


General

आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1 st Floor) Navrangpura, Ahmedabad-380009
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO.STC/15-30/OA/2019

DIN : 20220164WT0000555A58

आदेश की तारीख /

Date of Order : 18.01.2022

जारी करने की तारीख /

Date of Issue : 19.01.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव

/ UPENDRA SINGH YADAV

आयुक्त

/ COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-54/2021-22

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

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

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

3. 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 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

विषय: कृष्ण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice no. STC/15-30/OA/2019 dated 29.05.2019 issued to M/s Kesari Printer Limited, 4th & 5th Floor, Rituraj Apartment Opp. Rupal Flats, Near Loyala School, Memnagar, Ahmedabad

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 54 /2021-22

M/s Kesari Printer Limited, 4th & 5th Floor, Rituraj Apartment Opp. Rupal Flats, Near Loyala School, Memnagar, Ahmedabad and Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printer Limited, residing at A-8, Achal Apartment, Behind Akash Neem Bungalow, Bodakdev, Ahmedabad were issued SCN No. STC/15-30/OA/2019 dated 29.05.2019 by the Principal Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad..

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S KESARI PRINTERS LIMITED and Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printer Limited, ARE AS FOLLOWS:

M/s Kesari Printer Limited, 4th & 5th Floor, Rituraj Apartment Opp. Rupal Flats, Near Loyala School, Memnagar, Ahmedabad" (herein after referred to as the "the said Assessee") were engaged in providing taxable Services viz. " Event Management Service" as defined under sub-clause (zu) clause (105) of Section 65 of the Finance Act, 1994 & advertising Agency Service as defined under sub-clause (e) clause (105) of Section 65 of the Finance Act, 1994. The said assessee was holding the Service Tax Registration bearing No. AAACK 8926CST001 for providing the above said taxable services since 04.03.2009.

2. It was noticed that M/s Soi Entertainment and Communication Ltd, 4th & 5th Floor, Rituraj Apartment Opp. Rupal Flats, Near Loyala School, Memnagar, Ahmedabad were registered with Service Tax department since 03.12.2001 with Service Tax registration No. AACCS7804DST001 and the other company viz, M/s Soi Live Marketing & Events was also running from the same premises. Further, it was also gathered that both the assessees had neither paid the Service Tax nor had filed their periodical ST-3 returns regularly. Therefore, searches were conducted at the premises of 4th Floor, Rituraj Apartment Opp. Rupal Flats, Near Loyala School, Memnagar, Ahmedabad on 05.08.15 by virtue of Search Warrant No. 85/15-16 dtd. 05.18.15 and at the premises 5th Floor, Rituraj Apartment Opp. Rupal Flats, Near Loyala School, Memnagar, Ahmedabad on 05.08.15 by virtue of Search Warrant No. 86/15-16 dtd. 05.08.15; however as per the panchnama dtd. 05.08.2015 drawn at the/premises, no records were found pertaining to M/s Soi Live Marketing & Events.

2.1. Further, the financial documents viz; Balance Sheet for the year 2011- 12 to 2013-14, P & L Accounts for the period 2011-12 to 2015-16 (up to July- 2015), Trial Balance Sheet for F.Y 2011-12 to 2014-15 and ledger for the period 2011-12 to 2015-16 (up to July-2015) were collected under panchnama dated 05.08.2015 for further scrutiny. During the course of search, in presence of two independence panchas, Shri Himanshu K. Shah, Chief Mentor of the said assessee informed that M/s Soi Live Marketing & Events was a division of M/s Kesari Printers Ltd. and liability of Service Tax was discharged by M/s Kesari Printers Ltd. Further, on scrutiny of the records gathered, it was noticed that the said assessee had not discharged their Service Tax liability

for the period from January -2013 to 2014-15 & 2015-16 (upto July-2015). Based on the financial documents viz; Service Tax payable ledger, Balance Sheet for the year 2011-12 to 2013-14, P & L Accounts for the period 2011-12 to 2015-16 (up to July- 2015), Trial Balance Sheet for F.Y 2011-12 to 2014-15 and ledger for the period 2011-12 to 2015-16 (up to July-2015), on the spot the unpaid service tax liability was worked out to the tune of Rs. 90,03,572/-.

3. It appeared during the investigation that M/s Soi Live Marketing & Events, were not a business entity but a division of M/s Kesari Printers Limited and had taken Service Tax Registration in the name of M/s Kesari Printers Limited and Shri Himanshu K. Shah was the Chief Mentor of the said assessee and Shri Sunil Harishkumar Navani, Smt. Heena Arunkumar Mistry, Shri Janak Suryakant Jhaveri, Shri Miral Parimal Shah and Ms. Sohi Himanshu Shah were other directors in M/s Kesari Printers Limited. M/s Kesari Printers was holding Service Tax Registration bearing No. AAACK8926CST001 since March-2009 for providing output Service viz; "Event Management Service & Advertising Agency Service".

