


<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>GST ONE NATION. ONE TAX. ONE MARKET</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20230564WT000000E2E5

फा.सं./F.No. STC/15-193/OA/2021-22

आदेश की तारीख/Date of Order :- 26.05.2023

जारी करने की तारीख/Date of Issue :- 26.05.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 03/JC/LD/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -4 (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

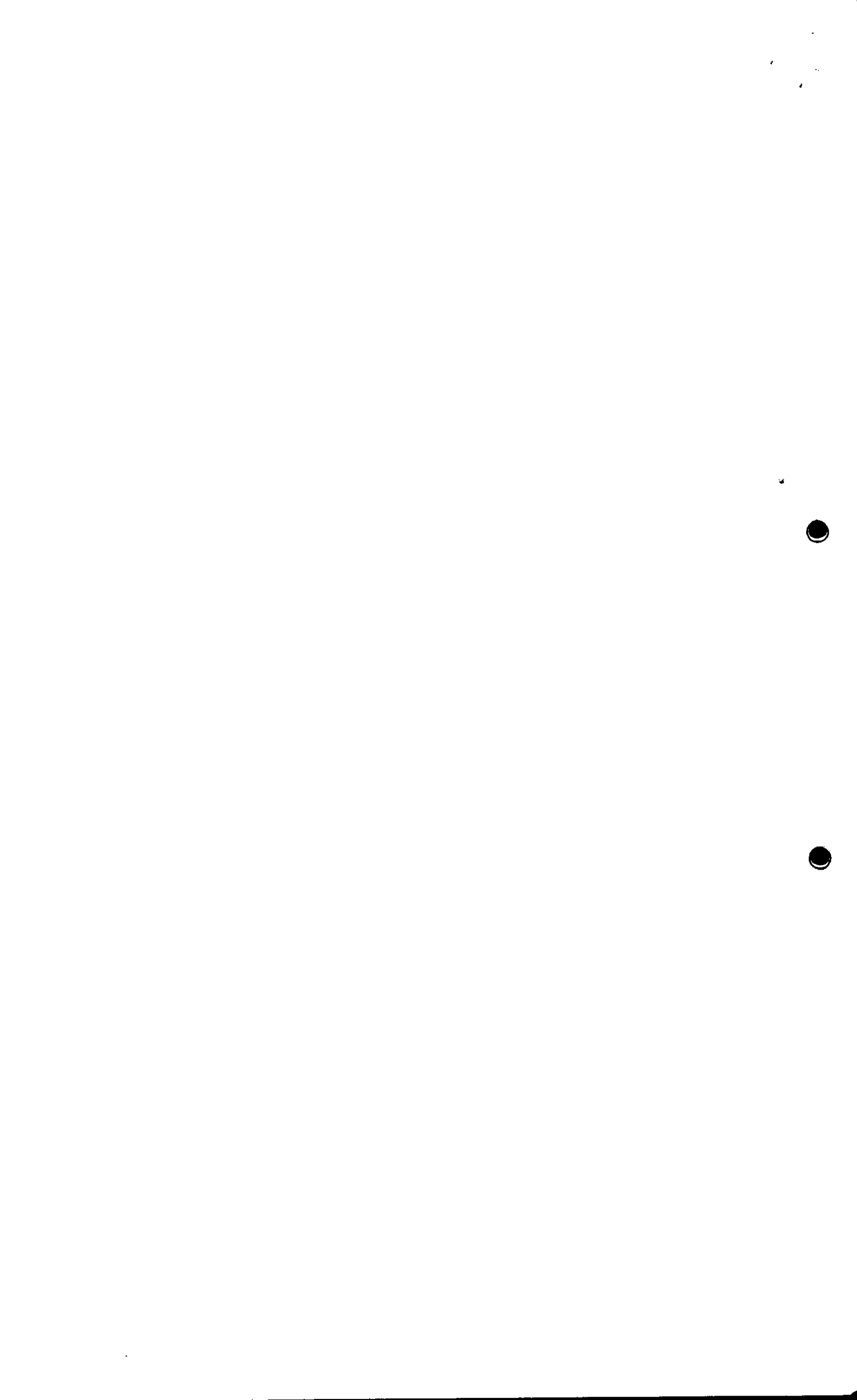
The appeal should be filed in form एस टी -4 (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order

Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-193/OA/2021-22 dated 23.04.2021 issued to M/s Utsav Bipinbhai Patel, 69, Super Bunglows, Opp. Science City, Sola, Ahmedabad, Gujarat-380063.



