
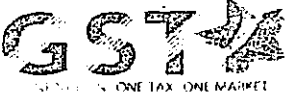


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220564WT000000D46B

फा.सं./F.No. STC/15-221/OA/2020

आदेश की तारीख/Date of Order :- 09.05-2022

जारी करने की तारीख/Date of Issue :- 09.05-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम IR Gulzar Begum

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 08/ADC/ GB /2022-23**

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।

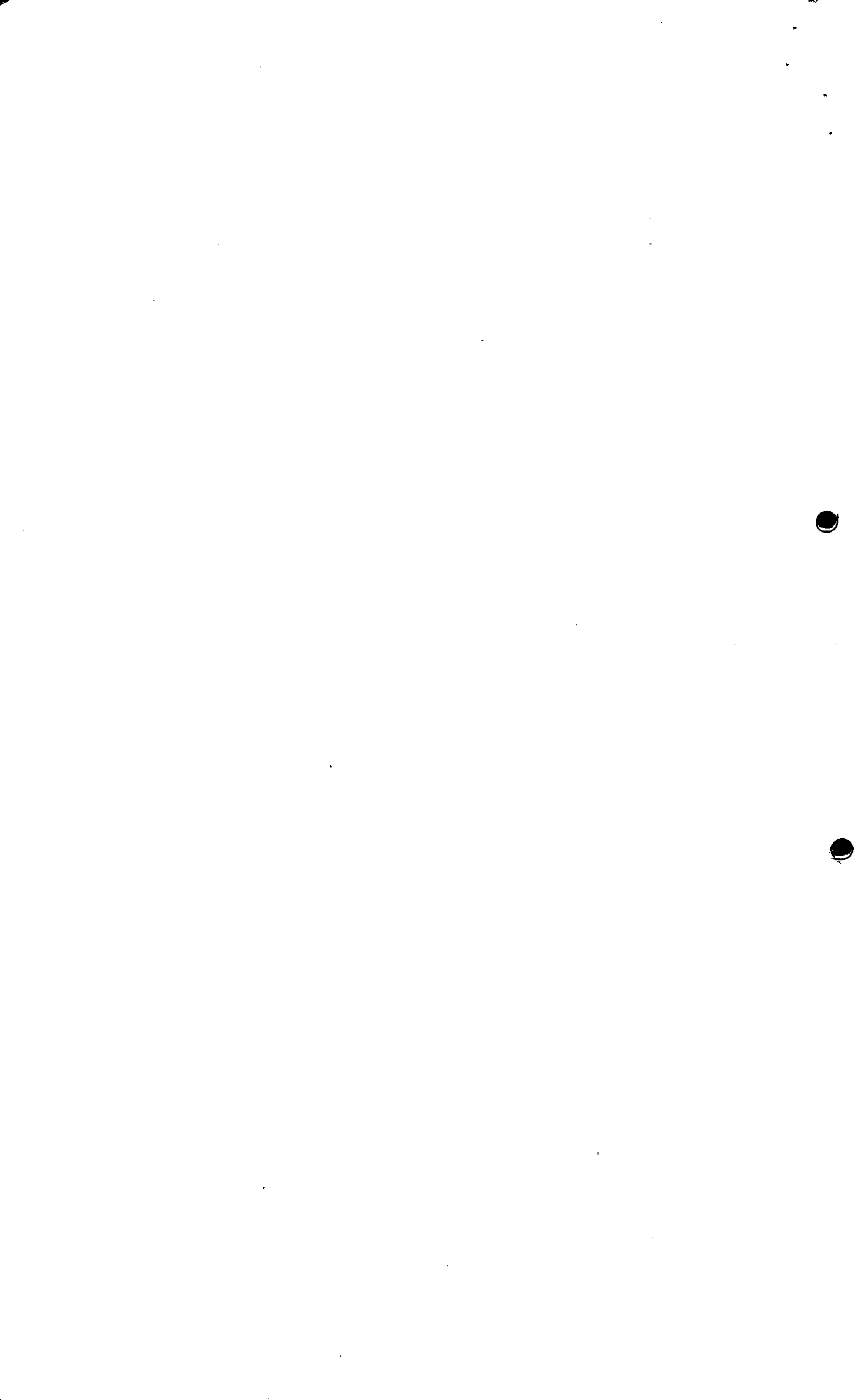
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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 Notices F.No.STC/15-221/OA/2020 dated 30.03.2021 issued to M/s Avichal Reality Pvt Ltd., 19-20-21, 3<sup>rd</sup> floor, Narayan Chambers, Ashram Road, Ahmedabad.