3.1 A statement of Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printers Limited was recorded on 05.08.2015 under section 14 of Central Excise Act, 1944, made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994, wherein he inter alia stated that M/s. Soi Live Marketing & Events (Division of M/s. Kesari Printers Ltd.) had engaged in providing Events, Advertising, Promotions, Live Marketing & Distribution services in Rural & Urban Markets; he further informed that they had taken Service Tax registration No.AAACK8926CST001 in March, 2009 in the name of M/s. Kesari Printers Ltd. for the Services "Event Management Services" and "Advertising Agency Services". That they were having their branches at Mumbai, Delhi, Kolkata and Bhubaneswar. On being asked about the Service Tax payment, he stated that they were not regularly discharging their Service Tax liability since the year 2012-13 to 2014-15; however, they were partially making their Service Tax payments; and during the subsequent period they were paying their past Service Tax liability alongwith the current Service Tax liability and showed the same in their Service Tax return periodically; he further informed that they had not paid the penalty and interest on the outstanding Service Tax due amount; he also stated that they had collected the Service Tax amount from their customers; on being asked about filing of ST-3 Returns, he stated they had not filed ST-3 returns on regular basis; he further informed that they had not paid the late fee for late filling of the ST-3 returns; on being asked about the constitution of their company; he stated that their Company M/s. Soi Live Marketing & Events was a Division of M/s. Kesari Printers Ltd; he further informed that the Service Tax registration was taken in the name of M / s. Kesari Printers Ltd; and all the records were maintained in the name of M/s. Kesari Printers Ltd only as stated above; that M/s. Soi Live Marketing & Events was a Division of M/s. Kesari Printers Ltd. and was not a business entity. Directors in M/s. Kesari Printers Ltd. were Shri Sunil Harishkumar Navani, Smt. Heena Arunkumar Mistry, Shri Janak Suryakant Jhaveri, Shri Miral Parimal Shah and Ms. Sohi Himanshu Shah, however, as he was the Chief Mentor of the above company, he looked after the entire affairs of the company; on being asked about availment of any amnesty scheme i.e. Voluntary Compliance Encouragement Scheme (VCES) for payment of past liability of Service Tax; he stated that they had availed VCES for the relevant period and had discharged

Service Tax liability of Rs. 45, 61,771/- (upto December, 2012) and would produce the copies of the VCES papers within a week's time. Further, on being asked about the service tax liability he stated that as per Service Tax ledger payable, Service Tax liability was arrived at Rs. 90,03, 572/(including Education & SHE Cess) for the period 2012-13 to July, 2015 and he agreed with the figures mentioned in the said worksheet as the same being true and correct, he had put his dated signature in token of agreeing to pay the Service Tax mentioned therein. Further as per the worksheet the Service Tax liability was arrived at Rs. 90,03,572/- (including Education & SHE Cess), out of which, he had made e-Payment of Rs. 5,15,000/- (Rupees Five Lakhs Fifteen Thousand only) vide Challan No. 10414 dated 05.08.2015 against aforesaid Service Tax liability and he had assured to make all the remaining payments within a short period.

3.2 Further statement of Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printers Limited was recorded on 12.01.2017 under section 14 of Central Excise Act, 1944 made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994 wherein he inter alia stated that that their firm was engaged in providing Events, Advertising, Promotions, Live Marketing & Distribution services in Rural & Urban Markets; that they have taken Service Tax registration No.AAACK8926CST001 since March, 2009 in the name of M/s. Kesari Printers Ltd. for the Services "Event Management Services" and "Advertising Agency Services" and at present they were having their branches at Mumbai and Delhi only; on being further asked he stated that due to financial crisis, they were not discharging their Service Tax liability regularly; on being further asked he stated they had not filed ST-3 returns on regular basis; that they had filed Service Tax Returns up to the period Oct-March-14; that thereafter, they had not filed ST-3 returns for further period. Further, he stated that due to the financial crisis, they had not paid Service Tax on regular basis and therefore they have not filed the ST-3 returns from April -2014 onwards; that according to them they had paid Service Tax approx. Rs. 55.60 lakhs for the period April-2014 onwards. On being asked about the agreement entered with Dishnet Wireless Ltd. dtd. 19h August 2013, he stated that they had entered into a contract with Dishnet Wireless Ltd by virtue of agreement dtd. 19h August 2013, that as per the agreement, they had got the distributorship of Recharge Vouchers and Talktime of the AIRCEL company for the state of Orissa; that they understood that services provided in the capacity of selling agent or a distributor of SIM cards or recharge coupon vouchers were exempt from Service Tax.

He was asked to peruse his previous statement dated 05.08.2015 by which he had accepted the liability of Rs. 90,03,572/- on the basis of Service Tax Payable-Paid ledger. Now, according to the detailed work sheet prepared on the basis of Balance sheet /Trial Balance Sheet for the period 2012-13, 2013-14 & 2014-15, Profit & Loss A/c 2015-16 (up to July-2015) and ST-3 Return filed up to the period Oct-Mar-14, their Service Tax liability was arrived at as detailed below:-

TABLE-A

(Amt. in Rs.)

Period	Gross amount as per B/S and Profit & Loss A/c	Less REP Income	Less SIM, Vouchers, E top etc. Income	Net Taxable Income	S.Tax Percentage	S.Tax payable	S.Tax paid			Total S.Tax Paid	Net S.Tax Payable
							By Cash	By Cenvat	By VCES		
2012-13	53190577	0	0	53190577	12.36%	6574355	2006623	9083	4561778	6577484	0
2013-14	144896518	49762035	31683894	63450589	12.36%	7842493	7793832	48734	0	7842566	0

2014-15	141463721	82215142	1830759	57417820	12.36%	7096843	0	0	0	0	7096843
2015-16 (Apr-May)	8962345	0	0	8962345	12.36%	1107746	0	0	0	0	1107746
2015-16 (Jun-Jul)	11398768	0	0	11398768	14.00%	1595828	0	0	0	0	1595828
Total	359911929	131977177	33514653	194420099		24217264	9800455	57817	4561778	14420050	9800416

On being asked whether he agreed with the facts and figures shown in the Work sheet above; he replied in the affirmative and agreed with the Service Tax Liability of Rs. 98,00,416/- calculated as per above table.

