आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009

फ़ोन नंबर./ PHONE No.: 079-27544557 फैक्स/ FAX : 079-27544463 E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वरा/By R.P.A.D DIN- 20220364WT0000666C31

फा.सं./F.No. STC/15-189/OA/2020 आदेश की तारीख/Date of Order : 25.03.2022

जारी करने की तारीख़/Date of Issue :- 25-03-2022

द्वारा पारित/Passed by:- आर गुलजार बेगम *IR. GULZAR BEGUM*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 101/ADC/ GB /2021-22

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 विरूद्ध 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 रू. 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।

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 रू .5) 00. पांच रूपये (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/15-189/OA/2020 dated 04.12.2020 issued to M/s AAA Colour World, Celler Shop 2, Simandhar House Owners Asso., Ranapark, Ghatlodia, Ahmedabad-380061.

BRIEF FACTS OF THE CASE ;

M/S. AAA COLOUR WORLD, CELLER SHOP, 2, SIMANDHAR HOUSE OWNERS ASSO, RANNAPARK, GHATLODIA, AHMEDABAD, 380061 (hereinafter referred to as the 'assessee' for the sake of brevity) is registered under Service Tax having Registration No.- BVTPS3730ESD001 & are engaged in the business of providing taxable services.

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 26AS) for the Financial year 2015-16 & 2016-17.

3. On scrutiny of the above data, it was observed that the assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2015-16 as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)

Sr No	F. Y.	Total Gross Value Provided (STR)	Sale Of Services (ITR)	Total Value for TDS(including 194C,194Ia,194Ib,194J,194H)	Higher Value (Value Difference in ITR & STR) OR (Value Difference in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	193030	25908844	22143666	25715814	3728793
2	2016-17	0	14696164	12498552	14696164	2204425
Total						**5933218**

4. It was requested to explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the Financial Year 2015-16 & 2016-17 vide letter dated 06.10.2020 issued to the said assessee by the jurisdiction office. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard by the department.

5. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16 & 2016-17, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the Income Tax 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.

6. No data was forwarded by CBDT, for the period 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 this stage, at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

7. With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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 data received from CBDT, it was observed that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the Financial year 2017-18 has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letter from the Department. Therefore, the assessable value for the year 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 2017-18 (upto-June 2017) under this Show Cause Notice, and due service tax 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 purpose 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 by the service provider, no matter how innocently. From the evidence on record, it appears that the said assessee had 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 the trust deposed in them. Such outright act in defiance of law appears 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 noticee, M/S. AAA COLOUR WORLD have committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service

Tax Rules, 2004:

(i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;

(ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994 as discussed above;

(iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16 to 2017-18 (upto June-2017).

(iv) 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.

(v) 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.

(vi) 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.

(vii) Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

11. The above said service tax liabilities of the assessee, M/S. AAA COLOUR WORLD., has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16 & 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

12. It has been noticed that at no point of time, the assessee has disclosed 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 & 2016-17. 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. 5933218/- (including Cess). It appears that the above act of omission on the part of the assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the

same appears to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No.450/61/2020-Cus. IV(Part-1) by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

13. In this regard, the noticee was offered an opportunity to give explanation/clarification as Pre-SCN Consultation on 23.11.2020. No one appeared to attend the Pre-SCN Consultation and neither any submission has been received in this matter.

14. Therefore, M/S. AAA COLOUR WORLD., CELLER SHOP 2 SIMANDHAR HOUSE OWNERS ASSO RANNAPARK GHATLODIA AHMEDABAD 380061 called upon to show cause before the Additional Commissioner, Central Goods and Service Tax, Ahmedabad North having his office situated at Ist Floor, Customs House, Opposite Old High Court, Income Tax Cross Road, Navrangpura, Ahmedabad -380009 as to why :

(i) The Service Tax to the extent of Rs.5933218/- (including cess) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No.450/61/2020-Cus. IV(Part-1);

(ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017), ascertained in future, as per paras no. 7 and 8 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 under the provisions of Section 75 of the Finance Act, 1994;

(iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.

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

Personal Hearing and Defence Submission

14. Personal hearing in the matter was fixed on 27.01.2022, 03.03.2022, 23.03.2022. However, neither the assessee nor any representative on behalf of assessee appeared for personal hearing nor filed any intimation for their non-appearance. They have also not filed any defence submission against the notice.

Discussions and findings: -

15. 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. The Show Cause Notice has been served to the assessee according to **Section 37C (1)(c) of the Central Excise Act, 1994,** which is applicable to Service Tax also and accordingly I proceed the case for adjudication.

15.1 I have carefully gone through the records of the case and as per the facts available on record I have noted that ample opportunity of personal hearing was given to the said asssesee however, they have not availed the same to defend their case. Therefore, I am proceeding to decide the case ex-parte based upon the records available with this office.

