


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-149/OA/2020

DIN : 20220164WT000000BAD0

आदेश की तारीख /

Date of Order : 20.01.2022

जारी करने की तारीख /

Date of Issue : 21.01.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-55/2021-22

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।

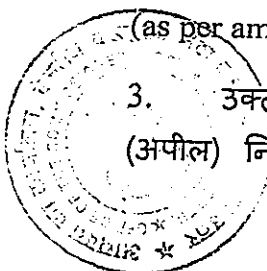
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax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

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 प्रतियाँ 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।

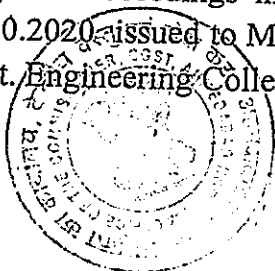
The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

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: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice no. STC/15-149/OA/2020 dated 21.10.2020 issued to M/s. Maitri Interior Projects Private Limited, Gayatri House, Opp. Govt. Engineering College, Motera, Sabarmati, Ahmedabad-380005



**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 55 /2021-22**

M/s. Maitri Interior Projects Private Limited, Gayatri House, Opp. Govt. Engineering College, Motera, Sabarmati, Ahmedabad-380005, were issued SCN No. STC/15-149/OA/2020 dated 21.10.2020 by the Principal Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad..

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S MAITRI INTERIOR PROJECTS PRIVATE LIMITED ARE AS FOLLOWS:**

M/s. Maitri Interior Projects Private Limited, Gayatri House, Opp. Govt. Engineering College, Motera, Sabarmati, Ahmedabad-380005 (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services, and are holding Service Tax Registration No. AAICM7450RSD001.

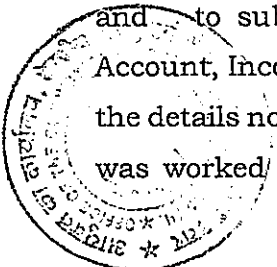
2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" in respect of M/s. Maitri Interior Projects Private Limited was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with the Divisional office of Division-VII and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y.2015-16, the total sales of service (Value from ITR/ Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16. The difference in value as observed for FY 2015-16 was as under:

Sr. No.		Total Sale of services as per (ITR)	Total Gross Value provided (STR)	Total Value for TDS (including) 194C, 194Ia, 194Ib, 194J, 194H	Value difference in ITR & STR	Value difference in TDS & STR	Higher Value (Value difference in ITR & STR) OR (Value Difference in TDS & STR)	Service Tax 14.5%
1	2015-16	1,90,61,305	7,71,72,752	26,33,62,084	5,81,11,447	18,61,89,332	18,61,89,332	2,69,97,453

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 2,69,97,453/- (including Cess) on the differential value of Rs. 18,61,89,332/-

4. A letter dated 06.10.2020 was issued to the assessee to explain the difference and to submit documents in support thereof viz. Balance Sheet, Profit and Loss Account, Income Tax Return, Form 26AS, etc. However, the assessee neither submitted the details nor submitted explanation. Therefore, the service tax liability of the assessee was worked out on the basis of income mentioned in ITR /Form 26AS, which were



11



shared by Income tax Department. The said income was considered as the Total Taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

5. As per Section 68 of the Finance Act, 1994 every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994. Therefore, it appeared that the assessee had short paid the service tax as tabulated above.

6. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994 :

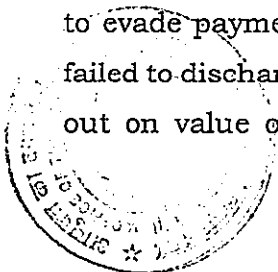
“(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed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

(2) The person or class of persons notified under sub-section (2) of section 69, 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.”

