

आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर,
कस्टम हाँउस, प्रथम तल,
नवरंगपुरा, अहमदाबाद- 380009



GST
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OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20230664WT000000DED6

फा.सं./F.No. STC/4-15/O&A/ADC/Div-I/12-13

आदेश की तारीख/Date of Order :- 27.06.2023

जारी करने की तारीख/Date of Issue :- 27.06.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त /Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 07-08/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 -४ (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 -४ (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।

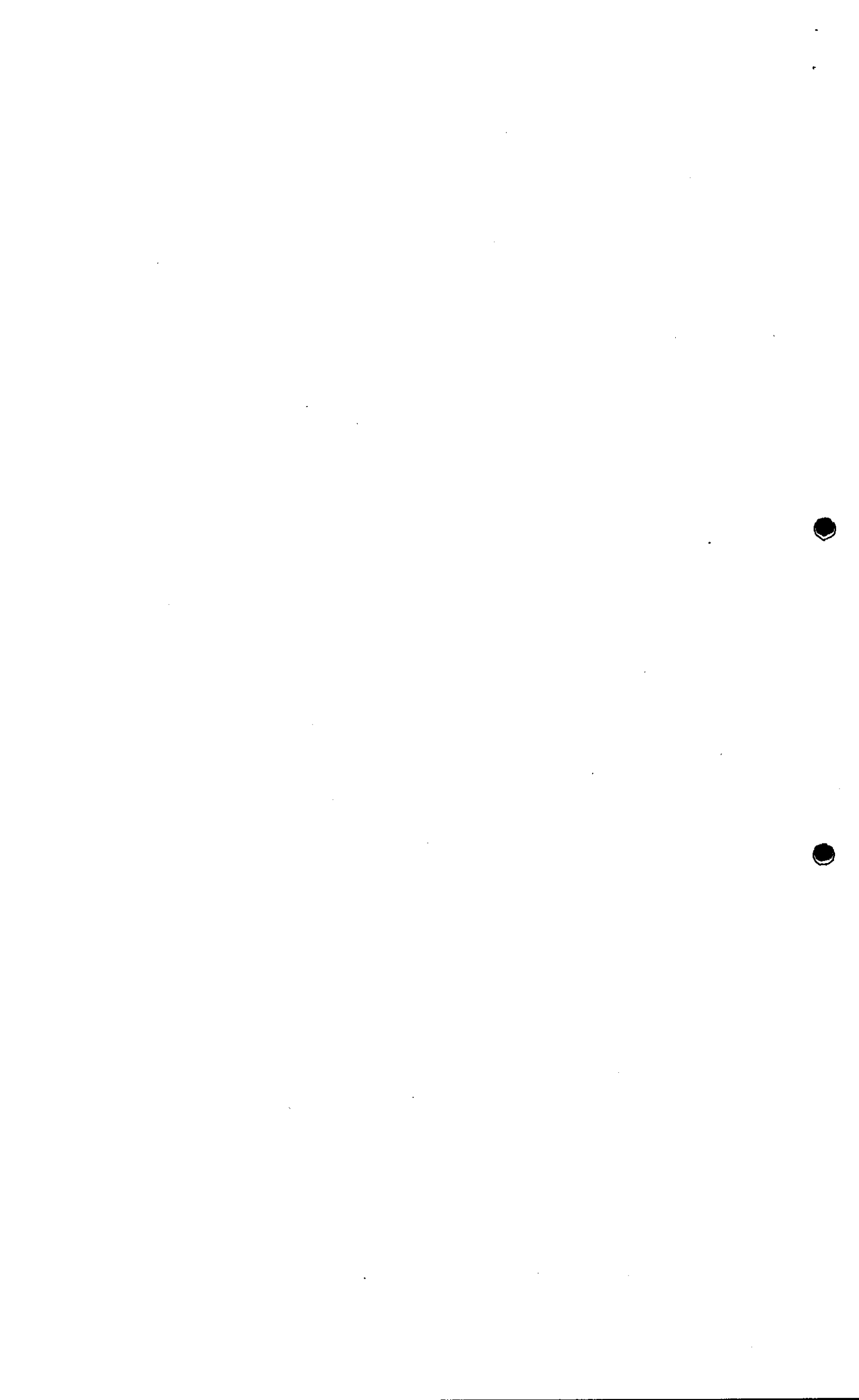
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(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/4-15/O&A/ADC/Div-I/12-13 dated 12.09.2012 and F.No. STC/4-03/O&A/13-14 dated 15.04.2014 issued to M/s Gujarat Infotech Limited, A-2, 2nd Floor, Jay Tower, Ankur Complex, Naranpura, Ahmedabad-380013.





BRIEF FACTS OF THE CASE:

M/s. Gujarat InfoTech Limited, A-2, 2nd Floor, Jay Tower, Ankur Complex, Naranpura, Ahmedabad-380013 (hereinafter referred to as "the said assessee") are engaged in the business of providing taxable services covered under the definition of Manpower Recruitment Agency, Online Information & Data & Commercial Training & Coaching. They are registered with the Service Tax Department and having Service Tax registration No. AABCG6123EST001.