BRIEF FACTS OF THE CASE

M/s.Utsav Bipinbhai Patel, 69, Super Bungalows, Opp. Science City, Sola, Ahmedabad, Gujarat - 380063 (hereinafter referred to as "the said assessee" for the sake of brevity) are engaged in providing services and for the same was registered with Service Tax Department having Service Tax Registration No. BRVPP7367JSD001.

2. An 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" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with this office, on going through the Third party Data received from CBDT of the said assessee for the F.Y. 2015-16 to 2016-17, the Sales/Gross Receipt from Services (Value from ITR) are not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 to 2016-17. It was noticed that the said assessee have declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 to 2016-17. The details of difference as per CBDT data for the F.Y. 2015-16 to 2016-17 are as under :

TABLE A

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
1.	2015-16	52568071	7334268
2.	2016-17	0	0
	TOTAL	52568071	7334268

Therefore, the said assessee has less discharged their Service Tax liability and thus is liable to pay Service tax including Cess [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and [@15% from 01-06-2016 to 31-03-2017] for amounting to Rs.7334268/- on the differential value amounting to Rs. 5,25,68,071/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

4. As per the provisions of Section 72 of the Finance Act, if any person, liable to pay service tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

5. As per the provisions of Section 73(1) of the Finance Act where any service tax has not been levied or paid or has been short levied or short paid by the 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 notice on the person chargeable with service tax which has not been levied or paid of which has been short levied or short paid requiring him to show cause why he should not pay amount specified in the notice.

6. As per Rule 6 of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5th 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 assessee shall submit their service tax returns in the form of ST-3 within the prescribed time.

7. Thus the said assessee have failed to pay/short paid/deposit service tax to the extent of Rs. 73,34,268 /- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 Returns vis-a-s their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, it appeared that the said assessee have failed to discharge the service tax liability of Rs. 73,34,268/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs. 5,25,68,071/- and therefore, service tax is 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.

8. In view of above, the said assessee have contravened the provisions of :

- (a) Section 66 of the Finance Act, 1994 in as much as they have failed to collect and pay the service tax as detailed above, to the credit of Central Government.
- (b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they have not paid the service tax as mentioned above to the credit of the Government of India within the stipulated time limit;
- (c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

9. It was further noticed that at no point of time, the said assessee has disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Service of the differential value that has come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 to 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid/short paid/not deposited Service Tax thereof to the extent of

Rs. 73,34,268 /-. Thus, it appeared that there is a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appeared that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

10. 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 appears that the said assessee has short paid/non-payment of Service Tax of 73,34,268/- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the Finance Act 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 has suppressed the facts to the department and contravened the provisions with an intent to evade payment of Service Tax. The said assessee has not discharged their Service tax liability and hence is liable to pay interest under Section 75 of the Finance Act.

11. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax appears to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to Rs. 73,34,268 /- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) not paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

12. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appear to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appears that the said assessee have contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appear to have rendered themselves liable to penalty under Section 76 & Section 77 of the Finance Act.

13. Moreover, in addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appears that the said assessee has willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994.

14. Therefore Show Cause Notice No.STC/15-193/OA/2021-22 dated 23.04.2021 was issued to the M/s.Utsav Bipinbhai Patel called upon to show cause as to why;

(i) Differential amount of Service Tax amounting to Rs.73,34,268/- (Rupees Seventy Three Lakh Thirty Four Thousand Two Hundred Sixty Eight only) (inclusive of Edu. Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.

(ii) interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994 from the due date on which the Service Tax was liable to be paid till the date on which the said Service Tax is paid.

(iii) penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit.

(iv) penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to assess the correct tax liability.