## BRIEF FACTS OF THE CASE

M/s "Avichal Reality P.Ltd., 19-20-21, 3rd Floor, Narayan Chambers, B/h.Patang Hotel, Ashram Road, Ahmedabad having PAN NO: "AAFCA1444E" (hereinafter referred to as the 'assessee') are engaged in providing taxable services without taking registration. On perusal of the data received from CBDT, it was noticed that the said assessee has earned substantial income by way of providing taxable services, but has neither obtained Service Tax registration nor paid service tax thereon.

2. In order to seek information in the matter, a letter dated 21.01.2021 & reminder dated 01.03.2021 were issued to the assessee with a request to produce the documents mentioned therein to this office within a period of three days from the date of receipt of that letter/reminder. However, the assessee has failed to submit the required details / documents. 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.

3. The nature of activities carried out by the assessee as Service Provider is to be covered under the definition of service and not to be covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. These services also appear to not be exempted under mega exemption notification No. 25/2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the assessee appear to be subjected to Service Tax.

4. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the assessee is ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

5. The Service tax payable is calculated on the basis of value of "sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J" as provided by the Income Tax Department for the financial year 2015-16. By considering the said amount as taxable income, the service tax liability is calculated as detailed below:-

TABLE-A

(Amount in Rs)

S. No.	F.Y.	TOTAL VALUE for TDS(including 194C,194Ia,194Ib,194J,194)	TOTAL SALE OF SERVICES (ITR)	HIGHER VALUE (VALUE OF SALE OF SERVICES ) OR (TOTAL VALUE for TDS)	Service Tax rate	Service Tax Payable
1	2015-16	101068251	101068251	101068251	14.5%	14654896/-
TOTAL						14654896/-

6. As no data is available with this office, for the period 2016-17 & 2017-18 (upto June 2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issuance of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2016-2017 & 2017-18 (upto June 2017).

7. Unquantified demand at the time of issuance of SCN. Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

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

8. From the facts, it was noticed that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the F.Y 2016-17 & F.Y. 2017-18 (upto June 2017) has not been disclosed thereof by the Income Tax Department. Further, the assessee has also failed to provide the required information even after the issuance of letter/reminders from the Department. Therefore, the assessable value for the year 2016-17 & 2017-18 (upto June 2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2016-17 & 2017-18 (upto June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

9. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purposes of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appears that the said assessee has not taken registration and thereafter has not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appears to have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and breach of trust deposed on them. Such outright act in defiance of law, appear to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

10. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the assessee, "AVICHAL REALITY PRIVATE LIMITED", have contravened the following provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (i) Section 69(1) of the Finance Act, 1994 read with Notification No.33/2012-Service Tax dated 20.06.2012 in as much as they have failed to obtain Service Tax Registration.

- (ii) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above;
- (iii) Failed to register with the department and fail to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;
- (iv) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision ;
- (v) Section 77 of the Finance Act, 1994, in as much as failed to take registration and did not provide required data/documents as called from them.
- (vi) All the above acts of contravention on the part of the said assessee appear to have 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 Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with Rule 6, and 7 of Service Tax Rules, 1994 appears to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vii) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

11. The above said service tax liabilities of the assessee has been worked out on the basis of limited data/ information received from the Income Tax Department for the financial years 2015-16. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

12. It was observed that the assessee has neither obtained the Service Tax registration from the Department for the services provided by them for the period of F.Y.2015-16 to 2017-18 (Upto June 2017), nor responded to correspondence made by the department in order to ascertain the actual taxable service income. Therefore, it was noticed that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provision of the Finance Act, 1994 and the Rules made there under relating to levy and collection of service tax, with intent to evade payment of service tax. The service tax amounting to Rs.1,46,54,896 /- is therefore recoverable from them by invoking extended period of five years as per first proviso to sub-section (1) of Section 73 of Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No 450/61/2020-Cus. IV (Part-I).

13. For this reason applicable interest under Section 75 of the Finance Act, 1994 is also to be demanded & is recoverable from the assessee and the assessee are also liable to penalty under Section 78 of Finance Act, 1994. Further, the said assessee is liable to penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994, for failure to take registration in accordance with the provisions of section 69; and for failure to furnish information / documents called for from them.