2. It appeared that the said assessee was requested by the Superintendent of Service Tax, Range-V, Division-I, Ahmedabad vide letter F.No.SD-01/R-V/Gujarat Infotech/AR-No.11/11-12 dated 30.04.2012 to provide relevant figures in the matter. The said assessee vide their letter dated 03.05.2012 submitted the relevant details, as per which they realized an amount of Rs.66,82,120/- during the period from 01.04.2011 to 31.03.2012 for providing Electoral Photo Identity Cards (EPIC) related services to various District Election Officer/ Collectors of Gujarat state, however no service tax was paid on the same.

3. The above service provided by them appeared to fall under the category of "Photography Service" as defined under Section 65(78) and Section 65(79) of the Finance Act, 1994.

3.1. As per the provisions of Clause (78) of Section 65 of the Finance Act, 1994 "**photography**" includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography;

3.2. As per the provisions of Section 65 (79) of the Finance Act, 1994, "**Photography studio or agency**" means any professional photographer or [any person] engaged in the business of rendering service relating to Photography;

4. The services which will come within the purview of service are:

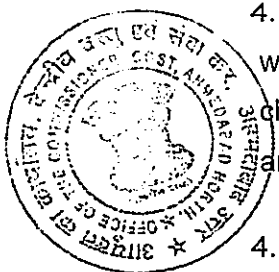
4.1.1 **Still photography** such as photographing persons or other subjects in studios or other locations, passport or identification photographs; fashion photos; industrial photographs of machine and buildings etc; photographic service for advertising display, brochures, newspaper advertisement, catalogues; photography of any live event such as weddings, receptions, conventions fashion shows, sports and news (excluding news agency services, that was, press photographers were excluded);

4.1.2 **Aerial photography** such as photographs of landscape, structures and other surfaces from aircraft or helicopters with the help of cameras mounted on such aircraft or helicopter;

4.1.3 **Laser photography** to create holograms;

4.1.4 **Motion picture photography**, also known as cinematography to make films, which involves the general composition of a scene; the lighting of the set or location; the choice of cameras, lenses, filters, and film stock; the camera angle and movements; and the integration of any special effects;

4.1.5 **Fluorescence photography** using ultraviolet rays to irradiate a surface or



substances to identify dyes, stains, and markings, specific chemical substances and fluorescent components in microscope specimens; **and any other kind of special photography service.**

4.1.6 Further, the photography services such as restoration of old photographs, processing and developing of photographic films and printing of photographs etc are also covered under the Photography Service.

4.2. The photography services rendered by Still photography studios, Still film processing laboratories, Cinematographic studios/labs who undertake Motion Picture photography and processing of cine films, holography studios (laser photography) who make holograms, aerial photographers, industrial photographers, etc. are covered under the definition of "Photography Service".

5. The said assessee was assigned Work order by the various District Election Officer/ Collector of Gujarat State for providing the services related to preparation of Electoral Photo Identity Cards. The said assessee was required to prepare EPIC as per the guidelines of the Election Commission of India. Further processes on the Identity Cards, namely:

- 1) Lamination of cards by using polyester film having thickness of more than 125 microns
- 2) Sealing and water proofing them so as to make them tamper proof were also required to be carried out by the assessee

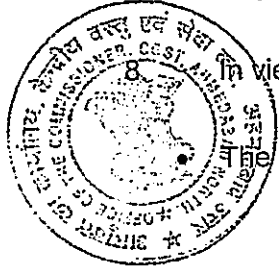
6. Scanned copy of one such work order shows that the assessee had entered into agreement /contract with the District Election Officer and Collector of Gujarat State for service related to Electoral Photo Identity Card. It appeared that the service related to EPIC provided by the said assessee is covered under the category of "Photography Service" and the said assessee was liable to pay Service Tax on the amount collected from the District Election Officer/Collectors of Gujarat State. Details of the amount received for Photography Service provided for the period from 01.04.2011 to 31.03.2012 are as under:

Sr. No.	Description of Service	Period	Value of Service Provided	Rate of ST	Service tax payable
1.	Photography service for preparation of Electoral Photo Identity card	2011-12	66,82,120/-	10.3%	6,88,258/-
	Total		66,82,120/-		6,88,258/-

7. It was also noticed that the said assessee had neither got registration for Photography Studio or Agency Service, nor paid any Service Tax on the amount of **Rs.66,82,120/-** received for the said service, during the period from 2011-12. This has resulted in non payment of Service Tax to the tune of **Rs.6,88,258/-**, which was required to be recovered from them along with interest.

In view of the above it appeared that:

assessee had provided taxable services under the category of 'Photography



Service' but failed to pay Service Tax thereon.