7. As per the provisions of *Section 73(1)* of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

8. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

9. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 8,21,18,274/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year FY 2015-16 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 2,69,97,453/- (including Cess) worked out on value of Rs. 18,61,89,332/- and therefore, Service Tax was required to be



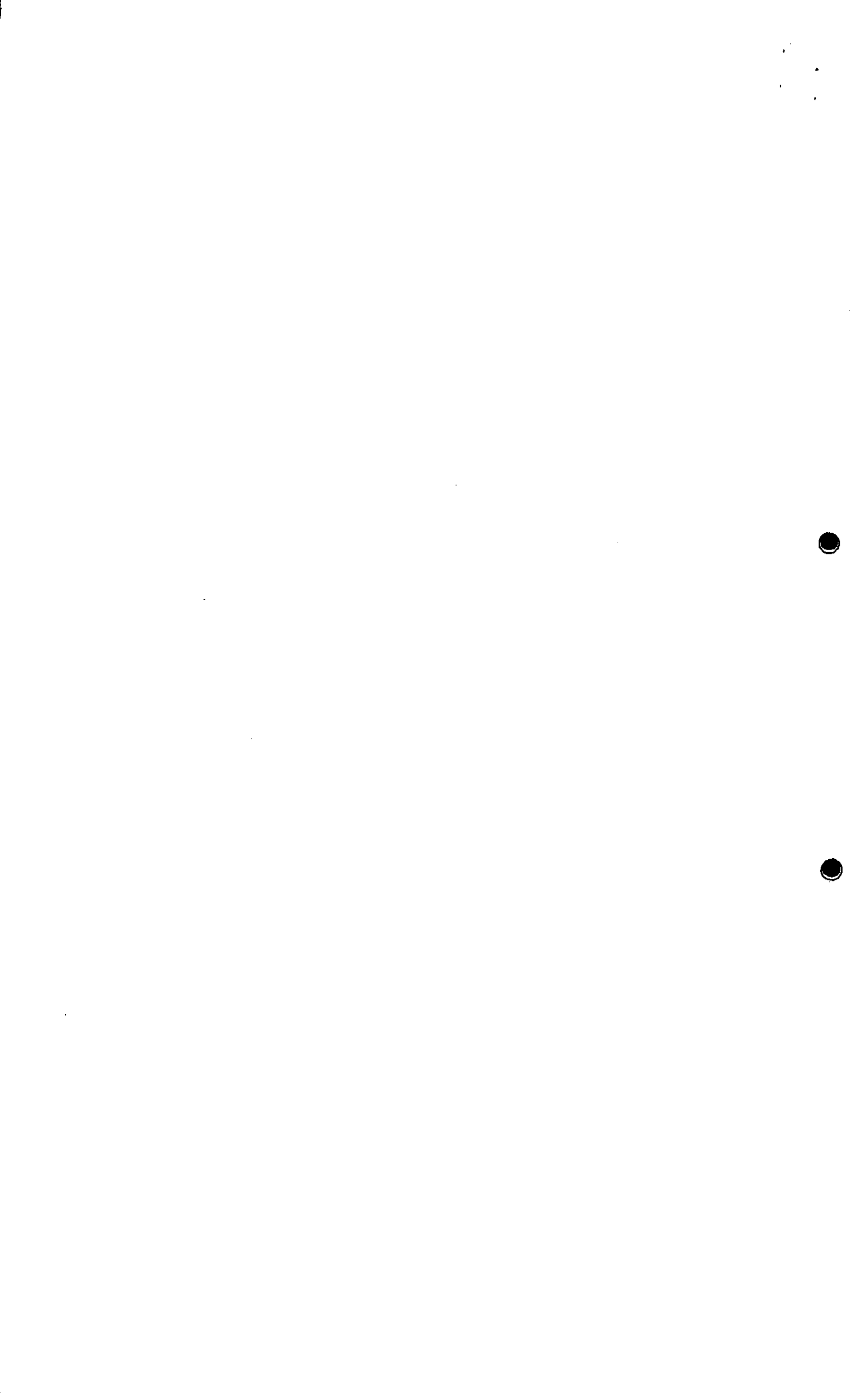


demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

10. Therefore, it appeared that the said assessee had (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had not paid service tax as worked out in the Table for Financial Year 2015-16; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) made themselves liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vi) also contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

11. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,69,97,453/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

12. 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 period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 2,69,97,453/- on the actual value received towards taxable services





provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

13. No data was shared by the CBDT, for the period FY 2016-17 and 2017-18 (upto June-2017) and the assessee had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period FY 2016-17 and 2017-18 (upto June-2017).