(vi) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

DEFENCE REPLY

15. The said assessee vide letter dated 29.04.2021, 16.03.2023, 20.03.2023 & 28.03.2023 submitted their reply to SCN, wherein they explained the reasons for the difference. They are carrying in the business of works contracts service of commercial buildings as well as residential buildings. During the period they have engaged in works contract service of construction of factory at Vapi for Jackson Limited. They are eligible for 60% abatement of total work contract as per Notification No.24/2012 Sr.No.1. They are as service provider to pay 50% ST after abatement & 50% ST payable by service recipient as per Notification No.30/2012 Sl.No.9. The difference has been explained by them accordingly to which they have filed ST 3 Return for the FY 2015-16 declaring total receipts as Rs.3,71,70,559/- against the receipts as per ITR of Rs.5,21,32,843/-. Thus there is a difference of Rs.1,49,62,284/- on which they have claimed abatement of Rs.89,77,370/- @ 60% being original works contract service. They also claimed benefit of Notification No30/2012 Sl.No.9 according to which the service receiver is liable to pay 50% service tax and therefore they are liable to pay the remaining 50% service tax. Accordingly they have paid service tax of Rs.4,92,646/- along with interest vide challan dated 26.08.2016. They have also provided copy of ST 3 Returns for the period and also copy of Challan dated 26.08.2016. As the portal is not open they could not provide Form 26AS for the period.

PERSONAL HEARING

16. In the instant case, Personal Hearings have been granted to the assessee on 01.06.2022, 20.09.2022, 30.12.2022, 17.01.2023, 16.03.2023 and finally 29.03.2023 on in the registered address of the assessee. However, the said assessee did not turned up for P.H. even though the same were delivered to them. As the service provider was given six opportunities of personal

hearing and failed to avail any of these opportunities, I am, therefore, bound to decide the case on the basis of the available facts on record/reply filed by the assessee.

DISCUSSION AND FINDINGS

17. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174 (2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding to adjudicate the SCN.

18. I have carefully gone through the Show Cause Notice, reply to SCN, Certificate issued by the service receiver, copy of ST 3 Return, copy of challan and other documents and find that Show Cause Notice was issued to the assessee demanding Service Tax of Rs.73,34,268/- for the Financial Year 2015-16 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 73,34,268/- for the financial years 2015-16 under proviso to section 73(1) of Finance Act, 1944 or not.

19. In the instant case, on perusal of the above referred documents, I find that the assessee has receipt from providing services related to works contract services. Here I would like to go the definition of service on which service tax is payable. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:

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

- (a) an activity which constitutes merely,—*
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or*
 - (iii) a transaction in money or actionable claim.*
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment.*
- (c) fees taken in any court or tribunal established under any law for the time being in force.*

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service.

Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 194 as under:

(51) taxable service means any service on which service tax is leviable under Section 66B.

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided r agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed”

20. According to which service tax is levied on all services other than those specified in negative list (Section 66 D of Finance act, 1994) in the taxable territory by one person to another. In this context the services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

SECTION 66D. Negative list of services.— The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or 9
- (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;
- (ii) supply of farm labour;
- (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;
- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) [****].;

(g) selling of space for advertisements in print media;

(h),service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression “betting, gambling or lottery” shall not include the activity specified in Explanation2 to clause (44) of section 65B;

(j) [* * * *]

(k) transmission or distribution of electricity by an electricity transmission or distribution utility; 10

(l) [* * * *]

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

- (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- (ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

- (i) [* * * *]
- (ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach;
- (iii) metro, monorail or tramway ,
- (iv) inland waterways;
- (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- (vi) metered cabs or auto rickshaws

(p) services by way of transportation of goods—

- (i) by road except the services of— (A) a goods transportation agency; or (B) a courier agency;
- (ii) [* * *]
- (iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

21. Thus with effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. It is not disputed that the assessee has provided works contract services and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance Act, 1994. In view of the above, the works contract services provided by the assessee are covered under service tax and they are also liable to pay service tax on the said services.

22. I have gone through the Show Cause Notice, reply to SCN, STR & other documents for the FY 2015-16 and find that the said assessee is engaged in providing Works Contract Services. They have registered with Service Tax Department under Registration No.BRVPP7367JSD001. They have filed ST 3 Returns for the FY 2015-16 declaring gross value as Rs.3,71,70,559/- and paid applicable service tax also . The Service tax payable is arrived at on the basis of value of "value of difference in ITR & STR/TDS & STR from services (value from ITR/26AS) for the Financial Year 2015-16. By considering the said amount as taxable income, the service tax liability is calculated as tabulated in Table-A supra. In this connection, the assessee in their reply to SCN and in their ST 3 returns claimed that they are providing works contract service, paid service tax and filed ST 3 Returns. In view of the above, I have gone through the definition given under Section 65 of Finance Act, 1994 of works contract service which reads as follows.