- The values of taxable service in respect of aforesaid service rendered by them have not been subjected to assessment.
- The assessee had failed to add the service namely 'Photography Service' in their existing Service Tax registration for the taxable service rendered by them within stipulated time.
- The assessee had failed to self-assess the Service Tax payable on the taxable value received.
- The assessee had failed to include the gross value received for Photography Service in their S.T-3 returns.
- The assessee had failed to pay service tax at the applicable rate on the taxable value received by them.
- Moreover it was also observed that the said service provider had failed to file correct Service Tax returns under section 70 of the Finance Act, 1994 in the prescribed ST-3 for the period involved herein for the category of Photography Service.

9. As per Section 73 of the Finance Act, 1994, Recovery of Service tax not levied or paid or short-levied or short-paid or erroneously refunded- (1) Where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded, the Central Excise officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice. In the instant case, the said assessee has provided Elector Photo Identity Cards related services to various District Election Officer/Collectors of Gujarat state in the year 2011-12, however no Service Tax was paid for the same, therefore the service tax & Education Cess of Rs 6,88,258/- which was not paid at the material time was required to be demanded/recovered under the provision of section 73 of the Finance Act, 1994.

10. As per the provisions of Section 68 of the Act read with Rule 6 of the Rules, every person providing taxable service to any person shall pay the Service Tax at the rate specified in Section 66 of the Act in such manner and within such period as may be prescribed. In the subject case, the said assessee has not paid the service tax leviable thereon and thereby contravened the provisions of Section 68 of the Act and rendered themselves liable for penalty as provided under Section 76 of the Act.

11. As per Section 69 of Finance Act, 1994 read with rule 4 of Service Tax Rules, 1994, every person liable to pay the service tax under this chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise. The said assessee failed to add the service namely 'Photography Service' in their existing Service Tax registration for the taxable service rendered by them within stipulated time. They had contravened the provisions of Section 69 of the Finance Act, 1994 read with Rule 4 of Service Tax Rules 1994 and has thus rendered themselves liable for penalty under the provisions of Section 77(1)(a) of the Finance Act, 1994.

12. As per the provision of Section 70 of the Act read with Rule 7 of the Rules, every person liable to pay Service Tax shall himself assess the tax due on the services provided by them and shall furnish to the Superintendent of Central excise, a return in such form and in such manner and at such frequency [and with such late fee not exceeding {twenty thousand rupees}, for delayed furnishing of return, as may be prescribed]. In the subject case, the said assessee had not filed returns for the services received by them during the period under reference and has contravened the provisions of section 70 of the Act and rendered themselves liable to pay late fee as provided under section 70 of the Act .

13. As per Section 75 of the Finance Act,1994 , every person, liable to pay the tax in accordance with the provisions of Section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest [at 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. Therefore, in addition to the Service Tax, the said assessee was also required to pay the interest at the appropriate rate under Section 75 of Finance Act, 1994.

14. As per Section 76 of the Finance Act,1994, any person, liable to pay service tax in accordance with the provisions of Section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of Section 75, a penalty which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two per cent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax provided that the total amount of the penalty payable in terms of this section shall not exceed the service tax payable.

15. All the above acts of contravention on the part of the said assessee appeared to have been committed with intent to evade payment of service tax and, therefore, the said service tax not paid/short paid was required to be demanded and recovered from them under Section 73(1) of the Finance Act, 1994. All these acts of contravention of the provisions of Section 68, 69 and 70 of the Finance Act,1994 read with Rule 4,6 and 7 of Service Tax Rules,1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act,1994 as amended from time to time.

16. Therefore, a Show Cause Notice bearing F.No.STC/4-15/O&A/ADC/Div-I/12-13 dated 12.09.2012 was issued to the said assessee, calling upon them to show cause to as to why:

(i) The amount of Rs.66,82,120/- received as consideration for providing 'Photography Service' should not be considered as taxable value and the Service Tax amounting to Rs.6,88,258/- (Rupees Six Lakh Eighty Eight Thousand Two Hundred Fifty Eight Only)



should not be demanded and recovered from them under the provisions of Sub-Section (1) of Section 73 of the Finance Act, 1994.

- (ii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994;
- (iii) Penalty under Section 76 of the Finance Act, 1994, should not be imposed upon them in as much as they failed to pay service tax within the stipulated time frame as mentioned above and for contraventions mentioned in foregoing paras.
- (iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994, as amended from time to time in as much as they failed to add the above mentioned service in their existing registration certificate and also failed to file periodical ST-3 return under the category of Photography service.