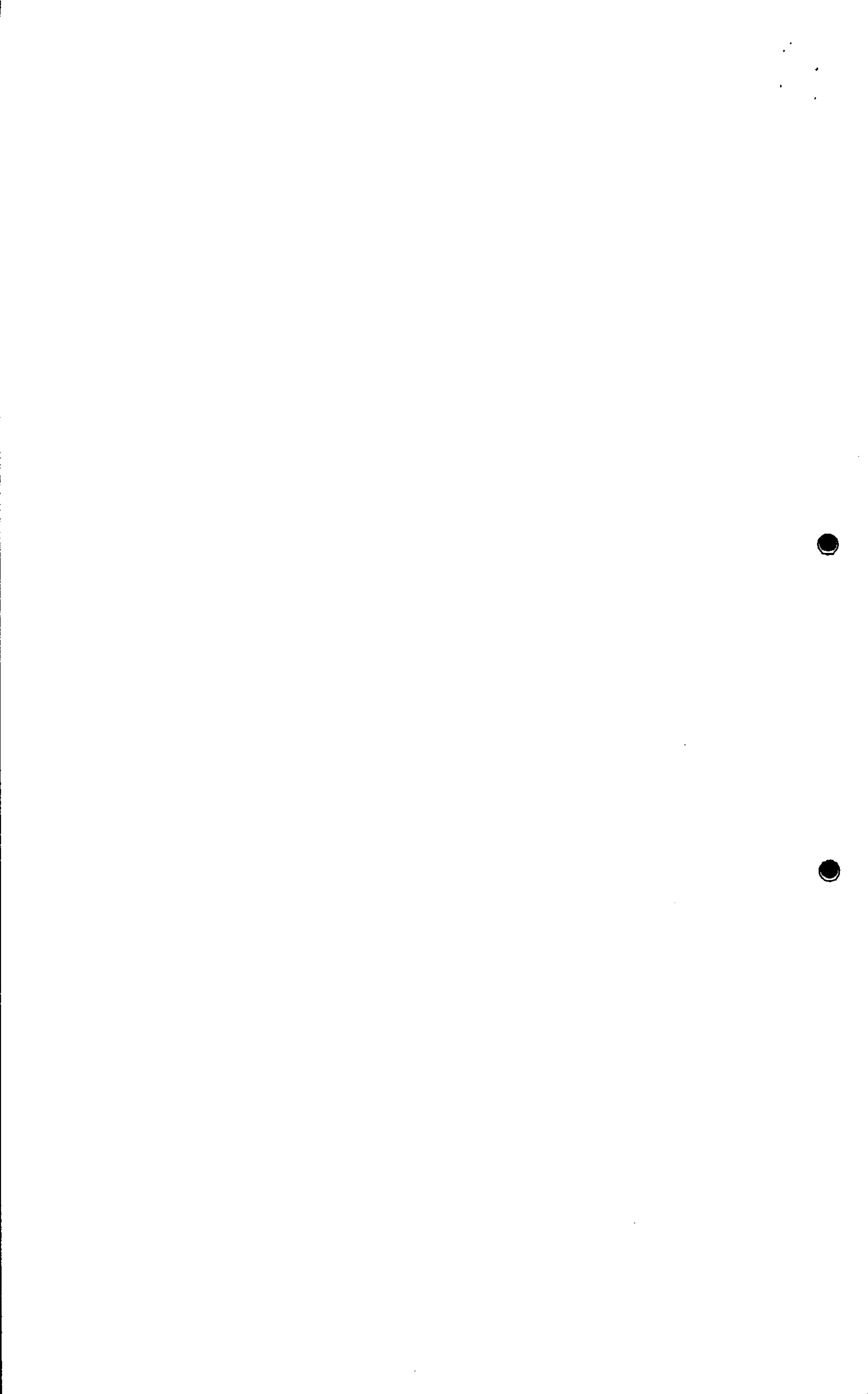
Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

