and 2015-16 there were some entries in "Misc Unaccounted Income" that pertained to certain short term loans taken in cash their friends, as during 2014-15 and 2015-16, they were not recording such loans separately as they were doing from financial year 2016-17 onwards.

From the above facts and records available, I find that there is no dispute the print out taken out of the per-drive recovered from Shri Kirit Manubhai Prajapati and from the google drive maintained by Shri Shaiyal Patel. I also find that the noticee has not disputed the contents of the print out till the stage of adjudication.



The assessee has contested in their defence reply dated 25.05.2021 that the data reflecting in the printouts were mere estimates prepared in excel sheets for their perspective customers, they had issued invoices where the rates were finalized. In this regard, I find that the print out of the data contained in the pen drive as well as in google drive were taken out on the spot under panchnama proceedings in the presence of independent witness. From the available records, I also find that Shri Bharatbhai Modi, one of the director of the assessee was also present at the time of panchnama proceedings. On perusing the printouts, I find that there are worksheets bearing title "Receipts -Grand Total Sheet 14-15", "Receipts -Grand Total Sheet 15-16", "Receipts -Grand Total Sheet 16-17" and "Receipts -Grand Total Sheet 17-18". I can see that these sheets are consolidated data of other worksheets having name which are appearing the Grand Total Sheet. I find that the scanned images have been reproduced in the SCN. These excel sheets contain the subheads/column viz. "cash deposit 1, cash deposit 2...upto...cash deposit 5, Total Cash, cheq deposit 1, cheq deposit2.... Total Cash+ Cheq." On perusing some feeder sheets, I can see there is a column 'estimates', in addition to the columns pertaining to cash deposit, cheque deposit, but the columns of Grand Total Sheets are consolidation of the respective columns of feeder excel sheets. Therefore, I find that the heading / column of sheets clearly indicates income, Receipt, cash deposit or cheque deposit. Hence, the plea of being "estimates", as raised by the assessee, is not acceptable. Even for the sake of arguments if we accept that these were estimates, the logic behind preserving these estimates in a systematic manner and concealed manner for years defies comprehension and the same has not been explained satisfactory by the noticee for obvious reasons.

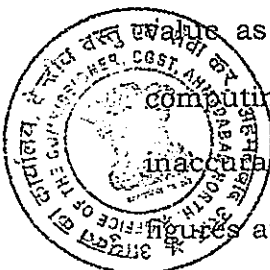
76. From the records, it can be discerned that the none of the persons whose statements were recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, have retracted their statements. Further, none of them have raised any complaint of recording of statements under threat, stress or duress by the officers of DGGI. Therefore, the plea taken by the assessee that the statement were given under stress, pressure and duress is not acceptable. They have not disclosed as to how they were pressurized. I find that the proceedings under Section 14 of Central Excise Act, 1944 is deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860) and if any retraction of the confession has to be made, the same should be made before the same authority who originally recorded the statement. I find that this is not the case of retraction, merely alleging of recording of the statement under pressure or stress at the time of adjudication stage, can not take away the evidential value of the statements. Therefore, I find that the statements recorded during the investigation process have vital evidence value and can be relied upon in the adjudication process. In this regard, I rely on the decision of the tribunal in the case of P.B. NAIR C&F PVT. LTD. Commissioner of Custom (General), Mumbai reported at 2015 (318) E.L.T. (11) - Mumbai, where in the tribunal at para 5.5 held that the *Confessional statements never retracted before the authority before whom the statement was recorded, belated retractions of statements after about one and half years cannot take*

away the evidentiary value of original statement. I also taken support of the decision of the Hon'ble High Court of Delhi in the case of H.R. SIDDIQUE Vs. DIRECTOR, ENFORCEMENT DIRECTORATE reported at 2015 (318) E.L.T. 182 (Del.), where in it was the high court observed that "Had the appellant subjected to threat, coercion or pressure, as alleged by him rather belatedly, he would have retracted his confessional statement soon after making the same once the alleged threat, coercion or pressure ceased to influence the action of appellant - Appellant failed to disclose as to how he was pressurized, coerced, or tortured, and by whom, when he made the earlier confessional statement".