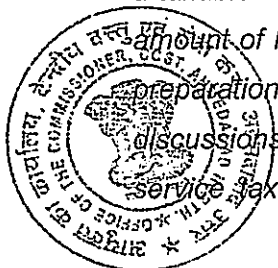
17. Since the issue was periodical in nature, another show cause notice bearing F.No.STC/4-03/O&A/13-14 dated 15.04.2014 for the period April-2012 to June-2012 was issued to the said assessee, calling upon them to show cause to as to why:

- (i) The amount of Rs.92,23,528/- charged / received during the period April 2012 to June 2012 should not be considered as taxable value under the category of "Photography Services";
- (ii) Service tax amounting to Rs.11,52,388/- (Rupees eleven Lakhs Fifty Two Thousand Three Hundred Eighty eight only) (Service Tax Rs.11,18,823/-, Edu. Cess Rs.22,376/- and H.Ed. Cess Rs.11,188/-) not paid during the period April 2012 to June 2012 under the category of "Photography" services should not be demanded and recovered from them under Section 73(1A) of the Finance Act, 1994;
- (iii) Interest at the appropriate rate should not be recovered under Section 75 of the Finance Act, 1994;
- (iv) Penalty should not be imposed on them for non payment of service tax under Section 76 of the Finance Act, 1994.

DEFENCE REPLY :-

18. The said assessee vide their reply dated 06.06.2023 submitted that they were issued SCN F.No.STC/4-48/R-V/O&A/11-12 dated 03.10.2011 proposing demand of service tax of Rs.2,21,08,643/- for the years 2006-07 to 2010-11 under category of Photography Service in respect of their activity of preparation of Electoral Photo Identity Cards (EPIC); that the matter was adjudicated by the Commissioner of CGST & CE, Ahmedabad North vide OIO No.AHM-EXCUS-002-COMMR-12/2019-20 dated 16.12.2019 and proceedings against them under the said SCN was dropped; that they reproduced Paragraph 36 of the said OIO for ready reference:

"36. I hold that the activity of preparation of Electoral Photo Identity Card (EPIC) by the assessee for District Election Commission and Collectors of Gujarat State cannot be considered a taxable service under the category of "Photography studio or Agency Service". I find that the amount of Rs.18,82,17,580/- was received by the assessee from the state authorities solely for preparation of EPICs and not for providing photography service. Therefore in view of the above discussions, I find that the said amount is not liable to service tax. I conclude that the demand of service tax amounting to Rs.2,21,08,643/- is not sustainable. Consequently the question of



charging of interest does not arise and the assessee is also not liable for penal action under the Finance Act."

18.1 They further submitted that the above mentioned OIO dated 16.12.2019 passed by the Commissioner also appears to be accepted by the department as they have not received any intimation of any appeal being filed by the Department in Tribunal; that hence they understand that the issue involved in this case has attained finality.

18.2 The said assessee further stated that subsequent to the first SCN, they were issued following periodical SCNs as per following details but these SCNs are still pending to be adjudicated.

Sr. No.	Period involved	SCN No.	SCN dated	Service tax involved Rs.
1	2011-12	STC/4-15/O&A/ADC/Div-I/12-13	12.09.2012	688258/-
2	April-12 to June-12	STC/4-03/O&A/13-14	15.04.2014	1152388/-

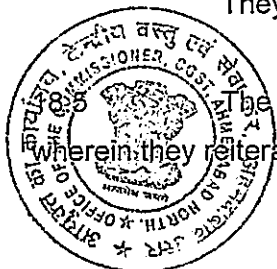
18.3 They further submitted that in view of the fact that the issue involved in these two pending SCNs is settled now in their own case, they requested to do the needful for adjudication of the matter; that they prayed to drop the proceedings under both the above stated SCNs dated 12.09.2012 and 15.04.2014 following the law laid down by Commissioner of CGST & CE, Ahmedabad North in their own case by OIO No. AHM-EXCUS-002-COMMR-12/2019-20 dated 16.12.2019.

18.4 They drew attention to following judgements wherein it is categorically held that issue of photo identity cards cannot be considered as falling under "Photography" and "Photography studio or agency" as per Section 65(78) and 65(79) of the Finance Act, 1994 and that the sovereign activities cannot be taxed.

- (i) CCE v. CMC Limited [2007 (7) S.T.R. 702 (Tri. - Bang.)] decided on 23.07.2007 categorically held that activity of issue of photo identity cards cannot be considered as falling under 'photography' and 'photography studio or agency' as per section 65 (78) and 65(79) of the Finance Act, 1994.
- (ii) CCE v. C.S.Software Enterprises Ltd. [2008(10)STR 367 (Tri-Bang.)] decided on 20.12.2007.
- (iii) CCE v. Ankit Consultancy Ltd. [2007(6)STR 101 (Tri.-Del)] decided on 10.12.2006
- (iv) OIA No.26/ST/Kol/2011 dated 21.01.2011 passed by the Commissioner of Central Excise (Appeal-I), Kolkata

They requested to grant a personal hearing in the matter.

The said assessee vide their letter dated 21.06.23 submitted further reply wherein they reiterated their submission dated 06.06.2023.



PERSONAL HEARING:

19. Personal Hearing in the matter was granted to the said assessee on 22.06.2023. On 21.06.2023, Dr.Nilesh. V. Suchak, C.A. and Shri Keyur Patel, C.A. appeared on behalf of the said assessee, and reiterated their written submission dated 06.06.2023 and further submitted their additional submission dated 21.06.2023. He further requested to decide the SCN on merit.