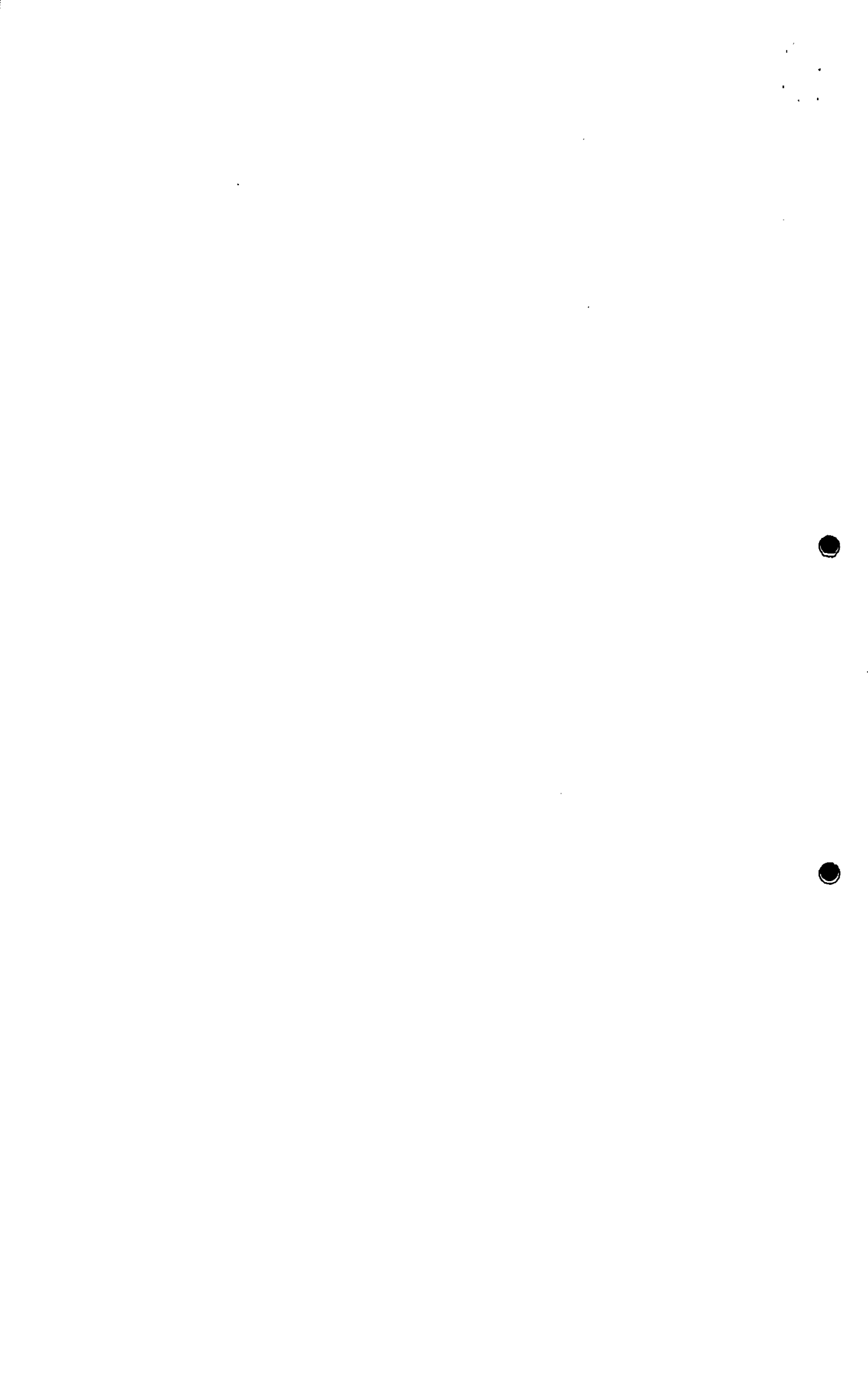
*'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'*

14. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the FY 2016-17 and 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The assessee had also failed to provide the required information even after the issuance of letters and summons from the Department and the assessable value for the FY 2016-17 and 2017-18 (upto June-2017) was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the FY 2016-17 and 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