77. With regard to contentions of the assessee for considering the outstanding amount for computing taxable value though the same was not received by them and non granting of the benefit of cut-duty value in terms of Section 67(2) of the Finance Act, 1994, I find that the outstanding amount was to be received against the provision of service and no invoices were issued by the assessee within stipulated time period under the Finance Act, as well as the same was not accounted in the books of account. There is nothing on records the same was not received later on. Therefore, the arguments/ contention can not be accepted. Further, the amount was collected in cash and it was not accounted for in the financial records, there was nothing on records to prove that the said amount was inclusive of tax. Hence, the benefit of cum-duty can not be extended to the assessee.

78. I also find with regard to the contention raised by the assessee that the cash receipt of Rs. 16,70,29,048/- from M/s. Green Leaves Management P Ltd by them has been added arbitrarily to the value of demand is not correct in as much as the accounting of the said account in the private record of M/s. Green Leaves Management Pvt Ltd. was made under expense head of M/s. Green Leaves Management Pvt Ltd., therefore, the same was considered to be income of the assessee.

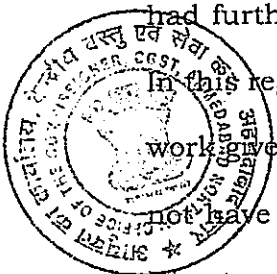
79. From the above facts, legal position, precedents and records available, I find that sufficient evidence was collected by the department to corroborate each and every charges levelled in the SCN. Recovery of transactions in digital form is backed by the Panchnama, the statements of employees and directors as aforementioned. I find that Shri Pinkal Dandwala, in his statement dated 20.08.2019 and 14.10.2019 has accepted the facts of receiving of amount in cash and not accounting the same in the regular books of accounts, I also find that he has requested for considering the taxable amount as inclusive of tax and not to include the same in outstanding amount in computing their tax liability. Further, the contention of the noticee, regarding inaccuracy in the calculation, contradiction in the narration, and mismatch in the figures at best appear to be trivial and clerical errors, which do not take away much from the main narrative pertaining to the issue. i.e the noticee had indulged in



evasion of legitimate service tax due to the department by way of taking consideration in cash. All the these facts lead me to conclude that the assessee had recovered certain amount of taxable value of the provision of services in cash and had not considered the same for computation of taxable value declared in their ST-3 Returns, thereby evading of the payment of appropriate service tax. I find that in any type of clandestine activity, the persons try their best not to leave any evidence, such activity at best can be established only by circumstantial evidence. In this regard, I would like to rely on the observation made by the tribunal in respect of case of *Gulabchand Silk Mills Ltd.* [2005 (184) E.L.T. 263 (Tri. - Bang.)], where in the tribunal observed that "We cannot expect persons indulging in clandestine clearance to faithfully put the details of all such clearances in some register and append their signature. This is never done. Hence, clandestine activity at best can be established only by circumstantial evidence. It should also be borne in mind that it will be humanly impossible to establish every link in the chain of clandestine activity.....". Therefore, I hold that the assessee is liable to pay the service tax of Rs. 5,36,93,856/- under the proviso to Section 73(1) of the Finance Act, 1944 as proposed in the subject SCN, by adding the amount of taxable value of Rs. 38,45,86,349/- recovered in cash over and above the invoice value, to the taxable value of Rs. 11,92,30,582/- as declared in ST-3 Returns. I also find that the provisions of Section 75 of the Finance Act, 1944 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate. I thus hold that the assessee is also liable to pay the interest on Service Tax of Rs. 5,36,93,856/-.

80. Now coming to the second issue of non payment of service tax under reverse charge mechanism on manpower supply service received by the assessee from Shri Anaji during the period from April 2014 to June 2017. I find that the assessee had made payment to Shri Anaji. I also find that this fact has not been disputed. I also find that Shri Pinkal Dandwala, in his statement dated 20.08.2019 had stated that Shri Anaji used to provide them labourers for day to day work of their company, he had further stated that Shri Anaji was not registered under service tax department.