DISCUSSION & FINDINGS:

20. 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 further.

21. I have carefully gone through the records of the case, SCNs, defence replies as well as oral submissions made by the said assessee during the course of personal hearing.

22. I find that the following two SCNs have been issued to the said assessee:

Sr. No.	Period involved	SCN No.	SCN dated	Service tax involved Rs.
1	2011-12	STC/4-15/O&A/ADC/Div-I/12-13	12.09.2012	688258/-
2	April-12 to June-12	STC/4-03/O&A/13-14	15.04.2014	1152388/-

23. I have gone through the records of the case and the written submissions made by the said assessee. I find that the issue to be decided is whether the activity of preparation of Electoral Photo Identity Card (EPIC), by the assessee, for various District Election Officers and Collectors of Gujarat State can be considered a taxable service under the category of 'Photography Studio or Agency Service' as defined under section 65 (105)(zb) or otherwise.

24.1 In terms of Section 65(105)(zb) of the Finance Act 1944, taxable service in relation to photography is the service provided to the customer by a photographic studio or agency in relation to photography.

Photography Studio or Agency Service'

24.2 Section 65 (105) (zb) of the Finance Act, 1994 defines that the taxable service is a service provided or to be provided to any person by a photography studio or agency in relation to photography, in any manner.

24.3 Section 65 (78) of the Act defines the term 'photography' which includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography.

Section 65(79) of the Act defines 'photography studio or agency' as any professional photographer or any person engaged in the business of rendering relating to photography.



24.5 CBEC Circular No. B.11/1/2001-TRU dated 9.7.2001, stipulates the services which will come within the purview of this service as under:

- i. **Still photography** such as photographing persons or other subjects in studios or other locations, passport or identification photographs; fashion photos; industrial photographs of machine and buildings etc; photographic service for advertising display, brochures, newspaper advertisement, catalogues; photography of any live event such as theyddings, receptions, conventions fashion shows, sports and news (excluding news agency services, that was, press photographers theyre excluded);
- ii. **Aerial photography** such as photographs of landscape, structures and other surfaces from aircraft or helicopters with the help of cameras mounted on such aircraft or helicopter;
- iii. **Laser photography** to create holograms;
- iv. **Motion picture photography**, also known as cinematography to make films, which involves the general composition of a scene; the lighting of the set or location; the choice of cameras, lenses, filters, and film stock; the camera angle and movements; and the integration of any special effects;
- v. **Fluorescence photography** using ultraviolet rays to irradiate a surface or substances to identify dyes, stains, and markings, specific chemical substances and fluorescent components in microscope specimens; **and any other kind of special photography service.**
- vi. Further, the photography services such as restoration of old photographs, processing and developing of photographic films and printing of photographs etc are also covered under the Photography Service.

25. I find that the said assessee had entered into contract/agreement with various District Election Officers/Collectors of Gujarat state in the year 2011-12 and from April-12 to June-12 for preparation of Electors Photo Identity Card. Issuance of EPIC is the sovereign function of the District Election Commission. The Elector Photo Identity Card is a photo identity card that is issued by the Election Commission of India to all individuals who are eligible to vote. The primary purpose of this card is to improve the accuracy of the electoral roll and to help prevent cases of electoral fraud. Additionally, it also serves as an identification proof when the citizens cast their vote.

26. It is clear from the definition of taxable services that all the following three essential ingredients must be present for attracting service tax. If any one of them is missing, the service tax liability on "Photography Studio or agency service", cannot be attracted.

1. The service must be provided to customer
2. The service must be rendered by a photography studio or agency
3. The service must be rendered in relation to photography

hereby examine the above three aspects to ascertain whether the activity of the assessee is a taxable service under "Photography Studio or agency service" or otherwise.



(A) Whether the service is provided to a customer or any person:

In this case, the assessee is providing the services to the District Election Commission/Collectors of Gujarat State. They are preparing the EPICs solely on behalf of Election Commission, which solely executes the function of issuing EPIC. The assessee photographs the electors with digital cameras attached to the Computer at USB Port using standard software supplied by CEO/DEO.

District Election Commission, which carries on the sovereign function of issuing Elector's photo identity card (EPIC), for which the assessee are preparing EPIC; cannot be termed as their customer, in as much as that the assessee is not being remunerated by the District Election Commission for taking the photographs of the electorate, but for preparation of EPICs

(B) The service must be rendered by a photography studio or agency:

As per Section 65(78) of the Finance Act, 1994, "Photography includes Still photography, Motion picture photography, laser photography, aerial photography and fluorescent photography".

In common parlance, photographic service includes development of negatives. The word 'photography' means the process of obtaining permanent image of object on paper or film. It involves the following steps:

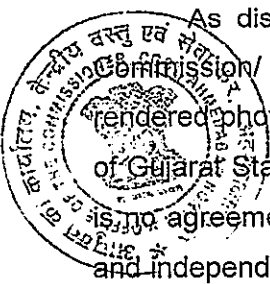
- i. Making negative film of the object.
- ii. Washing and developing the negative film.
- iii. Printing the image on the paper from the washed and developed film.