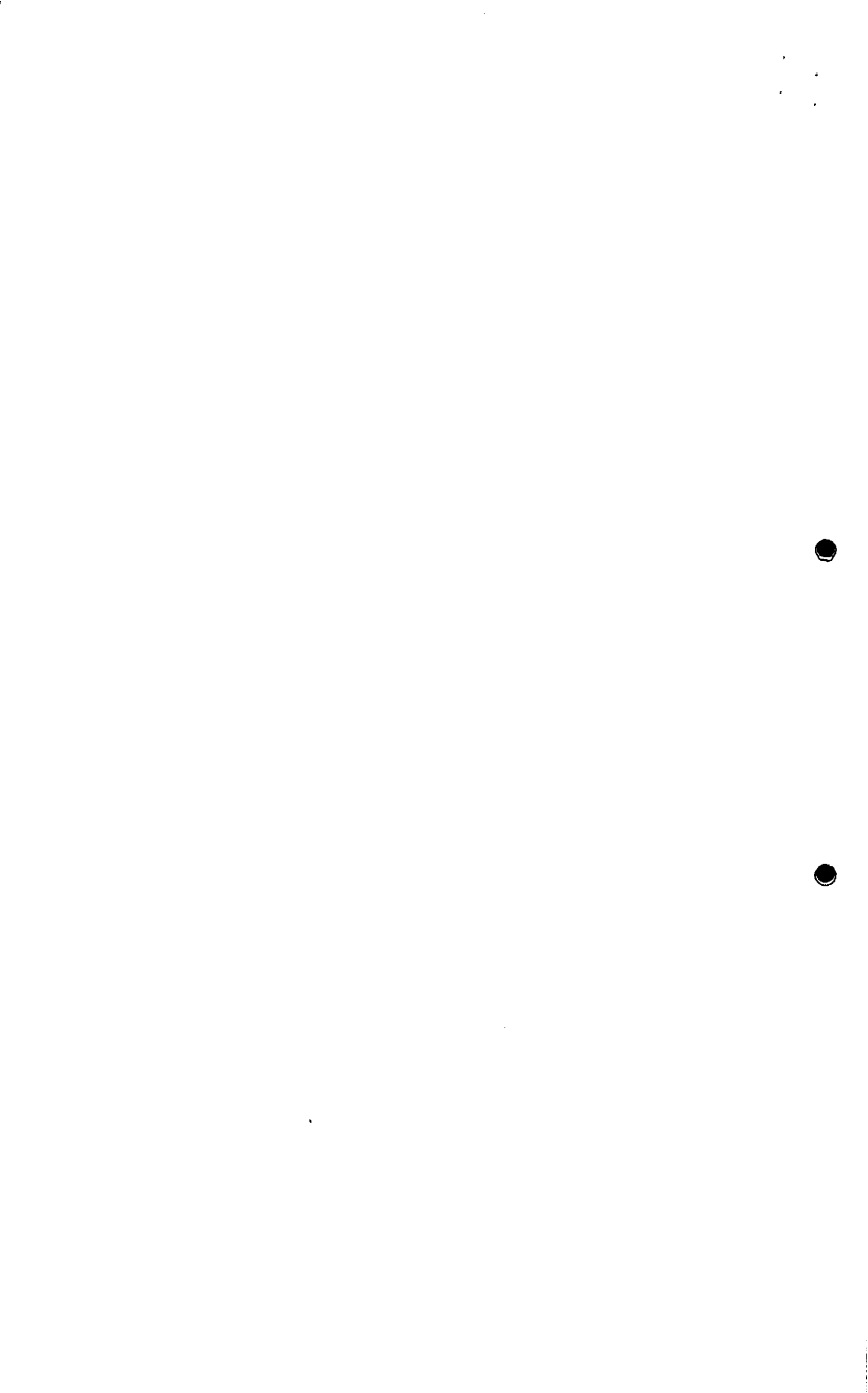
15. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with









