


<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 & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/ F.NO.STC/15-63/OA/2020

DIN- 20220364
20220364 with crown 044 F

आदेश की तारीख / Date of Order : 15.03.2022
जारी करने की तारीख / Date of Issue: 15.03.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या / AHM-EXCUS-002-COMMR- 71 /2021-22

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 71 /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 कम प्रतियाँ संलग्न की जाएंगी म 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 क्रमबद्ध 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.

Subject- Proceedings initiated vide Show Cause Notice No. F.NO.STC/15-63/OA/2020 dated 28.09.2020 issued to M/s.SKE Projects Private Limited, Situated At B-403, Aniket Residency, Opp. Sakar School, New C.G. Road, Chandkheda, Ahmedabad, Gujarat

M/s.SKE Projects Private Limited, Situated At B-403, Aniket Residency, Opp. Sakar School, New C.G. Road, Chandkheda, Ahmedabad, Gujarat were issued SCN F. No. STC/15-63/OA/2020 dated 28.09.2020 by the Principal Commissioner, Central GST & Central Excise, Ahmedabad North.

BRIEF FACTS OF THE CASE PERTAINING TO ISSUANCE OF THE SUBJECT SCN TO M/S. SKE PROJECTS PRIVATE LIMITED, ARE AS UNDER:

M/s.SKE Projects Private Limited, Situated At B-403, Aniket Residency, Opp. Sakar School, New C.G. Road, Chandkheda, Ahmedabad, Gujarat (hereinafter referred to as 'Noticee') are engaged in providing taxable services, and are holding Service Tax Registration No. AAOCS8698DSD001.

2. Analysis of Sales/Gross Receipts from Services, the Total Amount Paid/Credited and Gross value of Services Provided in ITR/Form 26AS of M/s SKE Projects Private Limited, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, 2015-16 & 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes & Customs (CBIC).

3. As per the records available with the Divisional Office of Division-VII, Ahmedabad North Commissionerate and on going through the Third Party Data provided by CBDT of the said noticee for the F.Y. 2014-15, 2015-16 & 2016-17, the total sales of service from ITR/26AS were found to not tallying with Gross Value of Service, as declared in ST-3 Return of the F.Y. 2014-15, 2015-16 & 2016-17. Therefore, it appeared that the said noticee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y.2014-15, 2015-16 & 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2014-15, 2015-16 & 2016-17. The difference in values as observed for FY 2014-15, 2015-16 & 2016-17 was seen to be as under:

F.Y.	Value As per B/S, P&L, Form 26AS of ITR	Value declared in ST-3 Returns	Differential amount	Service tax payable (including cess)
2014-15	2,32,153/-	0/-	2,32,153/-	28,694/-
2015-16	48491485/-	5135918/-	43355567/-	6286557/-
2016-17	158720751/-	2560284/-	156160467/-	23424070/-
TOTAL				29739321/-

Therefore, it appeared that the said noticee had short paid service tax to the extent of Rs.2,97,39,321/- on the deferential value of Rs. 19,97,48,187/-.

4. The noticee were requested to provide explanation to department vide letter F.No.STC/Prev/Gr-I/TDP/2018-18 dated 12.02.2018 and subsequent reminders dated 03.05.2018, 17.06.2019 and 09.07.2020 for difference in value shown in ST-3 Returns vis-à-vis that shown in Income Tax return filed for FY 2014-15, 2015-16 & 2016-17. But, the noticee neither produced any documentary evidences nor submitted any reply in the matter although sufficient time was provided to the noticee for the same.

5. It therefore appeared that the noticee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they had failed to pay/ short paid/ deposit Service Tax to the extent of Rs.2,97,39,321/-, by declaring less value in their ST-3 Returns vis-a-vis values declared in their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them. The noticee also appeared and have contravened Section 70 of Finance Act 1994 and they also appeared to have failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

6. It appeared that at no point of time the noticee had disclosed or intimated to the Department regarding receipt/providing of Service 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 2014-2015 to 2016-17. The Government had from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence were put in place. It appeared that the noticee had

knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as could be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs.2,97,39,321/-. It appeared that the noticee had indulged in suppression of material facts and had contravened the provisions of Finance Act, 1994 with an intent to evade payment of Service Tax and the same appeared to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 along with interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. The noticee appeared to have committed an offence of the nature specified under Section 78 of the Finance Act, 1994 and therefore, it appeared that the noticee had rendered themselves liable for penalty as well under Section 78 of the Finance Act, 1994.