Photography comprises of all the three above mentioned processes. The process of preparation of EPIC, undertaken by the assessee, does not involve such process of developing negatives. The assessee does not make negative films of their "object", neither do they wash or develop the negative film; nor do they print the image on the paper from the washed and developed film. This shows that they do not render any photography service.

(C): The service must be rendered in relation to photography

As per Section 65(79) of the Finance Act, 1994, "photography studio or agency" means any professional photographer or a commercial concern engaged in the business of rendering service relating to photography. They are not at all engaged in the business of rendering service relating to photography and theirs is not a photography studio or agency.

As discussed above, the assessee has prepared the EPICs for the District Election Commission/ Collectors of Gujarat State. It can never be said that the said assessee has rendered photography studio or agency service to the District Election Commission/ Collectors of Gujarat State and that they have been engaged merely as photographers. In this case there is no agreement between the parties for rendering the service of photography as an individual and independent activity for a specific price. Moreover, the service of taking photographs using



web cams or digital cameras attached to computers cannot be considered an independent activity or a separate service for photography, detached from the main contract, which is essentially for the preparation of EPICs.

28. From the preceding paras above, it comes out clearly that the service provided by the assessee is out of the purview of service tax under the category of 'photography service'. The assessee prepares EPICs for the District Election Commission/ Collectors of Gujarat State and this activity cannot be termed as a photography studio or photography agency service from any aspect.

29. CBEC, vide their Circular No. 141/52/95-CX, dated 14-8-1995 issued by Govt. of India, Ministry of Finance (Department of Revenue), Central Board of Excise & Customs, New Delhi, has clarified as under:

"6. Keeping in view the distinctive character, process of manufacture, relevant tariff headings Section notes, Chapter noted and HSN notes, the Board is of the view that Photo-Identity Cards and Holograms merit classification under Sub-Heading 4901.90 of the Schedule to the Central Excise & Tariff Act, 1985."

30. CBEC, has reiterated the above view vide their Circular No. 61/7/96-CX.4, where in it has been clarified as under:

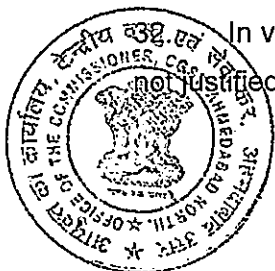
"In this regard it is reiterated that Photo-identity cards merit classification under Sub-heading 4901.90 of the Schedule of the Central Excise Tariff Act, 1985. However, classification of holograms, cleared as such may be decided keeping in view the manufacturing process and end-use, etc. on merits of each case."

31. The Central Board of Excise and Customs in Circular No. 89/7/2006-S.T., dated 18.12.2006 had clarified as follows :

"A number of sovereign public authorities (i.e. and agency constituted/set up by government) perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury. A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as 'provision of service' for the purpose of levy of service tax.

2 The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

In view of the above Circulars, even the demand of service tax on preparation of EPIC is not justified, in as much as it has been covered under Central Excise.



33. CESTAT, Bangalore, in its decision in the case of M/s. CMC Ltd., reported in 2007(7) STR 702 (Tri.Bang.), has held as under:

Photography service - Service tax - Issue of Electors Photo Identity Cards cannot be considered as 'Photo Identity' falling within definition of 'Photography' and 'photography studio or agency' as per Sections 65(78) and 65(79) of Finance Act, 1994 - Activity carried out by parties are sovereign activity performed by State functionaries which cannot be brought under tax limit - Section 65(105)(zb) ibid. [para 8]

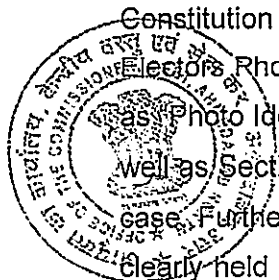
Paras 5 to 8, read as under:

5. The learned Counsel, Shri K.S. Ravi Shankar, referred to Circular Nos. 141/52/95-CX, dated 14-8-1995 and 195/20/CX., dated 3-4-1996 wherein a clarification has been given by the Board with regard to the Photo Identity Cards. In terms of the said Notification, the department has viewed that the Photo Identity Cards are required to be treated as goods and to be classified under sub-heading 4109.90 of the Schedule to the CET, 1985. It is his submission that once the department has taken this view, then the question of attracting Service tax does not arise. It is his further submission that the issue of Photo Identity Cards by the Election Commissioner is a sovereign duty under the Constitution of India and such activity performed by an officer of the Election Commission is required to be treated as an activity of the State and, therefore, it cannot be levied to tax. He finds strength in the ruling of the Tribunal in the case of CCE, Indore v. Ankit Consultancy Ltd. - 2007 (6) S.T.R. 101 (Tri.-Del.) wherein this issue has been decided in assessee's favour.