In this regard, I find that the assessee has not come up with any evidence showing the work given to Shri Anaji on job work basis as contended by the assessee. Hence, I do not have any other option except to rely on the statement of Shri Pinkal Dandawala, Director. I find that the activity of providing of labourers for a consideration by Shri





Anaji, clearly falls within the ambit of supply of manpower service. Hence, I find that in case of procurement of service of manpower from the individual by the body corporate, the recipient of the service is liable to pay service tax under Reverse Charge mechanism under Notification No. 30/2012-ST dated 20.06.2012 issued under Section 68(2) of the Finance Act, 1944. In the instant case, I find that the assessee being the body corporate and recipient of service from individual, is liable to pay service tax under RCM. Therefore, I hold that the assessee is liable to pay service tax of Rs. 44,09,611/- under the proviso to Section 73(1) of the Finance Act, 1944 as proposed in the subject SCN. I also find that the provisions of Section 75 of the Finance Act, 1944 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate. I thus hold that the assessee is also liable to pay the interest on Service Tax of Rs. 44,09,611/-.

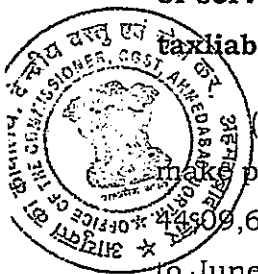
81. I find that the assessee has voluntarily paid Rs. 29,13,035/- against their service tax liability. Vide DRC-03 challan no. DC2408190234365/DI2408190323611 dated 20.08.2019 for Rs. 4,13,035/- and DRC-03 Challan no. DC2408190429772 dated 30.08.2019 for Rs. 25,00,000/-. Therefore, I hold that the same is liable to be appropriated against their total service tax liability.

82. I observe that the assessee has relied upon the various decisions of tribunal in their defence. In this regard, the ratios of the decision can be applied only if facts and circumstances of the case are shown to fit the same precedents which have been relied upon. The assessee has failed do so. In this regard, I take support of the decision of the Hon'ble Apex Court in the case of *Alnoori Tobacco Products* [2004 (170) E.L.T. 135 (S.C.)], wherein the Hon'ble Apex Court has held that "*a precedent followed had to be shown to fit factual situation of a given case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases*".

83. From the above facts discussed hereinabove, I find that the assessee has contravened the following provisions of Chapter V of the Finance Act, 1944 and Service Tax Rules 1994:

(a) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable services by **not considering the taxable value of services, so provided, that was received in cash while computing their service tax liability.**

(b) Section 68 of the Finance Act, 1994 in as much as they have failed to make payment of service tax liability of Rs. 5,81,03,467/- (Rs. 53693856/- + Rs. 44,09,611/- under RCM ) on the services provided by them during the period April-14 to June-17, in such manner and within the period prescribed;



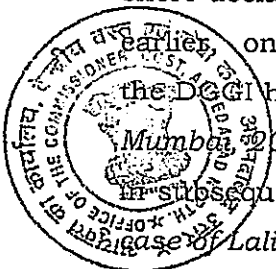
(c). Section 70 of the Finance Act, 1994 read with Rule 7 of the service Tax Rules, 1994 in as much as they have failed to furnish proper periodical returns mentioning the particulars of the aforesaid taxable service provided by them;

(d) Notification no. 30/2012-ST dated 20.06.2012, as amended, in as much as they had failed to pay services tax on the taxable value of manpower supply services received from Shri Anaji by them.

(e) Rule 4A of Service Tax Rules, 1994, in as much as they have failed to issue invoice giving correct details of the taxable value of the service provided by them by not including the cash portion of taxable value recovered by them from their clients

(f) Rule 5 of the Service Tax Rules, 1994, in as much as they have failed to maintain proper records regarding actual taxable value of the services provided by them.