14. The said assessee was given an opportunity of pre SCN consultation before the Joint Commissioner, CGST, Ahmedabad North on 26.03.2021 at 16.30 Hrs with an option to appear through virtual mode of hearing, but they did not appear for hearing. Therefore Show Cause Notice was issued to Ms.Avichal Reality Pvt.Ltd called upon to show cause as to why:

- (i) Service Tax of Rs. 1,46,54,896/- which was not paid for the financial year 2015-16 as per Table-A mentioned in para-7 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No 450/61/2020-Cus. IV (Part-I).
- (ii) Service Tax liability not paid during the Financial Year 2016-17 & 2017-18 (upto June 2017), ascertained in future, as per paras no. 9 and 10 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act,1994;
- (iv) Penalty under the provisions of Section 77(1)(a),77(1)(c) & 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax as explained herein above.

#### DEFENCE REPLY

15. The assessee vide letter dated 03.04.2021 submitted their reply to SCN wherein they stated that they are not providing any taxable services and therefore they are not liable for obtaining any service tax registration. In the FY 2015-16, the company entered into financial transactions regarding purchase and sale of Bonds of Power Grid Corporation of India Limited. However such transactions are wrongly classified as sales of services in the Audit Report of the company. Purchase and sale of Bonds are executed through NSCCL known as National Securities Clearing Corporation Limited and such transactions are out of the purview of service tax. In support of their claim they have furnished the following documents.

- i) Copy of income tax acknowledgement for AY 2016-17, 2017-18 and 2018-19
- ii) Copy of Form no.26AS for AY 2016-17, 2017-18 and 2018-19
- iii) Copy of Audit Report for AY 2016-17, 2017-18 and 2018-19
- iv) Copy of statement of transactions of demat account from their broker namely M/s.Amrapali Capital & Finance Service s Limited.
- v) Copy of ledger account of Bond purchases and Bond sales for the F.Y.23015-16

Vide letter dated 20.04.2022, the assessee also submitted invoice copy of Bond purchase and Bond sales and copy of ledger account of Bond purchase and sale.

#### PERSONEL HEARING

16. In the instant case the personnel hearing was granted to the assessee on 19.04.2022 and Shri Urvish Parikh C.A., and Shri Alkesh Patel, GST assistant were attended and reiterated the reply given on dated 03.04.2021 and requested to drop the proceedings.

#### 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, submission made by the noticee, Balance Sheet, copy of ledger account, and copies of invoices for the year

2015-16. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,46,54,896/- 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.1,46,54,896/- for the financial year 2015-16 under proviso to section 73(1) of Finance Act, 1944 or not.

19. On perusal of the reply to the SCN and other documents submitted by the assessee, I find that the assessee claimed that they are engaged in the business of trading of Bonds of Power Grid Corporation of India Limited. In the FY 2015-16, the company entered into financial transactions regarding purchase and sale of Bonds of Power Grid Corporation of India Limited. However such transactions are wrongly classified as sales of services in the Audit Report of the company. Purchase and sale of Bonds are executed through NSCCL known as National Securities Clearing Corporation Limited and such transactions are out of the purview of service tax.

20. In this connection, I have gone through the "Notes on accounts" annexed to Audit Report for the Accounting year 2015-16. On perusal of the Note 1 i.e. company information, I find that the objective of the incorporation of the company is to undertake "construction of housing and commercial projects in India". However on perusal of their audit report or any other financial records submitted by the assessee, the only revenue from operation was Rs.10,10,68,251/- which was further explained in the note 2.9 that the particulars as income from sale of services .

21. Further on perusal of statement of profit and loss for the year ended 03.03.2016, it was mentioned that the revenue from operation as Rs.10,10,68,251/- which was further explained in the note 2.9 that the particulars as income from sale of services. In both the notes the same income is shown as income from services. Nowhere in the audited report the income of Rs. 10,10,68,251/- is mentioned as income from trading of Bonds or any financial transaction. The assessee in their written reply submitted that they said income is earned from trading of Bonds of Power Grid Corporation of India. However they could not furnish any substantial evidence to prove that their income is derived from the sale of such Bond or otherwise. In the absence of any supporting evidence, I am not in a position to verify that the claim of the assessee is correct or not.

22. Further, I have gone through the various documents and reply to SCN submitted by the assessee. In their reply to SCN they claimed that in the FY 2015-16 they have entered into financial transactions regarding purchase and sale of bonds of power Grid Corporation of India limited. However such transactions are wrongly classified as sales of services in their Audit Report of the company. In this connection, I find that financial accounts of the assessee was audited by the C.A.firm M/s.Mehul Thakker & Co and accordingly Audit Report was also issued by them. However any documents/records/certificate have been submitted by the assessee issued by any CA that the transactions are wrongly classified as sale of service as claimed by the assessee. Further it is also pertinent to mention here that neither in their reply to SCN nor in their personnel hearing, they claimed any exemption or abatement under any of the Notification issued under Service tax, hence it is presumed that they are not entitled to any exemption Notification for exemption from payment of service tax. In the absences of any supporting evidence documents or evidence to prove that the said income is derived from the sale of Bonds, I am not in a position to accept the contention of the assessee that the income of Rs.10,10,68,251/- is derived from trading of Bond issued by the Power Grid Corporation of India Ltd and accordingly I treat the same amount as taxable under the Service Tax and accordingly they are liable to pay service tax on this differential value as proposed in the Show Cause Notice. From the records available, I find that the assessee is failed to discharge