3.3 Further Several summons dated 22.02.2016, 18.03.2016, 10.06.2016, 15.09.2016, 19.10.2016 and 07.02.2019 were issued to the Service provider to submit the relevant records such as ST-3 returns, P & L accounts, reconciliation statements according to P & L a/c and Sales details for the period from August -2015 to 2017-18 (upto June '17) the said assessee submitted worksheet of Sales details and Balance Sheet for the period 2015-16 on 08.02.2019 and Balance Sheet for the period 2016-17 and worksheet of Sales details for the period April to June, 2017 on 18.02.2019 on the basis of said documents the Tax liabilities have been tabulated as per Table-B in para 3.4 below.

3.4 Whereas further statement of Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printers Limited was recorded on 26.03.2019 under section 70 of CGST Act, 2017 wherein he ineralia stated that that their firm was engaged in providing Events, Advertising, Promotions, Live Marketing & Distribution services in Rural & Urban Markets; that they had taken Service Tax registration No.AAACK8926CST001 since March, 2009 in the name of M/ s. Kesari Printers Ltd. for the Services "Event Management Services" and "Advertising Agency Services" and at present they were having their branches at Mumbai and Delhi only; on being further asked he stated that due to financial crisis, they were not discharging their Service Tax liability regularly; however, on being further asked he stated they had not filed ST-3 returns on regular basis; however, they had paid Rs. 57,58,258/- vide challans between 5h August, 2015 to 27h September, 2018. He stated that they had filed Service Tax Returns up to the period Oct-March-14 (alongwith late filling fee). Thereafter, they had not filed ST-3 returns for further period.

On being asked for further perusal of his previous statements dated 05.08.2015 and 12.01.2017 by which he had accepted the liability of Rs. 98,00,416/- Service Tax liability, he stated that he agreed with the facts and figures shown in "Table-B" below prepared on the basis of Balance Sheet and Sales Ledger submitted by the assessee for the period August-2015 to June-2017.

TABLE-B

(Amt. in Rs.)

Period	Gross amount as per Sales Ledger	Less REP Income	Less SIM, Vouchers, E top etc. Income	Net Taxable Income	S.Tax Percentage	S.Tax payable	S.Tax paid			Total S.Tax Paid	Net S.Tax Payable
							By Cash	By Cenvat	By VCES		
2015-16 (Aug-Mar)	76027441	4093395	0	71934046	14.50%	10430437	0	0	0	0	10430437
2016-17	36314182	0	0	36314182	15.00%	5447127	0	0	0	0	5447127
April-17 to June-17	0	0	0	0	0	0	0	0	0	0	0
Total	112341623	4093395	0	112341623		15877564	0	0	0	0	15877564

He replied that he had seen the Service Tax Liability of Rs. 1,58,77,564 /- calculated as per above "Table-B", he stated that as per his knowledge, Income shown in the Sales Ledger in the head of " Sales of Navratri Garba Tickets" in the year 2015-16, Rs. 40,93,395/- and in the year 2016-17, Rs.1,78,61,400/- was not liable for Service Tax. Other than " Sales of Navratri Garba Tickets" he agreed on Service Tax Liability mentioned in both the table- A & B above. Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printers Limited could not produce any evidence in regard to income shown in Sales Ledger was "Sales of Navratri Garba Tickets". Hence Service Tax on said Income was calculated and included in Worksheet as shown in "Table-B" above.

4. Legal Provision:-

4.1 Event Management Service:-

Prior to 01.07.2012 the "Event Management Service" was defined under subclause (zu) of clause (105) of Section 65 of the Finance Act, 1994, as under:-

"Taxable Service" means any service provided or to be provided [to any person] , by an event manager in relation to event management.

Event Management - meaning

"Event management" means any service provided in relation to planning, promotion, organizing or presentation of any arts, entertainment, business, sports marriage or any other event and includes any consultation provided in this regard[Section 65(40) of the Act]

According to the above definition, a service of event management means any service:

- (i) in relation to planning, promotion, organizing or presentation of;
- (ii) any event (arts, entertainment, business, sports, marriage or any other events)
- (iii) and includes consultation in this regard.

Effective from 01.07.2012, Service Tax regime has shifted from selective taxation to comprehensive taxation, thus event management services was taxable as 'service' without reference to the specific head of event management service. In the new regime, there was no provision, specific to the activity of event management. Thus, the said services would be taxable.

Up to 30.06.2012, the services rendered or received by the said assessee, would be classifiable under category of Event Management Service as defined under Section 65(105)(zu) of the Finance Act, 1994, and hence they were liable for payment of Service Tax as of services. However, post 01.07.2012 period, since there was no service wise classification due to introduction of Negative List and since the activities carried out by the said assessee fell under the purview of definition of "Service" in terms of Section 65B (44) read with Section 66D of the Finance Act, 1994, and further since the said activities were neither covered by Negative List nor by any Exemption Notification, hence the said assessee was liable to pay Service Tax for the services provided or received by them after 01.07.2012 also. Thus, the demand of Service Tax for the period after 01.07.2012 along with period prior to 01.07.2012 was legally sustainable.