6. The learned Counsel, Shri K. Parameswaran, relies on the Circular No. 89/7/2006-S.T., dated 8-12-2006 which clarifies with regard to certain functions and duties performed by statutory authorities that such activities performed by statutory authorities are to be treated as performed by a sovereign/public authority under the provisions of law and they cannot be considered for the purpose of service tax. The learned Counsel further submits that the clarification given by the Circular No. B.11/1/2001-TRU, dated 9-7-2001 also supports their plea.

7. The learned Counsel, Ms. Anjali Agarwal, also supported the argument raised by both the Counsels and prays for setting aside the order in the case of M/s. Bajarang Infotech Systems Pvt. Ltd. She submits that in their case, Service tax has also been levied in respect of passes issued by the Transport authorities. This also falls under the same category as Photo Identity Cards issued by the Election Commission.

8. We have carefully considered the submissions and we note from the Stay Order given in these matters that the activity carried out by the parties are sovereign activity performed by the State functionaries. The Office of the Chief Election Commission is constituted under the Constitution of India. They are not carrying out the activity of photographic service by issuing Electors Photo Identity Cards. The issue of Electors Photo Identity Cards cannot be considered as "Photo Identity" falling within the definition of "Photographic Service" as per Section 65(78) as well as Section 65(79). The Circular referred to by the Counsels clearly apply to the facts of the case. Furthermore, the Tribunal, in the case of CCE v. Ankit Consultancy Ltd. (cited supra), has clearly held that any activity performed by a State organ to discharge the sovereign activity of



the State cannot be brought under the tax limit. This finding is also supported by the Circulars noted supra. Further, it is seen that the Board's Circular No. 141/52/95-CX and 195/20/CX views this activity to bring them under the definition of "goods" for exigibility. There is no merit in the Revenue appeals and the same are rejected and the appeal of M/s. Bajarang Infotech Systems Pvt. Ltd. is allowed with consequential relief, if any.

34. CESTAT, Bangalore, in its decision in the case of M/s. C.S. SOFTWARE ENTERPRISES LTD., reported in 2008 (10) STR 367 (Tri. Bang.), has held as under:

Photography service - Voter identity card - Photography for elector identity card - Appellant contending impugned activity as part of sovereign functions as per Constitution of India and not taxable - Impugned issue decided by Tribunal in 2007 (7) S.T.R. 702 (Tribunal) - Tribunal held in 2007 (6) S.T.R. 101 (Tribunal) that preparation of elector photo identity card not covered under Photography service - Issue settled in favour of assessee - Impugned order holding respondent as not liable, sustainable - Sections 65(78) and 73 of Finance Act, 1994. [paras 1, 4]

Paras 1 and 4 of the said order, read as under:

1. ".....The Revenue proceeded to consider the activity to come within the ambit of 'Photography Services'. The assessee took the contention that the issue of identity cards was a sovereign function in terms of the Constitution of India and the same cannot be brought within the ambit of Service Tax. Their plea has been upheld by the Commissioner (A). Revenue is aggrieved with the order and hence, this appeal."

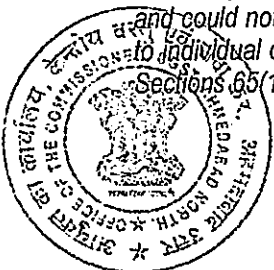
4. We have considered the submissions. We find that the issue in this case has already been decided in terms of Final Order rendered in the case of CCE, Hyderabad v. M/s. Bajarang Infotech Systems Pvt. Ltd. & M/s. CMC Limited & Others by Final Order No. 779 to 782/2007 dated 23-7-2007 [2007 (7) S.T.R. 702 (T)]. The order also covers the cases of M/s. CMC Ltd. and M/s. Kerala State Electronics Development Corporation Ltd. This Tribunal after due consideration and also applying the ratio of CCE, Indore v. Ankit Consultancy Ltd. - 2007 (6) S.T.R. 101 (Tri. - Del) has held that the activity of preparing elector photo identity cards cannot be considered to fall within the ambit of photographic services as per Section 65(78) as well as Section 65(79) of the Finance Act. We find that the issue is fully decided in assessee's favour. The impugned order passed by the Commissioner (A) is legal and proper. There is no merit in this appeal and the same is rejected.