service tax on the differential amount of Rs.10,10,68,251/- for the year 2015-16 and therefore I confirm the service tax demand of Rs.87,59,946/- on the differential value of Rs. 1,46,54,896/- along with interest and penalty.

23. An assessee registered with Service Tax Department 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 service tax being the service tax provider. Even during the course of personnel hearing also the assessee failed to submit any documents proving that they are eligible for exemption from payment of service tax or abatement of value for the purpose of calculating service tax liability. In view of the above facts, it is proved that the assessee may not have the data 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.

24. 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. M/s.Avichal Reality P. Ltd deliberately not supplied their ST-3 Returns and other 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. Moreover, the Hon'ble apex court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.

*"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.*

*12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis -statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.*

*13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.*

*14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.*



15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of *Rajasthan Spinning and Weaving Mills (supra)* has held thus :

"From sub-section 1 read with its proviso it is clear that in case the short payment, nonpayment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priori the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

In view of the above facts, the extended period is correctly invoked while issuing this Show Cause Notice

25. 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 during the relevant period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

26. I further find that M/s.Avichal Reality P.Ltd 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 from 01.04.2015 to 31.03.2016:

- (i) (i) Section 69(1) of the Finance Act, 1994 read with Notification No.33/2012-Service Tax dated 20.06.2012 in as much as they have failed to obtain Service Tax Registration.
- (ii) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above;
- (iii) Failed to register with the department and fail to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance

Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;

- (iv) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision
- (v) Section 77 of the Finance Act, 1994, in as much as failed to take registration and did not provide required data/documents as called from them.
- (vi) All the above acts of contravention on the part of the said assessee appear to have 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 Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with Rule 6, and 7 of Service Tax Rules, 1994 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vii) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

27. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Act, rendering themselves liable to penalty under Section 77 of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994

28. 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 taken registration and filed 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 to the Department. 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.

29. Further, on perusal of SCN, I find that the levy of Service Tax for the financial year 2016-17 & 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges leveled for the demand for the year 2016-17 & 2017-18 (Up to June 2017), in charging para of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any

income other than the income from clearing and forwarding services. I, therefore, refrain from discussing the taxability on any other income.

30. The financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

31. Further, 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 the service provider 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/short 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. All these acts of contravention of the provisions of Section 65, 67, 68,69 & 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 liable to penal action under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

32. In view of the above discussion and findings, I pass the following orders:-

#### ORDER

- (i) I confirm the Service Tax demand amounting to Rs.1,46,54,896/- (Rupees One Crore Forty Six Lakhs Fifty Four Thousand Eight Hundred Ninety Six only) for the period FY 2015-16 under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act,2017 as amended and order M/s.Avichal Reality P. Ltd to pay up the amount immediately.
- (ii) I order that interest be recovered from M/s.Avichal Reality P. Ltd on the service tax amount of Rs.1,46,54,896/- under the provisions of Section 75 of chapter V of the Finance Act, 1994.
- (iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s.Avichal Reality P.Ltd under Section 77(1)(a) of the Finance Act, 1994.
- (iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s.Avichal Reality P.Ltd under Section 77(1)( c ) of the Finance Act, 1994.
- (v) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s.Avichal Reality P.Ltd under Section 77(2) of the Finance Act, 1994.

- (vi) I impose a penalty of Rs.1,46,54,896/- (Rupees One Crore Forty Six Lakhs Fifty Four Thousand Eight Hundred Ninety Six only) on M/s.Avichal Reality P.Ltd 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.Avichal Reality P.Ltd pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s.Avichal Reality P.Ltd 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.

*R. Gulzar Begum*

(R.GULZAR BEGUM)  
Additional Commissioner  
Central GST & Central Excise  
Ahmedabad North.

By Regd. Post AD./Hand Delivery  
F.No.STC/15-221/OA/2020

Date: 9/5/20

To  
M/s "Avichal Reality P.Ltd.,  
19-20-21, 3rd Floor,  
Narayan Chambers, B/h.Patang Hotel,  
Ashram Road, Ahmedabad

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-IV, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File