Outcome of investigation:

5. From the records resumed under the panchnama dtd. 05.08.2015 and from statements dated 05.08.2015, 12.01.2017 and 26.03.2019 of Shri Himanshu K. Shah, Chief Mentor of the said assessee it transpired that:

- a) The said assessee had been engaged in providing service under the category "Event Management Service" .
- b) At the time of Search on 05.08.2015 the said assessee had not filed ST-3 return for the period Oct-13 to March-14. Subsequently, during the course of investigation the said assessee had filed ST-3 Returns for the period Oct- March-14 on 17/12/2016.
- c) The said assessee had filed VCES before the department for Rs. 45,61,777/28.12.2013 and the designated authority had issued VCES-3 No.814/2013-14 dated 03.09.14.
- d) The said assessee had not filed ST-3 returns for the period April-14 to Sep-14, Oct-14 to March-15, April-15 to Sep-15, Oct-15 to Mar-16, April-16 to Sep-16, Oct-16 to March-17 and April-17 to June-17.
- e) The said assessee had also received income as 'selling agent or a distributor of SIM cards or recharge coupon vouchers'

The Notification No. 25/2012- ST provides exemption in relation to Intermediary service relating to the sale of SIM cards in its entry 29(f) which is as follows- "29. Service by the following persons in respective capacities- (f) a selling agent or a distributor of SIM cards or recharge coupon vouchers."

6. In view of the above discussion and reconciliation of the figures of taxable income reflected in the Books of Accounts viz. Balance sheet /Trial Balance Sheet for the period 2012-13, 2013-14 & 2014-15, Profit & Loss A/c 2015-16 (up to July-2015) and ST-3 Return filed up to the period Oct-Mar-14, the service tax liability worked out in tune of Rs. 98,00,416/- for the period from January -2013 to July-2015 and for the period August-2015 to June-2017 the service tax liability worked out to the tune of Rs.1,58,77,564/- (Total Rs.2,56,77,980/- as per Annexure "B" annexed with the SCN):

7. It appeared that the act of non-assessment of tax liability at their own, non-payment of Service Tax and non filing of Service Tax Returns was a deliberate act on the part of the said assessee. Thus, it could be said that the said assessee was fully aware of their legal obligations which they did not fulfill with the mala fide intention of evading payment of Service Tax.

8. It appeared from the documents furnished by the said assessee and investigation carried out in the matter, that they had rendered "Event Management Service" which was chargeable to Service Tax with effect from 16.08.2002. The said assessee, had engaged themselves in doing

activities as described under Section 65(25b) of Chapter V of the Finance Act, 1994, as amended and provided taxable services as defined under Section 65(105) (zu) & (e) of the Finance Act, 1994. For doing these activities they had received consideration and shown it as income under Income heads of accounts in their Books of Accounts, wherein they had not paid Service Tax in Government Account and thereby evaded payment of it. Therefore, the said assessee was liable to pay Service Tax on the gross income / amount received from their customers. Thus, it appeared that the said assessee had not properly discharged their Service Tax liability on the income shown in their Books of Accounts.

Contravention of Provision

9. According to Section 67 of the Finance Act, 1994, as amended, where Service Tax is chargeable on any taxable service with reference to its value, such value shall be the gross amount charged by the service provider for such service provided or to be provided by him. The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. Thus, the value to be considered for calculation of service tax was the gross amount charged for providing the taxable services. In the present case, the said assessee, was not paying the service tax on the gross amount charged for the taxable services rendered by them. In other words, they had not paid Service Tax on the gross amount charged / received for the taxable services provided by them and thereby contravened the provisions of Section 67 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994.

10. As per the provisions of the Finance Act, 1994 and rules made thereunder, the service provider was required to assess correct value for the service provided by them as well as to pay Service Tax on the actual amount of income received by them for services rendered/received in due course as prescribed and to follow all the procedure laid down in the Act and Rules. In this case, the said assessee had failed to pay due Service Tax leviable on the taxable value charged. They had failed to file correct ST-3 Returns for the taxable services rendered by them and suppressed the facts for the period in question. It, therefore, appeared that they had failed to make timely payment of Service Tax, as provided in Section 68 of the Act read with Rule 6 of the Rules *ibid*.

11. As per Section 68(1) of the Act, 'Every person providing taxable service to any person shall pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed'. The manner and period of payment of Service Tax has been prescribed under Rule 6(1) of the Service Tax Rules, 1994. In this case, it appeared that the said assessee had not discharged Service Tax liability to the tune of Rs. 2,56,77,980/- on taxable value received during the period January 2013 to June-2017 and thereby the said assessee had contravened the provisions of Section 68(1) of the Act, read with Rule 6 of the Service Tax Rules, 1994.

12. As per Section 70(1) of the Act, 'Every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of

Central Excise, a return in such form and in such manner and at such frequency as may be prescribed'. The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said assessee had failed to file the ST-3 Returns for the period April-14 to Sep-14, Oct-14 to March-15, April-15 to Sep-15, Oct-15 to Mar-16, April-16 to Sep-16, Oct-16 to March-17 and April-17 to June-17 within stipulated time limit and thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994.

INVOCATION OF EXTENDED PERIOD

13. It appeared that all these material information and value of taxable services had been concealed from the department deliberately and consciously to evade payment of Service Tax by not declaring the amount received against the services rendered. All the above acts of contravention on the part of the service provider had been committed with an intention to evade the payment of Service Tax by suppressing the facts and to commit fraud. Therefore, service tax was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years time as the service provider had suppressed / not declared the nature and value of the taxable services. Thus, the total amount of Service Tax to the tune of Rs. 2,56,77,980/- on "Gross taxable Income" received and recorded in books of account by the said assessee under the category ("Event Management Service & Advertising Agency Service) was required to be recovered from the said assessee by applying the extended period of five year's time.