Clause 44 of section 65B of Finance Act, 1994, defines the Work-Contact as follows: "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

The method of determining the taxable value is to be determined as per Rule 2A of service tax (Determination of value Rules) 2006 which reader as under:

1 "2A. Determination of value of service portion in the execution of a works contract.- Subject to the provisions of section 67, the value of service portion in the execution of a works contract , referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services; 1 amended by Service Tax (Determination of Value) Second Amendment Rules, 2012 vide Notification no 24/2012-ST, dated 6.06.2012 w.e.f. 1.7.2012.

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

Explanation 1. - For the purposes of this rule,-

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon: Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.--For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."

23. The assessee further claimed benefit of Notification No30/2012 Sl.No.9 according to which the service receiver is liable to pay 50% service tax and therefore they are liable to pay the remaining 50% service tax under Reverse Charge Mechanism. The relevant portion of the Notification is as under:

I. The taxable services,-

(A) (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,-

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

(iii) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;

(iv) provided or agreed to be provided by,-

(A) an arbitral tribunal, or

(B) an individual advocate or a firm of advocates by way of support services, or

(C) Government or local authority by way of support services excluding,-

(1) renting of immovable property, and

(2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994,

to any business entity located in the taxable territory;

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



(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Table

Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

24. According to which the works contract service provided to in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory.

25. In this connection, I have gone through the SCN, reply to SCN, copy of ST3 Return for the FY 2015-16, copy of challan reconciliation statement and find that the assessee is claiming the services provided as works contract service. On perusal of the ST 3 Return for the FY 2015-16, I find that the assessee has declared Rs.3,71,70,559/- under the head Works Contract Service and paid service tax accordingly against the total value difference in ITR & STR which comes to Rs.5,25,68,071/-. Accordingly they have declared Rs.1,53,97,472/- less in their ST 3.

26. The assessee in their reply stated that the differential amount of Rs.1,53,97,472/- is received from works contract service. They have claimed abatement @ 60% for the said differential amount and also claimed that the service receiver is liable to pay service tax of 50% under Reverse Charge Mechanism. After considering these two factors, they have paid service tax of Rs.4,90,646/- vide challan dated 26.08.2016 on the remaining taxable amount of Rs.59,84,913/- and claimed that they have paid service tax on the entire differential income and not liable to pay any service tax.

27. On perusal of the above referred records, I find that in the instant case the service provider is an individual (proprietary firm) and claimed that they are providers of works contract service for which they are eligible for abatement @ 60% of the total value of works contract service for the purpose of

payment of service tax. As discussed above, the abatement of 60% is available in case of works contracts entered into for execution of original works only and service tax shall be payable on forty per cent of the total amount charged for the works contract. In the instant case, even though the assessee claimed abatement of 60% from the total receipts of works contract service income, no documentary evidence to support the eligibility of 60% abatement was provided by the assessee. The abatement of 60 % is available only to original works, as defined as per Rule 2A of service tax (Determination of value Rules) 2006. However the assessee could not furnish any document to prove that the services provided by them are falls under the definition of original works in relation to works contract service as detailed above. They are required to produce copy of an agreement, work order, invoice, ledger account or any other documents to establish that the works done by them are falls under the definition of original works for claiming 60% abatement for the purpose of payment of service tax. Accordingly in the absence of any such supporting documents, I am unable to accept the claim of the abatement of 60% for the purpose of service tax by the assessee.

28. Further, the assessee in their reply to SCN claimed that 50% of the service tax liability is to be paid by the service receiver under RCM in Works Contract Service as they have provided the service to the category of persons as mentioned in Noti.30/2012. I have gone through the reply to SCN and other documents submitted by the assessee and find that they have not furnished copy of an agreement, work order, invoice, ledger account or any other document to establish that the service receiver falls under any of the category of to prove that the service receiver is falling under any of the categories mentioned under Notification No.30/2012 dated 20.06.2012 for paying service tax under RCM. In the absence of the any such supporting documents, I am not in a position to accept the claim of the assessee that 50% of the service tax liability is to be paid by the service receiver under RCM and remaining service tax liability is tom be paid by the assessee. In the circumstances, the assessee, being the service provider, is required to pay the 100% service tax as required by the law.