7. Un-quantified 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.'

8. It appeared that the data for the F.Y. 2017-18 (up to 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 said noticee had also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year F.Y. 2017-18 (up to June'2017) was not ascertainable at the time of issuance of Show Cause Notice. Consequently, if any other amount was to be disclosed by the Income Tax Department or any other sources/agencies against the said noticee, action was to be initiated against them 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 period F.Y. 2017-18 (up

to June'2017) covered under the Show Cause Notice issued, was to be recoverable from the said noticee accordingly.

9. Accordingly, Show Cause Notice No.STC/15-63/OA/2020 dated 28.09.2020 was issued by the Principal Commissioner, Central GST & Central Excise, Ahmedabad North to M/s. SKE Projects Private Limited, Ahmedabad asking them as to why :

(i) The Service Tax to the extent of Rs. 2,97,39,321/- (Rupees Two Crore Ninety Seven lakhs Thirty Nine Thousand Three Hundred Twenty One Only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994;

(ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

(iv) Penalty of Rs.10,000/- should not be imposed on them under Section 77 of the Finance Act, 1994.

10. **DEFENCE REPLY:**

No defense reply in the matter has been received by this office, till date.

11. PERSONAL HEARING:


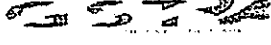
The noticee were granted personal hearing on 28.09.2021, 13.10.2021, 16.11.2021, 10.12.2021, 10.01.2022 to present their case. However, inspite of being offered so many opportunities for attending the personal hearings the noticee has preferred to not attend any of the personal hearings granted.

DISCUSSION & FINDINGS:

12. Since, a substantial amount of revenue is involved in the subject demand and the noticee had refused to even reply to the notice or reply to the letters of personal hearings let alone attend the same, it was felt that in the interest of justice and fair play one last opportunity of personal hearing to the noticee was justified before taking any decision on the subject matter.

12.1 Accordingly, the undersigned as the adjudicating authority issued letter F. No.STC/15-164/OA/2020 dated 18.01.2022 to the noticee which is reproduced herein as under;

DIN 202201164WT 0000566 FR2

आयुक्त का कार्यालय, केंद्रीय जी. पस्. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद -उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009		 OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
फोन नंबर./ PHONE No.: 079-27544557 फैक्स/ FAX : 079-27544463 E-mail:- anbmscdabn2@gmail.com		

BY SPEED POST

फा सं. STC/15-63/OA/2020

दिनांक : 18.01.2022

To.

M/s. SKE Projects P. Ltd.,
B 403, Aniket Residency,
Opp. Sakar School,
New C G Road,
Chandkheda, Ahmedabad

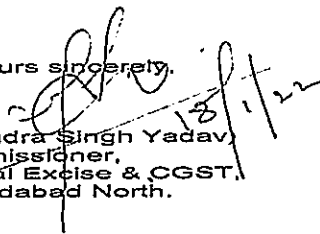
Gentleman,

Sub: Intimation regarding Fixing of Personal Hearing m/reg.

Please refer to the SCN No. STC/15-63/OA/2020 dated 28.09.2020 issued to you by the Principal Commissioner, Central Excise & CGST, Ahmedabad North. Please also refer to the letters of even no. dated 13.09.2021, 01.10.2021, 27.10.2021, 10.12.2021 and 27.12.2021 vide which dates of personal hearing were communicated to you so that you could have your say vis-à-vis the charges levelled in the SCN.

In this connection, it is to mention that you have neither filed your defence reply nor have attended any of the numerous personal hearings fixed in the matter. Since, a substantial amount of govt. revenue is involved in the matter, you are once again requested to file your defence reply if any and also appear for personal hearing on any working day, but not later than 28.01.2022. You may also take note that this is the final opportunity given to you to defend your case in person. In case you fail to appear for personal hearing before 28.01.2022, the undersigned as an adjudicating authority would have no recourse left but to adjudicate the case on the basis of available records ex-parte.

Yours sincerely,


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


प्राप्त किया
उपस्थित एवं संवत् 2022, अहमदाबाद उत्तर
दिनांक: 19.01.2022
हस्ताक्षर: P. K. 501
नाम:

Copy to: The Deputy Commissioner, Central Excise & CGST, Div. VII, Ahmedabad North, Ahmedabad for serving the letter on the notice.