14. It appeared from the foregoing paras and discussion made hereinabove, that the said assessee, had contravened the following provisions:

(i) Section 67 of the Finance Act, 1994 inasmuch as they had failed to assess and determine the correct value of Taxable Services provided by them, as explained in foregoing paras during the period from January-2013 to June-2017.

(ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch as they had failed to make the payment of Service Tax amounting to Rs. 2,56,77,980/- on "Gross taxable Income" received and recorded in books of account by the said assessee under the category ("Event Management Service & Advertising Agency Service) for the period from January -2013 to June-2017 and failed to credit in the Government Account within the stipulated time limit;

(iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they had failed to file their periodical ST-3 Returns from time to time;

(iv) Proviso to Section 73(1) of the Finance Act, 1994 inasmuch as they had made wilful mis-statement and deliberately suppressed material facts from the department in order to evade payment of Service Tax.

15. In view of the foregoing paras, it appeared the aforementioned omission and commission was deliberate and intentional and they had willfully avoided the payment of Service Tax. As non-payment of Service Tax was intentional and material facts were deliberately suppressed from the department, the provisions of proviso to Section 73(1) appeared to be invocable and the said Service Tax not paid by them was to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended by invoking extended period of five years time. Thus, it appeared that the said assessee had contravened the provisions of the Finance Act, 1994 and the rules made thereunder with the sole intention to evade payment of Service Tax and, therefore, the amount of Service Tax of Rs. 2,56,77,980/- on "Gross taxable Income" received and recorded in books of account by the said assessee under the category "Event Management Service" appeared to be recoverable along with Interest under Section 75 of the Finance Act, 1994 by invoking extended period of five years time, as per the proviso to Section 73(1) of the Finance Act, 1994.

16. As per Section 75 *ibid*, "Every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest". Since the service provider had failed to pay their Service Tax liabilities in the prescribed time limit, they also appeared liable to pay the said Service Tax and the same was required to be recovered from them along with interest under Section 75 of the Finance Act, 1994.

Penalty provisions:

17. It appeared that they were liable to penalty under Section 77(2) of the Finance Act, 1994 inasmuch as they had failed to assess their actual Service Tax liability and also failed to file their correct ST-3 Returns from time to time, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

18. The said assessee appeared also liable to penalty under Section 78 of the Finance Act, 1994 inasmuch as they had wilfully and intentionally suppressed the figures of taxable income and had not assessed their Service Tax liability and had not paid the required service tax and had suppressed the same. The assessee had not paid/ short paid service tax for the period January-2013 to June- 2017 and had also not filed required service tax returns i.e. for the period from April-14 to Sep-14, Oct-14 to March-15, April-15 to Sep-15, Oct-15 to Mar-16, April-16 to Sep-16, Oct-16 to March-17 and April-17 to June-2017. It appeared that non- payment of Service Tax was deliberate and intentional. It also appeared that they were aware of provisions of Finance Act 1994 and rules framed thereunder and that non compliances of provisions of Finance Act, 1994 and rules framed thereunder was deliberately intended. This led to an impression beyond doubt that the act of non-payment of service tax was with the sole intent to evade payment of Service Tax. The above contraventions had been in total defiance of greater faith reposed under Service Tax provisions on the assessee, where it was expected that a tax payer would discharge their liability with due diligence. The said assessee had thus failed in honoring the liberalized provisions

of Service Tax, by not honoring their liabilities during the course of rendition of " Event Management Service".

19. Penal action against Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printer Limited

In view of the facts discussed hereinabove and material evidences available on record, it further appeared that Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printer Limited was the person who was handling all the activity of the said company. Thus, he was the overall in charge of all the affairs of M/s Kesari Printer Limited. Further; he was the person who appeared to have conceived the entire plan regarding the evasion and not depositing the Service Tax to the tune of Rs. 2,56,77,980/- even after charging and collecting the same from customers, in respect of taxable services provided by them during the period from January -2013 (after VCES Period) to 2016-17 and June,2017. He had collected the amount as Service Tax but failed to pay the amount so collected to the credit of the Central Government thereby knowingly evading the payment of Service Tax. Further, he had also failed to assess/ declare the correct taxable value in periodical ST-3 Returns and also failed to file their periodical ST-3 Returns for the period April-14 to Sep-14, Oct-14 to March-15, April-15 to Sep-15, Oct-15 to Mar-16, April-16 to Sep-16, Oct-16 to March-17 and April-17 to June-17. Thus, he appeared to have deliberately suppressed the value of the taxable services provided by them from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, Thus he, being Chief Mentor of the Company and mastermind appeared to have abetted in the evasion of Service Tax on the taxable services, thus, violating the provisions of the Finance Act, 1994 and rules framed thereunder with intent to evade payment of huge amount of Service Tax. In view of the above, Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printer Limited, appeared liable to penal action under Section 78A of the Finance Act, 1994, for omission & commissions committed by him.

20. It further appeared that on account of all the above narrated acts of commission and omissions on the part of the said assessee, the assessee appeared to have rendered themselves liable to penalty under the following provisions of the Finance Act, 1994, as amended:

- (i) Section 77 of the Finance Act, 1994, failed to file and furnish their ST-3 Returns incorporating correct details;
- (ii) Section 78 of the Finance Act, 1944, inasmuch as they had suppressed the taxable value of the services provided or received by them from their service recipients and they had, knowingly and wilfully, not paid the applicable Service Tax leviable on such amount.

21. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed thereunder, on the part of the said assessee, appeared to have been committed by way of suppression of facts with the sole intention to evade payment of Service Tax and therefore, the said Service Tax not paid by them was required to be demanded and recovered under the proviso to Section 73(1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years time. All these acts of contravention of the

provisions of Section 67, 68, 69 & 70 of the Finance Act, 1994, as amended, read with Rules 4, 6 and 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 77 & 78 of the Finance Act, 1994, as amended from time to time.

22. Therefore, M/s Kesari Printer Limited) 4th & 5th Floor, Rituraj Apartment Opp. Rupal Flats, Near Loyala School, Memnagar, Ahmedabad were called upon to show cause, as to why:-

i) The taxable Income Under Head "Event Management Service" (as tabulated in Annexure-B attached to the Notice) received during the period from January -2013 to June-2017 by them from their clients and shown in books of accounts should not be treated as Gross Taxable Income in terms of Section 65B (44) read with Section 66D of the Finance Act, 1944 with effect from 01.07.2012 onwards;

ii) the Service Tax amounting to Rs. 2,56,77,980/- (inclusive of Edu. cess + HSEC) (Rupees Two Crores Fifty Six Lakhs Seventy Seven Thousands Nine Hundred Eighty Only) on the Taxable Income received during the period from April-2014 to June-2017 should not be demanded and recovered from them under proviso to Section 73(1) read with Section 68 of the Finance Act, 1994, and subsequently paid service tax of Rs. 57,58,258 /- (inclusive of Edu. cess + HSEC) for the above said period should not be appropriated against their Service tax liability.

iii) Interest on Service Tax liability at the prescribed rate should not be charged and recovered in terms of the provisions of Section 75 of the Finance Act, 1994 as amended from time to time.

iv) Penalty under sub-Section (2) of Section 77 of the Finance Act, 1994 should not be imposed on them in as much as they had failed to assess their correct Service Tax liability and failed to file their Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994;

v) Penalty under Section 78 of the Finance Act, 1994, as amended should not be imposed on them for suppressing the material facts of providing / receiving of Taxable Service from the department and for not disclosing the value of the said taxable service to the department with sole intention to evade payment of applicable Service Tax.

vi) Penalty should not be imposed on Shri Himanshu K. Shah, Chief Mentor of the said company under Section 78A for contravening of the provisions and for evasion of service tax and failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due;

23. In addition, Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printer Limited, residing at A-8, Achal Apartment, Behind Akash Neem Bungalow, Bodakdev, Ahmedabad, was called upon to show cause as to why the personal penalty should not be imposed upon him under the provisions of the Section 78A of the Finance Act, 1994.

DEFENCE REPLY:

24. The assessee vide their letter dated 01.07.2019 sought extension of time of 20 days for filing the defence reply to the notice. Thereafter, both the noticees have not filed any defence reply to the notice.

PERSONAL HEARING:

25. Personal Hearing was granted to the assessee and Shri Himanshu K. Shah on 19.02.2020, 20.04.2021, 14.06.2021, and 24.06.2021 to defend their case in person. However, the assessee vide their letter dated 14.06.2021, requested to grant Personal Hearing after the Covid Situation abated and the situation became normal. They however requested to grant hearing before deciding the matter. Thereafter, they were again granted personal hearing on , 23.09.2021, 22.10.2021, and 25.11.2021. But, both the noticees neither attended the personal hearing nor have they responded to the letters sent to them. Therefore, it is apparent that both the notices are only attempting delaying of adjudication proceedings on the pretext and guise of covid pandemic. The dilatory & obstructionist approach of the noticee cannot be allowed to hold hostage the adjudication proceedings which has been pending for unduly long duration of time. I am accordingly forced to proceed in the matter on the basis of available records and decide the case ex-parte in view of the non cooperation and dilatory approach of the noticees.

DISCUSSION AND FINDINGS:

26. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, and documents collected/ relied upon during the investigations. I find that the assessee has failed to appear for Personal Hearing, inspite of being asked to do so repeatedly as mentioned in Para-25 above for defending their case. Under the circumstances, left with no recourse, I take up the matter for adjudication proceeding ex-parte on the basis of records/documents available since ample opportunities have been given to the assessee to attend and defend their case in person.

27. In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals have held, in several judgments/decision, that *ex-parte* decision will not amount to violation of principles of Natural Justice.

In support of the same, I rely upon the following judgments/orders:

- a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. OLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;

"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

(Emphasis Supplied"

- b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, has observed that;

“Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the assessee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - *It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]*

(Emphasis supplied)”

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

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

(Emphasis Supplied)”

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

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

(Emphasis Supplied)”

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

“Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing.

- If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(Emphasis Supplied)”

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

“7. Our attention was also drawn to a recent decision of this Court in *A.K. Kripak v. Union of India - 1969 (2) SCC 340*, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of *audi alteram partem* and it was argued that an *ex parte* hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector

would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."