15.3 I find that the assesse was given three opportunities of personal hearing on the same address to which the notice was addressed, however, they have not availed the same to defend their case . As the assessee was given three opportunities of personal hearing, but they failed to encash any of this opportunity, nor they filed any submissions, I am therefore bound to decide the case on the basis of the available facts on record.

15.4. As per SCN the said asssesee is registered with department under registration number BVTPS3730ESD001 and were providing taxable services. On receipt of the data from CBDT, it was noticed that the assesse had declared different values in their Service Tax Returns (ST-3) as compared to the figures mentioned in their Income tax return (ITR/Form 26AS) for the financial year 2015-16 and 2016-17. The assesse had declared less taxable value in their Service Tax return (ST-3) for the financial year 2015-16 and 2016-17 in comparison to the taxable value declared in their ITR/ Form26AS. I find that the assesse also failed to submit any documents or details explaining such difference nor responded to the correspondence made in this regard.

15.5 The Service tax payable is arrived at on the basis of value of **"sales of services"** declared in the ITR/26AS for the Financial year 2015-16 and 2016-17. By considering the said amount as taxable income, the service tax liability is calculated. The same is tabulated in Table supra. Since, the assessee has not submitted any reasons to clarify the difference in taxable value, therefore, no further verification could be done in the matter. According to Section 67 of the Finance Act, 1994 as amended from time to time where service tax is chargeable on any taxable service with reference to its value, then such value shall be the gross amount charged by the service provider (subject to abatements prevailing) for such service provided or to be provided by him. The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. Thus, the value to be considered for calculation of service tax is the gross amount charged for providing the taxable services.

15.6 In view of facts stated hereinabove, the Value of Services declared in **Total Amount Paid/Credited Under Section 194C, 194H,194I,194J** / ITR filed by the assessee for Financial Year 2015-16 and 2016-17is considered as the taxable Value of Services provided and since the said notice has not provided any details/data and the reasons for non-payment of service tax, therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice, the Value of Services declared in **Total Amount Paid/Credited**

Under Section 194C, 194H,194I,194J / ITR filed by the notice has been considered for Non-Payment of Total Service Tax, which comes to Rs. 59,33,218/- for Financial Year 2015-16 and 2016-17 as tabulated in the Table.

15.7 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 stated above.

15.8 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 is observed 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 proper 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.

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

(i) Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the SCN period;

(ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the SCN period, to the credit of the Government account within the stipulated time limit;

(iii) Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the SCN period.

(iv) Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.

16 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 deposed 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 Table supra for financial Year 2015-16, is required to be demanded and 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.

17. 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 assesse 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.

18. I further find that on account of all the above narrated acts of commission and omissions on the part of the service provider, they have rendered themselves liable to penalty under the provisions of the Section 78 Finance Act, 1994, as amended in as much as they have mis-stated the taxable value of the services provided/received by them and they have, knowingly and wilfully not paid the correct amount of Service Tax leviable on such amount.

19. Further, on perusal of paras 6,7 & 8 of SCN, I find that the levy of Service Tax for the financial year 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 2017-18 (Up to June 2017), in charging para of the SCN.

20. 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. Therefore, I pass the following order.

ORDER

1. I confirm the demand of Service Tax of Rs.59,33,218/- initiated against **M/s AAA COLOUR WORLD, CELLER SHOP 2 SIMANDHAR HOUSE OWNERS ASSO RANNAPARK GHATLODIA AHMEDABAD 380061** which was short paid during the period from 2015-16 and 2016-17 as per Table supra and order to recover from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;

2. 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 (i) above under Section 75 of the Finance Act, 1994;

3. I impose Penalty of Rs. 10,000/-(Rupees Ten Thousand only only) under the provisions of Section 77(2) of the Finance Act, 1994, as amended, on them for contravention of provisions of the Finance Act,1994, as explained herein above;

4. I impose Penalty of Rs. 10,000/-(Rupees Ten Thousand only only) under the provisions of Section 77(1) of the Finance Act, 1994, as amended, on them for contravention of provisions of the Finance Act,1994, as explained herein above

5. I impose Penalty of Rs.59,33,218/- under Section 78 of the Finance Act, 1994, as amended. If **M/s AAA COLOUR WORLD** 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 AAA COLOUR WORLD** 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)
Additional Commissioner,
Central GST and CX, Ahmedabad North

By Regd. Post AD./Hand Delivery
F.No.STC/15-189/OA/2020

Date: 28-03.2022

To
M/s AAA COLOUR WORLD.,
CELLER SHOP 2 SIMANDHAR HOUSE OWNERS ASSO RANNAPARK GHATLODIA AHMEDABAD 380061.

Copy for information to:
1. The Commissioner, CGST & Central Excise, Ahmedabad (N)
2. The Dy./Assistant Commissioner, Division-VII, CGST & CX, Ahmedabad North.
3. The Superintendent, Range- , Division-VII,CGST& CX, Ahmedabad North.
4. The SuperintendentSystems ,CGST& CX, Ahmedabad North for uploading the order
5. Guard File.