In response to the above, noticee vide letter dated 27.01.2022 requested to grant extension for one month time for submission of their reply. They have also submitted that they had not received the notices of previous dates and requested to provide the same. The same had been provided by the department on 31.01.2022 on mail id SKTIWARISKE@gmail.com.

The noticee vide letter dated 27.01.2022 have submitted that they have received personal hearing notice dated 15.01.2022, that they have not received any previous notice and requested to provide notices issued them, and to grant extension of time limit of 1 month to file reply in the subject matter. This office vide mail dated 31.01.2022 sent copy of SCN and PH letter

on mail id SKTIWARI@gmail.com of the noticee. However, the noticee have neither filed any reply nor responded to the PH letter issued to them. The undersigned as the adjudicating authority again issued PH letter dated 24.02.2022 to noticee to appear for personal hearing, which is reproduced herein as under;

<p>आयुक्त का कार्यालय, मैट्रीय जी. एस. टी. एस पैन्दीय इन्पाद बुल्डिंग, अहमदाबाद -3तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 3ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फोन नंबर/ PHONE No.: 079-27544557 गैर/ FAX : 079-27544463 E-mail:- <u>asahmedabad2@gmail.com</u></p>		

फा. सं. STC/15-63/OA/2020

BY SPEED POST

दिनांक 24 02 2022

To,
M/s. SKE Projects P. Ltd.,
B 403, Aniket Residency,
Opp. Sakar School,
New C G Road,
Chandkheda, Ahmedabad
Gentleman.

Sub: Intimation regarding Fixing of Personal Hearing m/reg.

Please refer to the letter dated 18.01.2022 issued by the undersigned, giving the final opportunity to defend your case in person in the matter of SCN No. STC/15-63/OA/2020 dated 28.09.2020 issued to you by the Principal Commissioner, Central Excise & CGST, Ahmedabad North.

In this connection, you have neither filed your defence reply nor have attended any of the numerous personal hearings fixed in the matter. Since, a substantial amount of govt. revenue is involved in the matter, you are once again requested to file your defence reply if any and also appear for personal hearing on any working day, but not later than 04.03.2022. You may also take note that this is the last & final opportunity given to you to defend your case in person. In case you fail to appear for personal hearing before 04.03.2022, the undersigned as an adjudicating authority would have no recourse left but to adjudicate the case on the basis of available records ex-parte and no further extension of time will be granted.

Yours sincerely,

<p>प्राप्त किया वर्ष: 2022 दिनांक: 04.03.2022 समय: 05:30 PM Office post-man @ Copy Received</p>

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

Copy to: The Deputy Commissioner, Central Excise & CGST, Div. VII, Ahmedabad North, Ahmedabad for serving the letter on the noticee

The PH letter dated 24.02.2022 was served to Shri Gajendra D. Mulani, authorized representative of M/s. SKE Projects Pvt. Ltd., on 02.03.2022, which reproduced herein as under;

Date: 02/03/2022

ACKNOWLEDGEMENT

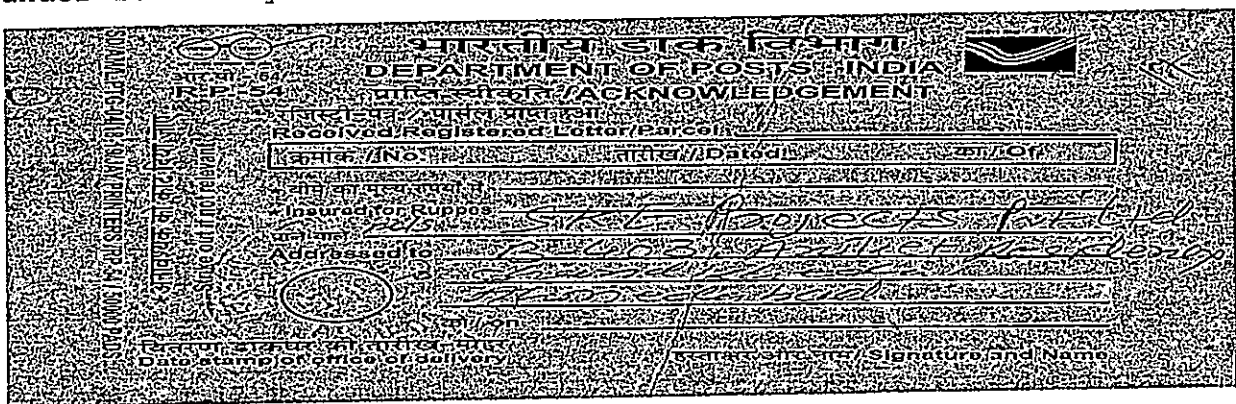
I, the undersigned, hereby acknowledge the receipt of letter (Intimation regarding fixing of personal Hearing) bearing F.No. STC/15-63/OA/2020 dated 24.02.2022 issued by Commissioner, Central Excise & CGST, Ahmedabad North, in respect of M/s SKE Projects P Ltd.