28. Now, moving ahead to decide the case, I find from the SCN that basically the essence of the case is that on the basis of the information that M/s. Soi Entertainment and Communication Ltd and M/s. Soi Live Marketing & Events were operating from the same premises at 4th and 5th Floor of Rituraj Apartment, Opp. Rupal Flats, Nr. Loyala School, Memnagar, Ahmedabad, and they had not filed their service tax returns and not paid service tax regularly, the search was carried out at the said premises on 05.08.2015. During the course of search, it was revealed that M/s. Soi Live Marketing & Events was a division of M/s. Kesari Printers Limited and had taken the service tax registration in March 2009 in the name of M/s. Kesari Printers Limited. They were engaged in providing the services of "Event Management Service" and "Advertising Agency Service". At the time of search, it was also noticed that they had not discharged their service tax liability from January 2013 to July-2015. I further find that the SCN alleges that the assessee had filed ST-3 Return for the period Oct-March 2014 on 17.12.2016, during the course of investigation. Thereafter, they had not filed the service tax returns for the period from Apr-14 to June 2017. The service tax liability of Rs. 2,56,77,980/- for the period April 2014 to June 2017 (As per Annexure B) was worked out on the basis of financial records viz. Balance sheet, Trial Balance, Sales Ledgers, resumed during the search and as produced by the assessee during the investigation. The SCN also proposes to appropriate the amount of Rs. 55,58,258/- subsequently paid by the assessee against their service tax liability.

29. From the records, it can be discerned that statements of Shri Himanshu K Shah were recorded on 05.08.2015, 12.01.2017, and 26.03.2019 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. I find that the proceedings under Section 14 of Central Excise Act, 1944 are deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860). Therefore, I find that the statements recorded during the investigation process have vital evidentiary value and can be relied upon in the adjudication proceedings. On perusing the said statements, I find that Shri Himanshu K Shah had stated that he was the Chief Mentor of M/s. Soi Live Marketing & Events, he had further stated that M/s. Soi Live marketing Events was a Division of M/s. Kesari Printers Limited, and was not an independent business entity as such. He had also stated that he was looking after the entire affairs of the company. He had also stated that they were providing services of "Event Management Services" and "Advertising Agency Services". He had further stated that their company was engaged in providing services for Events, Advertising, Promotion, Live marketing and Distribution in Rural and Urban Market. They had obtained the service tax registration No. AAACK8926CST001 in the name of M/s. Kesari Printers Limited for the Services "Event Management Services" & "Advertising Agency Service". I also find that he had stated that they had not filed service tax returns from April 2014 and have not paid service tax regularly, however, they had paid service tax of Rs. 5809754/- vide various challans from 5th August 2015 to 27th September 2018. He also stated that they had income of Rs. 22,58,33,409/- from "Share Trading"

in 2016-17, which was exempt income. I find that Shri Himanshu K Shah had admitted their liability of Service tax of Rs. 98,00,416/- for the period from 2014-15 to July 2015. Shri Himanshu K Shah had stated with respect to the liability of service tax of Rs. 1,58,77,564/- for the period from Aug 2015 to June 2017, that the income of Rs. 40,93,395/- and Rs. 1,78,61,400/- shown in the head of "Sales of Navratri Garba Tickets" for the year 2015-16 and 2016-17 respectively, was not liable to service tax. He had admitted their liability other than income from sales of Navratri Garba Tickets.

30. I observe that after introduction of new system of taxation of services in negative list regime w.e.f 01.07.2012, any activity carried out by a person for another person for a consideration is taxable service except those services specified in the negative list or exempt list by virtue of mega exemption notification.

The term "Service" has been defined under Section 65B (44) of the Finance Act, 1994 ('Act') as under:

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

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

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

31. I find that prior to 01.07.2012 i.e. before introduction of a new system of taxation of services, the tax was levied on services of specified description only. The new taxation system of services had widened the scope of levy of tax on services without specific description of service. Accordingly, any activity carried out by a person for another person in lieu of the consideration is taxable service. I find that the Shri Himanshu K Shah had admitted to the fact of provision of service of "Event Management Services" & "Advertising Agency Service" in their statements, therefore, there is no doubt of these services being taxable services. I find that the service tax liability of Rs. 2,56,77,980/- for the period April 2014 to June 2017 (As per Annexure B to the SCN) had been worked out by the officers of the preventive wing on the basis of the financial records viz. Balance sheet, Trial Balance, Sales Ledgers, resumed during the search and as produced by the assessee during the investigation. I also find that the said liability was also admitted by Shri Himanshu K Shah in his statement recorded on 26.03.2019 under Section 14 of Central Excise Act 1944 read with Section 83 of the Finance Act, 1994, except the income of Rs. 40,93,395/- and Rs. 1,78,61,400/- shown in the head of "Sales of Navratri Garba Tickets" for the year 2015-16 and 2016-17. I find that the assessee had not provided any tangible evidences with regard to such income during the investigation, therefore, the assessee's arguments were not accepted and the SCN issued. I during the adjudication proceedings also find that there is no tangible and concrete evidence on records to establish the claim of the assessee for this service being exempt. Thus, from the documentary evidence available on records and by relying on the statement of Shri Himanshu K Shah, Chief Mentor of the assessee, I am left with no recourse but to hold that the activity of "Event Management service" and "Advertising Agency Service" is covered under the definition of "service" as provided under Section 65B(44) of the Finance Act, 1994, and thus the same is liable to service tax in terms of section 66B of the Finance Act, 1994,

accordingly the service tax of Rs. 2,56,77,980/- for the period April 2014 to June 2017 (As per Annexure B to SCN) is leviable from the assessee as demanded in the subject SCN.

32. Based on above facts and circumstances, discussion and documents available on records, I hold that the assessee is liable to pay the service tax amounting to Rs. 2,56,77,980/- as per the subject SCN for the period from FY 2014-15 to 2017-18 (upto June 2017). Therefore, I find that the assessee has contravened the provisions of Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have failed to pay service tax to the tune of Rs. 2,56,77,980/- though they were liable to pay the same; they have also contravened the provision of Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to file their ST-3 Returns for the period from April 2017 to June 2017. I also find that Section 75 of Finance Act, 1994 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 the demand of service Tax of Rs. 2,56,77,980/-.