84. From the facts and discussion aforementioned, I find that the noticee has resorted to short declaring / under reporting the taxable value of service provided in their financial records as well as in ST-3 Returns filed. They had collected certain part of taxable value in cash over and above the invoice value of the service provided to their clients. The noticee knowingly and intentionally had not considered cash income or certain part of taxable value of the service while computing their service tax liability. They had chosen to not declare the correct value in their ST-3 Returns for the period from April 2014 to June 2017. Had the department not investigated the fact of suppression of the actual turnover of service, the service tax amount, so evaded would not have been revealed. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence are in place. Further, the assessee are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise law. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that the such facts of contravention and short/non paying the service tax by short declaring /under reporting taxable value of the service provided, as discussed earlier on the part of the assessee came to the notice of the department only when the DCGI had initiated the investigation. In the case of *Mahavir Plastics versus CCE Mumbai* 2010 (255) ELT 241, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275*, in the case of *Lalit Enterprises v CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on



verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under proviso to Section 73(1) of the Finance Act, 1944 by invoking the extended period of time of 5 years, and the service tax total amounting to Rs. 5,81,03,467/- (Rs. 5,36,93,856/- + Rs. 44,09,611/- under RCM) is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994. And for the same reasons, all ingredients for imposing penalty under Section 78 exist, therefore the assessee is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

85. 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.

86. 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.

87. As regards the proposal of imposition of penalty under Section 77(1)(b) and 77(1)(e), I find that the assessee has not maintained proper records in as much as they had not recorded certain part of the consideration in their books of account. Thereby contravening the provisions of Rule 5 of Service Tax Rules 1944. I also find that the assessee has not issued invoice giving correct details of the taxable value. Thereby, contravening the provision of Rule 4A of the service Tax Rule 1994. Thus, the assessee have rendered themselves liable to penalty under Section 77(1)(b) and 77(1)(e) of the Finance Act, 1944.

88. Now, as regards imposition of penalty on Shri Pinkal Dandwala, Director under Section 78A, I find that he was key person in the assessee company and it was on his directions that his employees had not recorded the payments received in cash in their books of account, or consider the taxable value recovered in cash for computing the taxable value declared in ST-3 returns and consequently, no service tax was paid on such cash component of taxable value. During the course of recording of statement, he had inter alia admitted evasion of service tax by his company and had taken responsibility for the same. As such, he had a decisive role to play in the

present evasion unearthed by DGGI, AZU, Ahmedabad. By committing such an act, he has rendered himself liable to penalty under **Section 78A** of the Finance Act, 1994.

89. I also find that **Shri Bharatbhai Modi, Director** was holding key position in the assessee company. it was on his directions that his employees had not recorded the payments received in cash in their books of account, or consider the taxable value recovered in cash for computing the taxable value declared in ST-3 returns and consequently, no service tax was paid on such cash component of taxable value. Being a director in the firm, he had a decisive role to play in the present evasion unearthed by DGGI, AZU, Ahmedabad. By committing such an act, he has rendered himself liable to penalty under **Section 78A** of the Finance Act, 1994.

90. **Shri Yash Modi, Director** too is liable for penalty under **Section 78A** of Finance Act, 1994 in as much as he, along with Shri Pinkal Dandwala and Shri Bharatbhai Modi, was responsible for day-to-day functioning of the firm as stated by Shri Bharatbhai Modi in his statement dated 20.08.2019. Thus, he was well aware of the wrongdoings in the firm i.e. not recording of the payments received in cash in their books of account, and not considering the taxable value recovered in cash for computing the taxable value declared in ST-3 returns and consequently, non-payment of service tax on such cash component of taxable value. By committing such an act, he has rendered himself liable to penalty under **Section 78A** of the Finance Act, 1994

In view of the above discussion and findings, I hereby pass the following order:

#### ORDER

(i) I hereby reject the taxable value of **Rs. 11,92,30,582/-** declared in the ST-3 returns under the provisions of Rule 4 of Service Tax (Determination of Value) Rules, 2006 and order to determine valued at **Rs. 50,38,16,931/-** by adding the amount of **Rs. 38,45,86,349/-**, recovered by the assessee in cash over and above the invoice value or shown as outstanding, to the said amount of **Rs. 11,92,30,582/-**, under the provisions of Section 67 of the Finance Act, 1994 read with Rule 4 of the Service Tax (Determination of Value) Rules, 2006;