Signature: Gajendra D. Mulani

Name: Gajendra D. Mulani
Mobile Number: 8733054417

Inspite of receiving PH letters issued by the undersigned as the adjudicating authority, the noticee have neither bothered to file any reply nor have they appeared for personal hearing in the subject matter.

12.2 On going through the case file, I find that SCN had been served through regd. post and the same had been received by the noticee. Therefore, I am not convinced with the argument put forth by the noticee that they had not received the subject SCN before as it clearly evident that the SCN was received by them on 07.10.2020. The copy of postal acknowledgment is placed here under for ready reference;



12.3 I also find that letters written to the noticee have never been reverted back by the postal authority to the department, which clearly proves that the noticee had received all the letters/communication issued by the department. The noticee first by giving the excuse of not receiving the SCN and thereafter by not responding to the letters of personal hearings and asking for extension of time for preparing for the personal hearing seems to be indulging in dilatory and obstructive approach/ strategies to delay the due process of adjudication.

13 Now, having carefully gone through the facts and contents of the case as available in the case file, I find that the noticee has failed to submit their written reply and has also failed to appear for Personal Hearing, though asked to do so repeatedly as mentioned in Para-11 to 12.1 above. Under the circumstances, I take up the matter for adjudication proceeding ex-parte since enough opportunities have been given to the noticee to defend their case and to attend personal hearings. In view of the reluctance of the noticee to file a written reply and to attend personal hearings, I am left with no recourse but to decide the instant Show Cause Notice on the basis of records/documents available in the case file.

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

In support of the same, I rely upon some of the relevant judgments/orders which are mentioned herein as under:-

a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR 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;

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."

14. On going through the Show Cause Notice, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for F.Y.2014-15, 2015-16 & 2016-17, which was then compared with the gross value declared in ST-3 Returns filed for FY 2014-15, 2015-16 & 2016-17 by the noticee. The difference in value of service to the extent of Rs. 19,97,48,187/- was noticed and therefore, in view of the differential values the subject SCN for recovery of Service Tax to the tune of Rs.2,97,39,321/- was issued.

14.1 I find that noticee was holding Service Tax Registration No. AAOC8698DSD001. They had declared values in ST3 returns Rs. "0" (Zero) for F.Y.2014-15, Rs.51,35,918/- for

F.Y.2015-16 and Rs.25,60,284/- for F.Y.2016-17. Therefore, I find that the noticee were providing taxable services for the period from 2014-15 to 2016-17 and had filed the ST3 returns for F.Y.204-15, 2015-16 & 2016-17. Further, I find that noticee were holding service tax registration, which means they were very much aware about their tax liability and were having the knowledge of rules and regulation of Finance Act,1994. In spite of various letters issued by the department and sufficient opportunity being granted for personal hearing in the matter, the noticee has not responded with any reply/submission and has also not appeared for multiple personal hearings granted.

15. I find that SCN shows the difference in value to the tune of Rs.19,97,48,187- for FY 2014-15, 2015-16 & 2016-17, when value of sales/gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further para 7 of the SCN states that 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 noticee, action was to be initiated against noticee 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 noticee accordingly.

Since, the noticee has not provided any details/information/ documents for the F.Y.2017-18 (upto June,2017) and reason for the non disclosure was not made known to the department either by the CBDT or the noticee, I refrain myself from entering in the said period to determine liability or otherwise of noticee for service tax.

16. I observe that after introduction of new system of taxation of services in negative list regime, any service for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption.