33. From the facts and discussion aforementioned, I find that the assessee has failed to assess and discharge their service tax liability for the period from April 2014 to June 2017, and has failed to file service tax returns for same period. The assessee has failed to disclose their taxable income by not filing the service tax returns and not paying legitimated service tax due to the govt. account, though they were having income which were liable to service tax. This clearly demonstrates the intention of the assessee to evade the payment of service tax. These acts of non payment of service tax, non filing of the service tax returns, suppressing the materials fact from the department were done with an intent to evade the payment of service tax. 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 have been put 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 service tax law. Moreover, returns are also filed online without any supporting documents. All these operate 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 non payment of service tax, as discussed earlier, on the part of the assessee only came to the notice of the department when the inquiry was initiated by the department. 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 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 the proviso to Section 73(1) of Finance Act, 1994. By invoking the extended period of 5 years, the demand of Service Tax of Rs. 2,56,77,980/- along with

applicable interest under Section 75 of the Finance Act, 1994, is justified. And for the same reasons, the said assessee is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994. The assessee had paid the service tax of Rs. 57,58,258/- piecemeal during the course of investigation, thus, I find that the same is liable to appropriation as has been proposed in the SCN, against the service tax liability of the assessee. As regards, the proposal for imposition of penalty under Section 77(2) of the Finance Act, 1994, I find that the assessee has failed to assess their service tax liability and has failed to file their service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994, thus, they have rendered themselves liable to penal action under Section 77(2) of the Finance Act, 1994.

34 As regards proposal for imposition of personal penalty on Shri Himanshu K Shah, Chief Mentor of the assessee company under Section 78A. I find from his statements dated 05.08.2015, 12.01.2017, and 26.03.2019 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, that he was the Chief Mentor of the Company and was the de-facto over all-in -charge of all affairs of M/s. Kesari Printer Limited. He was the person who had conceived the entire plan regarding the evasion and not depositing the Service Tax to the tune of Rs. 2,56,77,980/- even after charging and collecting the same from customers, in respect of taxable services provided by them during the period from January -2013 (after VCES Period) to 2016-17 and June, 2017. He had collected the amount as Service Tax but had failed to pay the amount so collected to the credit of the Central Government thereby knowingly evading the payment of Service Tax. Further, he had also failed to assess/ declare the correct taxable value in periodical ST-3 Returns as well as also had failed to file their periodical ST-3 Returns for the period April-14 to Sep-14, Oct-14 to March-15, April-15 to Sep-15, Oct-15 to Mar-16, April-16 to Sep-16, Oct-16 to March-17 and April-17 to June-17. Thus, he had deliberately suppressed the value of the taxable services provided by them from the Jurisdictional Service Tax Authority and had failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, Thus he, being the Chief Mentor and de-facto controller of the Company was the mastermind who had abetted in the evasion of Service Tax on the taxable services, in violation of the provisions of the Finance Act, 1994 and rules framed thereunder with intent to evade payment of huge amount of Service Tax. In view of the above, Shri Himanshu K. Shah, Chief Mentor of M/s Kesari Printer Limited, has rendered himself liable to penal action under Section 78A of the Finance Act, 1994.

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

ORDER

- (i) I hold the activity "Event Management Service" as "Service" in terms of Section 65B(44) of Finance Act, 1994, and income received by the assessee during the period from January 2013 to June 2017 is held liable to service tax.
- (ii) I confirm the demand of service tax of Rs. 2,56,77,980/- (Rupees Two Crore Fifty Six Lakh Seventy Seven Thousand Nine Hundred Eighty Only) and order to recover the

same from the assessee under the proviso to Section 73(1) of the Finance Act, 1994. I also order to appropriate the service tax of Rs. 57,58,258/- already paid by the assessee during the course of the investigation, against their service tax liability under the proviso to Section 73(1) of the Finance Act, 1994.

- (iii) I order to charge interest and recovery of the same from them under the provisions of Section 75 of the Finance Act, 1994 on the demand confirmed at (ii) above;
- (iv) I order to impose penalty of Rs. 10,000/- on them under Section 77(2) of the Finance Act, 1994 for failure to assess their service tax liability and failure to file ST-3 returns under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules 1994.
- (v) I impose penalty of Rs. 2,56,77,980/- (Rupees Two Crore Fifty Six Lakh Seventy Seven Thousand Nine Hundred Eighty Only) on them under the provisions of Section 78 of the Finance Act, 1994.
- (vi) I order to impose penalty of Rs. 1,00,000/- (Rupees One Lakh) on Shri Himanshu K. Shah, Chief Mentor of the assessee, under Section 78A of the Finance Act, 1994.

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

By Regd. Post AD./Hand Delivery
F. No. STC/15-30/OA/2019

Date: .01.2022.

To

1. M/s Kesari Printer Limited,
4th & 5th Floor, Rituraj Apartment
Opp. Rupal Flats, Near Loyala School,
Memnagar, Ahmedabad
2. Shri Himanshu K. Shah,
Chief Mentor of M/s. Kesari Printers Limited
A-8, Achal Apartment, B/H. Akash Neem Bunglow,
Bodakdev, Ahmedabad

Copy for information to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Deputy/Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.
- 3 The Superintendent, Range-II, Division-VII, Ahmedabad North.
- 4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 Guard File.