(ii) I hereby demand the service tax amounting to **Rs. 5,36,93,856/-** (Rupees Five crore thirty six lakh ninety three thousand eight hundred fifty six only) short/non paid corresponding to cash income received during the period from April-2014 to June-2017 as shown above, and order to recover from the assessee under the proviso to Section 73(1) of the Finance Act, 1994;

(iii) I hereby demand the service tax amounting to **Rs. 44,09,611/-** (Rupees Forty Four Lakhs Nine Thousand Six Hundred Eleven only) on payments made to Shri Anaji Marwadi during the period from April-2014 to June-2017 for supply of manpower services under Reverse Charge Mechanism (RCM) as shown above, and order to recover from the assessee under the proviso to Section 73(1) of the Finance Act, 1994;

(v) I hereby allow and order for the appropriation of the service tax amounting to **Rs. 29,13,035/-** voluntarily paid by the assessee against their above mentioned Service Tax liability of **Rs. 5,81,03,467/-** (=Rs. 5,36,93,856/- + Rs. 44,09,611/-).

I hereby order to charge Interest at the appropriate rate under Section 75 of the Finance Act, 1994, and to recover from the assessee on the service Tax demanded at (iii) above;



(vii) I hereby impose the penalty of Rs. **5,81,03,467/-**(=Rs. 5,36,93,856/- + Rs. 44,09,611/-) (Rupees Five Crore Eighty One Lakhs Three Thousand Four Hundred Sixty Seven only) on the assessee under the provisions of **Section 78** of the Finance Act, 1994 for suppressing the facts and contravention of statutory provisions with the intent to evade payment of service Tax on the service tax amount demanded at (ii) and (iii) above;

(viii) I hereby impose the penalty of Rs. Rs. 10,000 (Rs. Ten Thousand) on the assessee under 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 in accordance with the relevant provisions of the Finance Act, 1994.

(ix) I hereby impose the penalty of Rs. 10,000 (Rs. Ten Thousand) on the assessee under the provisions of Section 77(1)(e) for issuance of incorrect invoices by way of not incorporating the unaccounted cash received by them;

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

(xi) I impose the penalty of Rs. 1,00,000/-(Rs. One Lakh only) on **Shri Pinkal Dandwala, Director under Section 78A of the Finance Act, 1994;**

(xii) I impose the penalty of Rs. 1,00,000/-(Rs. One Lakh only) on **Shri Bharatbhai Modi, Director under Section 78A of the Finance Act, 1994;**

(xiii) I impose the penalty of Rs. 1,00,000/-(Rs. One Lakh only) on **Shri Yash Modi, Director under Section 78A of the Finance Act, 1994.**

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

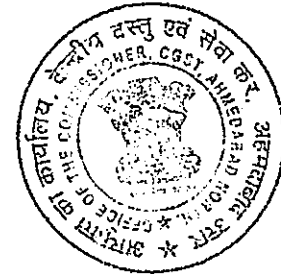
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Date: .12.2021

To.

1. M/s. Poojan Decor Pvt Ltd.,  
Plot No. 630/01, Opp. Baliadev Temple  
Mummatpura Gam, S.G. Highway  
Dist: Ahmedabad
2. Shri Pinkal Dandwala, Director,  
M/s. Poojan Decor Pvt. Ltd.,  
A-6, Aryaman Bungalows, Nr. Ambali Rly. Crossing  
Thaltej-Shilaj Road, Thaltej  
Ahmedabad-
3. Shri Bharatbhai Modi, Director,  
M/s. Poojan Decor Pvt. Ltd.,  
C-24, Aryaman Bungalows, Nr. Rly. Crossing  
Shilaj, Ahmedabad
4. Shri Yash Modi, Director,  
M/s. Poojan Decor Pvt. Ltd.,  
C-24, Aryaman Bungalows, Nr. Rly. Crossing  
Shilaj, Ahmedabad



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-I, Division-VII, Ahmedabad North.
5. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
6. Guard File