The relevant text to Section 65B (44) of the Finance Act, 1994 ('Act') reads as under:

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

‘Taxable Service’ defined under Section 65B (51) of the Act reads as under:

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

17. Further, I find that invoking extended period of limitation has been discussed in the SCN at length. It is my considered view that the Government has, from the very beginning; put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service providers/ taxpayers and accordingly, measures such as self-assessment etc., based on mutual trust and confidence have been put in place. In the spirit of mutuality of trust and transparent tax administration with reduced compliance burden vis-à-vis rules & procedures the government has consciously promoted the industries interest. Further, a manufacturer/ supplier of goods/ service provider/ taxpayer is not required to maintain any statutory or separate records under the provisions of the Finance Act, 1994 and Rules made thereunder, as considerable amount of trust is placed on them and private records maintained by them, for their normal business purposes, are accepted, practically for all the purposes. All these operate on the basis of expectation of honesty, truthfulness and due diligence on the part of the noticee. Therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences, it is observed that the noticee had knowingly suppressed the fact of receiving income on account of being a service provider. This deliberate act of suppressing income under Finance Act, 1994 is in utter disregard to the requirements of law and breach of trust reposed in them and is certainly not in tune with Government’s efforts in the direction to create a voluntary tax compliance regime.

I rely upon the judgment in the case involving Aircel Digilink India Ltd. V/s. Commissioner of Central Excise, Jaipur, reported in 2006 (3) STR 386 (Tri.-Del) and the case involving Bharti Cellular Ltd. V/s Commissioner of Central Excise, Delhi, reported in 2006 (3) STR 423 (Tri.-Del). In both cases, the hon’ble Tribunal has upheld invocation of

extended period after taking note of the fact that appellants had not disclosed certain details and mode of computation in their ST-3 details and that there was nothing on record to suggest that appellants ever approached the office of the service tax authorities to ascertain the details of their liability to pay the service tax. Similarly, in case of Insurance & Provident Fund Department V/s. Commissioner of Central Excise, Jaipur-I, reported in 2006 (2) STR 369 (Tri.-Del.), Hon'ble Tribunal held that non-disclosure of full amount of premium collected would attract invocation of extended period. The ratio of the above judgments can be applied to the present case also as the noticee had not only suppressed the material facts from the department but had also failed to comply with law and procedures, including payment of service tax. In view of the above, I hold that in the facts and circumstances of the present case, proviso to section 73 (1) of finance act, 1994, is rightly invoked for raising the demand for service tax against the noticee.

18. Further, it is observed that the noticee was fully aware about the fact that they were receiving such income which was chargeable to Service Tax. However, in spite of being conscious of their liability; they chose not to pay and discharge the said applicable dues related to Service Tax. This was done to escape from the eyes of the department with an intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, if the third party data had not been received from the CBDT. These acts on the part of the noticee tantamounts to willful suppression, concealment and mis-statement of facts, with an intent to evade the payment of dues related to Service Tax.

19. Since in the instant case, suppression of material facts have been established after discussions in the paras supra, I consider this as a fit case for imposition of penalty under Section 78 of the Finance Act, 1994 which reads as under:

“SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —

(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Explanation. — For the purposes of this sub-section, “specified records” means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.”

20. Since, it is already proved that the noticee had suppressed the facts, the consequences shall automatically follow. Hon'ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008(231)ELT3(SC) and has further clarified the same in the case of U.O.I. Vs. RSWM reported in 2009(238)ELT3(SC). Hon'ble Supreme Court has said that the presence of *malafide* intention is not relevant for imposing penalty and *mens rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Further, Hon'ble High of Karnataka at

Bangalore in the case of Motor World (2012.(27)STR225(Kar.)) has held that;

"Section 78 applies to a case where a person has registered himself under the Act and failed to file the prescribed return and in such return filed, he has suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service.....

.....Therefore, the argument that once acts of suppression, concealment and furnishing inaccurate particulars are established, the penalty follows as a matter of course or in other words is automatic, is without any substance as it runs counter to the express provision contained in Sections 78 and 80 of the Act. When once it is held that there is no reasonable cause, then the authority is empowered to impose penalty as prescribed under Section 78, for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount or service tax sought to be evaded by reason of suppression or concealment or the value of taxable service or the furnishing of inaccurate value of such taxable service.