29. Further the assessee has also informed that they have paid service tax of Rs.4,90,646/- vide challan transaction ID No.800323 dated 26.08.2016 for the period under reference. The payment particulars have been verified from the system/portal and found in order. Hence I consider the service tax of Rs.4,90,646/- paid by assessee from their total service tax liability of Rs.22,32,639/- as calculated in the reconciliation table shown as under. For the sake of clarity, I reconcile the figures as under:

(figure in rupees)

TABLE B

S.No.	Particulars	2015-16
01	Value difference in ITR & STR/TDS & STR	5,25,68,071
02	Less: Value declared in the ST 3 Return	3,71,70,559
03	Taxable value	1,53,97,512
06	Service Tax (incl. cess) @ 14.5%	22,32,639
05	Less: ST paid as discussed	4,90,646
	S.T. Payable	17,41,993

30. Accordingly, on perusal of the records of the case, submissions of the assessee, 26 AS, ST 3 Returns and reconciliation statement for the years 2015-16 & 2016-17, I find that the receipts of the assessee derived from providing works contract services are taxable. On reconciliation and perusal of documents as detailed above, I find that the assessee is liable to pay service tax of Rs.17,41,993/- alongwith with appropriate interest and applicable penalty. Accordingly, I confirm service tax demand of Rs.17,41,993/- out of the total service tax demand of Rs.73,34,268/- demanded vide the above referred SCN and dropped the remaining service tax demand of Rs.55,92,275/- (Rs.73,34,268/- - Rs.17,41,993/-) as discussed above.

31. A taxable person is required to provide information/documents to the department as and when required. However, in this case the assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to pay service tax being the service tax provider. In view of the above facts, it is proved that the assessee may not have the details of the service receivers or they might have been try to avoid furnishing the details which may have lead to proof that the service provider is liable to pays service tax.

32. Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period nor did they have sought any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service in the ST-3 Returns during the relevant period. Consequently, this amounts to mis-declaration and wilful suppression of facts with the deliberate intent to evade payment of Service Tax.

33. I further find that M/s.Utsav B Patel had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period FY 2016-17:

34. It is provided under section 68 of the Finance Act, 1994 that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as worked out above in Table.

35. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services provided by him, as discussed above, as they failed to file ST-3 Returns and thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules,

1994. From the foregoing paras and discussion made herein above, I find that the assessee has contravened the provisions of -

- (a) Section 66 of the Finance Act, 1994 in as much as they have failed to collect and pay the service tax as detailed above, to the credit of Central Government.
- (b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they have not paid the service tax as mentioned above to the credit of the Government of India within the stipulated time limit;
- (c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

36. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. From the information/data received from CBDT, it appeared that the assessee has not discharged service tax liability in spite of declaring before Income Tax Department. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposited on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax not paid by the assessee worked out in Tables supra for financial Year F.Y. 2015-16 is required to be recovered from them under Section 73 (1) of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

37. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, 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 has failed to pay their Service Tax liabilities in the prescribed time limit, I find that the assessee is liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

38. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of Finance Act, 1994 as they failed to pay the correct duty with the intent to evade the same. It is also a fact that they had deliberately not shown in their ST-3 Returns, the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come

to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided them, in respective ST-3 returns filed by them at the relevant period. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. It, thus, found that the assessee, as a service provider, deliberately suppressed the actual provision 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, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act, 1994.

39. In the instant SCN penalties under section 76 and 78 have been proposed. However, penalty under Section 76 and Section 78 of the Finance Act, 1994 cannot be imposed simultaneously. The Finance Act, 2008 (18 of 2008) which came into force from 10-5-2008, the Parliament has made the legal position clear by introducing a proviso to Section 78. Therefore, as per the prevailing provisions of law, penalty can be imposed either under Section 76 or Section 78 of the Finance Act, 1994 w.e.f 10.05.2008. As I propose to impose penalty u/s.78 of the Finance Act, 1994, I refrain from imposing any penalty u/s.76 of Finance Act, 1994 in this case.

40. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. The said assessee deliberately not supplied their documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. The said assessee himself admits in their reply to SCN that they were provided various services.

41. Further the onus is on the assessee to prove that they are eligible for any exemption Notification. In this connection the Hon^{ble} Supreme Court of India in the case of Commissioner of Central Excise New Delhi Vs. Hari Chand Shri Gopal reported in 2010(260) ELT 3 (sc) clarified that the person claims exemption or concession has to establish that he is entitled to that exemption or concession. The relevant portion of the order is reproduced as under:

"22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said

provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in *Hansraj Gordhandas v. H.H. Dave* - (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption." . Here in the instant case the assessee failed to prove that they are eligible for the exemption Notifications.

42. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of the assessee has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid is required to be demanded and recovered from them 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 along with applicable interest. All these acts of contravention of the provisions of Section 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 on part of assessee have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time. In this regard, I rely upon the decision of Larger Bench of Hon'ble Supreme Court in the case of *UIO Vs Dharmendra Textile Processors* -2008 (231)ELT 3(SC) and further clarification in the case of *M/s Rajasthan Spinning & Weaving Mills* [2009 (238) E.L.T. 3 (S.C) wherein, it was, inter alia held that:

"23. The decision in Dharmendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no jurisdiction in quantifying the amount and penalty must be imposed equal to the duty determined under sub section (2) of Section 11 A. that is what Dharmendra Textile decides". With the above observation, the Hon'ble Apex court held that mens rea is not an essential ingredient to impose penalty under Section 11AC of the Central Excise Act, 1944 and there is no discretion available on quantum of penalty imposable under that section. As penal provisions of Section 78 of the Finance Act, 1944 and Section 11 AC of Central Excise Act, 1944 are pari materia, the ratio of decision of the Apex court is applicable to Service Tax matters also.

43. In view of the above facts and findings, I pass the following order.

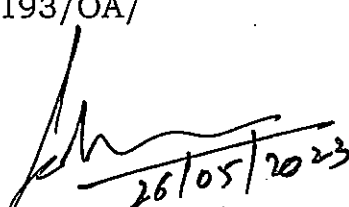
ORDER

1. I confirm the demand of Service Tax of Rs.17,41,993/- (including cess) (Rupees Seventeen Lakh Forty One Thousand Nine Hundred Ninety Three only), which was not paid/short paid during the Financial Years 2015-16 as per Table B supra and order to recover from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;
2. I drop demand of Rs. 55,92,275/- (Rupees Fifty Five Lakh Ninety Two Thousand Two Hundred Seventy Five only) as discussed above.

3. I confirm the demand of Interest at the appropriate rate and order to recover from them for the period of delay of payment of service tax mentioned at (1) above under Section 75 of the Finance Act, 1994;
4. I do not impose any penalty in terms of Section 76 of the Finance Act, 1994 as discussed above.
5. I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s.Utsav Bipinbhai Patel under Section 77 of the Finance Act, 1994
6. I impose Penalty of Rs. 17,41,993/- (including cess) (Rupees Seventeen Lakh Forty One Thousand Nine Hundred Ninety Three only), under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Utsav Bipinbhai Patel pays the amount of Service Tax as determined at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Utsav Bipinbhai Patel shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

40. Accordingly the Show Cause Notice bearing F.No. STC/15-193/OA/2021-22 dated 23.04.2021 is disposed off.




 (LOKESH DAMOR)
 Joint Commissioner
 Central GST & Central Excise
 Ahmedabad North

F.No. STC/15-193/OA/2020

Dt.

To
 M/s.Utsav Bipinbhai Patel,
 69, Super Bunglows, Opp. Science City,
 Sola, Ahmedabad, Gujarat - 380063

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The D.C/A.C, Central Excise & CGST, Division-VI, Ahmedabad North.
3. The Supdt, , C. Ex. & CGST, Range-IV, Division-VI, Ahmedabad North
4. The Supdt(system) CGST, Ahmedabad North for uploading on website.
- ✓ 5. Guard File