35. CESTAT, Principal Bench, New Delhi, in its decision in the case of M/s. Ankit Consultancy Ltd, reported in 2007 (6) S.T.R. 101 (Tri. - Del.), has held as under:

Business Auxiliary Service - Service tax - Preparation of voter list - For Chief Electoral Officer - It is part of sovereign activity of State - It is not a business activity with an eye on profit - Section 65(19) of Finance Act, 1994. [para 8]

36. Hon'ble High Court of Calcutta, in its judgment in the case of M/s. Webel Technology Ltd., reported in 2018(19) GSTL 467 (Cal.), has held as under:

Photography service - Election Photo Identity Card (EPIC) - Requiring photograph of voter and filling details of voter in EPIC - Photograph was one component of work discharged by noticee - Contracts were pre 2007 - HELD : Ultimate product was EPIC and photography was not sole purpose of contracts - Contract for EPIC was indivisible and could not be divided into separate compartments of photography - Noticee did not render photographic services to individual or to person who contracted with them - Show cause notice issued to noticee was without jurisdiction - Sections 65(19), 65(76b), 65(78), 65(79), 65(105)(zb), 65A, 66 and 67 of Finance Act, 1994. [paras 13, 20]



Paras 13 and 20 of the judgment read as under:

13. Whether Service Tax can be levied on indivisible works contracts prior to the introduction on June 1, 2007 in the Finance Act, 2007 have come up for consideration in Larsen & Toubro Ltd. (supra). It was held that, there was no charge pre 2007 and that, there was no machinery provisions as well to bring indivisible works contracts under the Service Tax net. In the present case, the three writings, one by the District Election Officer, Muzaffarpur and two by the Electoral Officer of the Government of West Bengal relate to preparation of EPIC. In executing such a contract, the petitioner would necessarily have to take a photograph of the voter. It would also be required to fill up the other requisite details of the voter in the EPIC. Photograph is one of the components of the work required to be discharged by the petitioner. The ultimate product is EPIC. The contracts are pre 2007. The subject contracts cannot be said to limit itself to photography. Preparation of a photograph or photography is not the sole purpose of the contracts. The end product is EPIC. Such end product involves a photograph of a voter. The photograph of the voter incorporated in EPIC is not a standalone product. To my understanding the contract for EPIC cannot be divided into separate compartments to say that, photography or photograph is a separate compartment. It is indivisible. Therefore, on the strength of Larsen & Toubro Ltd. (supra) such contracts cannot be divided to bring it under the Service Tax net assuming that, the petitioner was rendering the service of photography. In any event, as noted above, the contracts in question are for preparation of EPIC. The petitioner cannot be said to have rendered any photographic services to an individual or to the person who had entered into the contract with the petitioner.

14. In CMC Limited (supra), CESTAT, South Zonal Bench, Bangalore it was held that, issue of EPIC cannot be considered to be falling within the definition of "photography" and "photography studio or agency" in terms of Sections 65(78) and 65(79) of the Finance Act, 1994. It has also held that, activities carried out by the parties are sovereign activity performed by the State functionaries and the same cannot be brought under the tax limit. The petitioner herein is also rendering the same service as that of CMC Limited (supra). The department, therefore, cannot take a different stand than the one which is binding upon it by virtue of CMC Limited (supra).

20. The petitioner not having rendered any service of photography is not liable to pay Service Tax. The impugned show cause notice is, therefore, without any jurisdiction.

37. I find that the analogy of the above decisions of CESTAT and the judgment passed by the High Court of Calcutta, are undoubtedly applicable in the case of the assessee. I hereby rely on these decisions of CESTAT and the judgment passed by the Hon'ble High Court, as the issue on hand is squarely covered under them.

38. I further find that demand of service tax on the same issue of the assessee covering the period 2006-07 to 2010-11 has been dropped by the Commissioner, Central GST & CE, Ahmedabad North vide OIO NO. AHM-EXCUS-002-COMMR-12/2019-20 dated 16.12.2019.



39. I hold that the activity of preparation of Electoral Photo Identity Card (EPIC), by the assessee for District Election Commission and Collectors of Gujarat State cannot be considered a taxable service under the category of 'Photography Studio or Agency Service'. I find that the amount of Rs. 66,82,120/- received during the period 2011-12 and Rs. 92,23,528/- received during the period April-12 to June-12 by the said assessee from the State authorities was solely for preparation of EPICs and not for providing Photography service. Therefore in view of the above discussions, I find that the said amount is not liable to Service tax. I conclude that the demand of Service Tax amounting to Rs.6,88,258/- during the period 2011-12 and Rs.11,52,388/- during the period April-12 to June-12 is not sustainable. Consequently the question of charging of interest does not arise and the assessee is also not liable for penal action under the Finance Act.

40. In view of the above findings, I pass the following order

ORDER

I hereby drop the proceedings initiated against the said assessee vide Show Cause Notice No. STC/4-15/O&A/ADC/Div-I/12-13 dated 12.09.2012 and Show Cause Notice No. STC/4-03/O&A/13-14 dated 15.04.2014.



(Lokesh Damor)
Joint Commissioner,
CGST & CE.,
Ahmedabad North.

BY RPAD

F. No. STC/4-15/O&A/ADC/Div-I/12-13

Date: 27.06.2023

To
M/s. Gujarat InfoTech Limited,
A-2, 2nd Floor, Jay Tower,
Ankur Complex,
Naranpura,
Ahmedabad-380013

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Division-VII Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central GST & Central Excise, Ahmedabad North
4. The Superintendent (System), Central GST & Central Excise, Ahmedabad North for uploading the order on website.
- ✓ 5. Guard File.