21. When once the ingredients of Section 78 are established and there is no reasonable cause for failure. Section 80 is not attracted. Then the authority has to impose a minimum penalty of the amount or service tax sought to be evaded and the maximum is double the said amount. Here, there is no discretion, which is vested with the authority. The discretion is only confined to impose a penalty above the minimum and less than the maximum provided for under the Act....."

21. Penalty under Section 78, is attracted whenever any Service Tax has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful mis-statement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. Thus the noticee have rendered themselves liable to penalty under Section 78 of the Finance Act, 1994 as they were not paying service tax in spite of the facts that they were providing the taxable service. However, as per the second proviso to section 78, where such service tax along with interest is paid within 30 days from the date of communication of the order penalty would be further reduced to 25% of the service tax so determined. The benefit of reduced penalty shall be available only if such penalty is also paid within 30 days from the date of receipt of the order.

22. Regarding penalty under Section 77, I find that the noticee has also contravened the provision of Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable services; violated the provisions of Section 68 of the act read with Rule 6 of the Service Tax Rules, 1994 by not paying the Service Tax during the F.Y. 2014-15, 2015-16 & 2016-17. Further, the noticee has not assessed the tax dues properly on the services provided by them, as discussed above, and had failed to file correct ST3 returns in time thereby violating the proviso of Section 70 of the act read with Rule 7 of the Service Tax Rules, 1994. In view of the above, they are liable for imposition of appropriate penalty under Section 77 of the Finance Act, 1994.

23. Further, in view of the discussion made in the forgoing paras, I hold that the noticee has failed to pay the service tax on the taxable income received by suppressing the facts from the department by contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax Rules, 1994. The service tax liability of the noticee has been determined as under, as demanded in subject SCN:

F.Y.	Value As per B/S, P&L, Form 26AS of ITR	Value declared in ST-3 Returns	Differential amount	Service tax payable (including cess)
2014-15	2,32,153/-	0/-	2,32,153/-	28,694/-
2015-16	48491485/-	5135918/-	43355567/-	6286557/-
2016-17	158720751/-	2560284/-	156160467/-	23424070/-
TOTAL				29739321/-

Accordingly, the Service Tax totally amounting to Rs. 2,97,39,321/- (Rs. Two Crores Ninety Seven Lakhs Thirty Nine

Thousand Three Hundred Twenty One Only) is recoverable from the noticee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

24. The provision of omitted Chapter V of the Finance Act, 1994 were saved vide Section 174(2) of the CGST Act, 2017 and therefore the provisions of the Chapter V of the Finance Act, 1994 and the Rules made thereunder are applicable for the purpose of demand of Tax, Interest etc. and imposition of penalty under the subject SCN.

25. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order:

ORDER

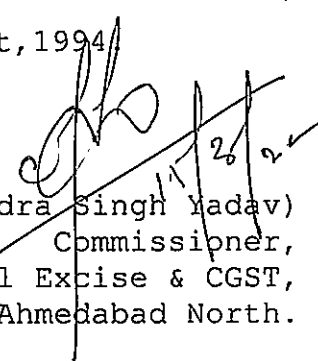
(i) I confirm the demand and order recovery of Service Tax Rs.2,97,39,321/- (Rs. Two Crores Ninety Seven Lakhs Thirty Nine Thousand Three Hundred Twenty One Only) from M/s. SKE Projects Private Limited, Ahmedabad under Section 73. of the Finance Act, 1994.

(ii) I order to recover interest at the applicable rate from M/s. SKE Projects Private Limited, Ahmedabad under the provisions of Section 75 of the Finance Act, 1994 on the demand at (i) above.

(iii) I impose penalty of Rs. Rs.2,97,39,321/- (Rs. Two Crores Ninety Seven Lakhs. Thirty Nine Thousand Three Hundred Twenty One Only) on M/s. SKE Projects Private Limited, Ahmedabad under section 78 of the Finance Act, 1994. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax

amount, provided if such penalty is also paid within such period of 30 days.

(iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon M/s. SKE Projects Private Limited, Ahmedabad under section 77 of the Finance Act, 1994


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

By Regd. Post AD./Hand Delivery

F.No. STC/15-63/OA/2020

Date:15.03.2022.

To,
SKE Projects Private Limited
B-403, Aniket Residency,
Opp. Sakar School, New C.G.Road,
Chandkheda,
Ahmedabad.

Copy to:

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