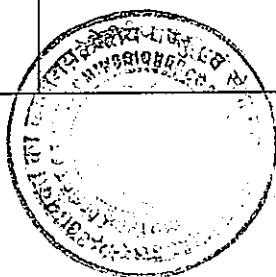


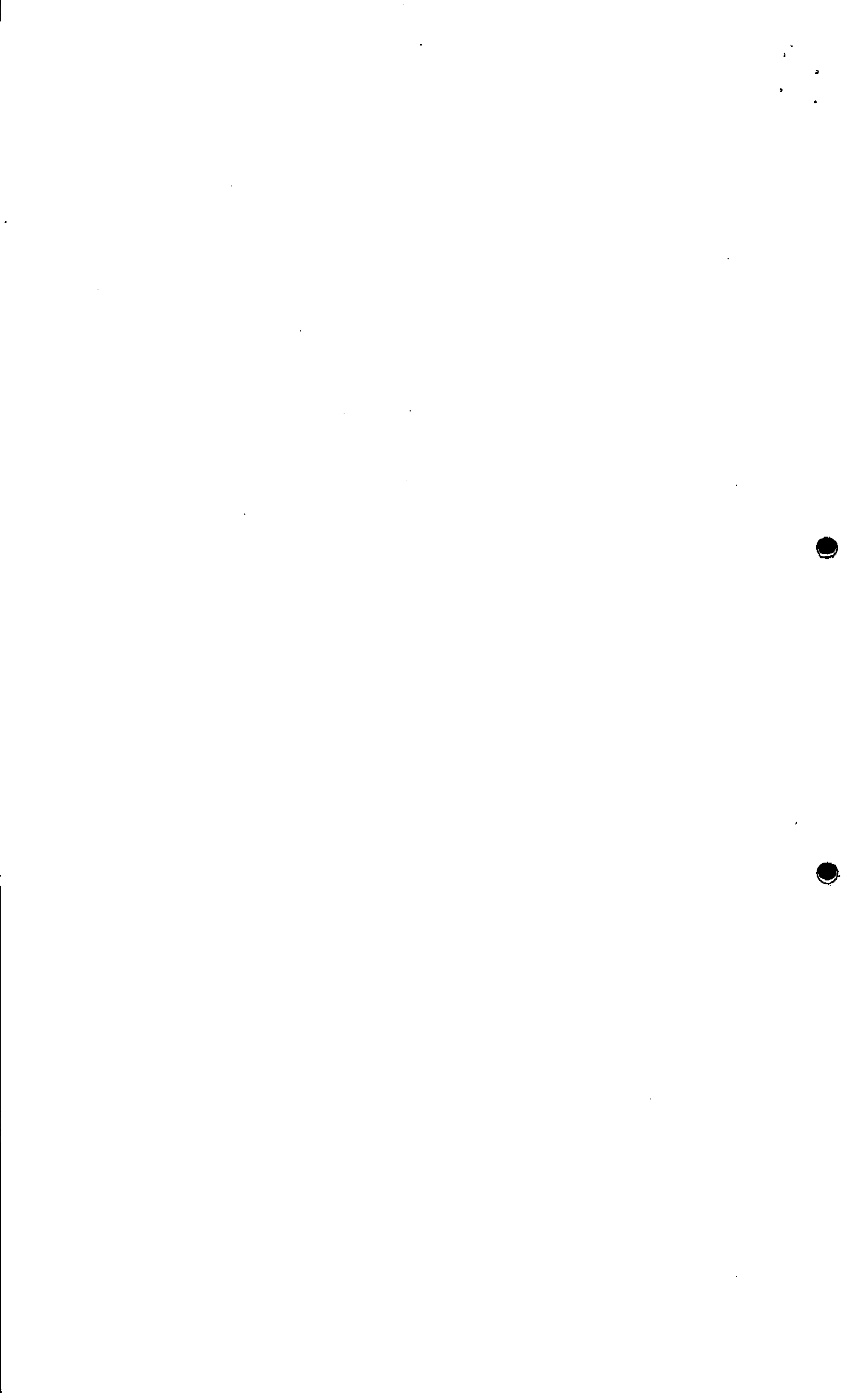
already been verified by the Service Tax Audit Team, which had covered the period from FY 2015-16 and FY 2016-17. They have also stated the demand raised during the audit was accepted by them and the same was paid in full. They have submitted the copy of Final Audit Report No. 75/2018-19 . They have requested to drop the demand in view of the subject audit report.

24. In view of the submission made by the assessee, I am of the opinion that the Final Audit Report issued by the department needs to be looked at to arrive at any fair conclusion. On perusing the Final Audit Report No. 75/2018-19 dated 21.08.2018, I find that the audit was conducted in Jun 2018 by the audit party of Circle VII, CGST, Audit, Ahmedabad, which had covered the period from April 2015 to March 2017. The Audit Report was issued by the Assistant Commissioner, Circle-VII, CGST Audit, Ahmedabad. I find that the audit had raised the following Revenue paras, and all these paras were accepted by the assessee and the amount involved in the paras were paid by the assessee. The summary of the audit objections are reproduced hereinunder for ease of reference:

“ Summary of major audit objections from the working paper:

Sr.No.	Gist of Objections	Revenue Implication if any(in Rs.)	Assessee Agreement, Yes/No. If no reasons for disagreement	Department's Conclusion with reasons
1	Non payment of Service Tax on Legal Services received under RCM (ST-CSR099)	S.Tax. Rs. 7250/- Int Rs. 3263/- Penalty Rs. 1088/- Total Rs. 11601/-	Yes, agreed and Paid	Approved by MCM-accepted by the Party and Para Closed.
2	Wrong Transfer of Cenvat Credit of Education Cess & SHEC in Basis Duty (ST-ISR099)	S.Tax. Rs. 5506 /- Int Rs.2180 / Penalty Rs.826 /- Total Rs. 8512/-	Yes, agreed and Paid	
3	Wrong availment of Cenvat Credit of Swacch Bharat Cess (SBC) (ST-ISR099)	S.Tax. Rs. 16216/- Int Rs.8173 /- Penalty Rs. 2432/- Total Rs. 26821/-	Yes, agreed and Paid	
4	Nonpayment of Service Tax on Agency Fees Received (ST-CSR099)	S.Tax. Rs. 4926/- Int Rs.2482/- Penalty Rs. 739/- Total Rs. 8147/-	Yes, agreed and Paid	
5	Wrong availment cenvat Credit on Common Input (ST-ISR099)	S.Tax.Rs. 388307/- Int Rs.190251 /- Penalty Rs. 58276/- Total Rs. 636834/-	Yes, agreed and Paid	
	TOTAL	S.Tax.Rs.422205 /- Int Rs.206349/- Penalty Rs.63361 /- Total Rs.691915/-		



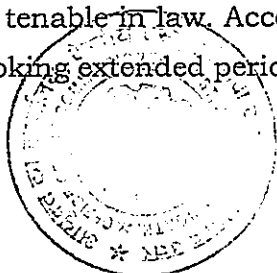




25. Therefore, it is apparent from the Final Audit Report that the verification of the books of accounts and other records have been verified by the audit in detail for the period from April 2015-16 to March 2017. The assessee's income from services and trading activities have also been verified. The audit has not pointed any major difference in incomes, other than non payment of service tax on "Agency fees" as per Revenue Para- 3 of the Final Audit Report, as per incomes (Taxable value) disclosed in ST-3 Returns vis-à-vis that disclosed in Financial Records. It is also seen that the assessee had already paid the service tax on the differential value of service as observed by the audit. It is also evident that the audit of records of assessee by the department had already been conducted before the issuance of the subject SCN. Despite of the above fact the SCN seeking demand of the service tax on differential value worked out by comparing the Income as per ITR/ Form 26AS vis-à-vis Taxable value disclosed in ST-3 Returns was issued. I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department had not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax. Having considered these factual and documentary evidences available on records, and relying on the Final Audit Report, I find that there is no short payment on the part of the assessee. The SCN issued to the assessee after audit of the assessee is bad in law and is absolutely incorrect and is not justified. In this regard, I rely on the decision of Hon'ble Tribunal in the case of A.N. KAPOOR (JANITORS) PVT. LTD., reported at 2021 (52) G.S.T.L. 153 (Tri. - All.), relying the Apex Court's decision in the case of NIZAM SUGAR FACTORY [2008 (9) S.T.R. 314 (S.C.) held that "Moreover, audit conducted for relevant disputed period without any objection - Hence, demand raised invoking extended period of limitation not sustainable - Section 73 of Finance Act, 1994." Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

26. As regards the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. Since, the assessee had not provided any details/information/documents for the F.Y.2017-18 (upto June,2017) or reason for the non disclosure was made known to the department, I refrain myself from entering in to the said period to determine liability of assessee for service tax.

27. In view of the facts and circumstances pertaining to the subject case, the demand is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length



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and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty.

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

**ORDER**

I drop the proceedings initiated against M/s. Maitri Interior Projects Private Limited, Gayatri Houser, Opp. Govt. Engineering College, Motera, Sabarmati, Ahmedabad-380005, vide Show Cause Notice F.No. STC/15-149/OA/2020 dated 21.10.2020.



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

By Regd. Post AD./Hand Delivery  
F. No. STC/15-149/OA/2020

Date: .01.2022.

To  
M/s. Maitri Interior Projects Private Limited,  
Gayatri House, Opp. Govt. Engineering College,  
Motera, Sabarmati, Ahmedabad-380005

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

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