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
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- **20230664WT0000888DE3**

फा.सं./F.No. STC/15-237/OA/2021

आदेश की तारीख़/Date of Order :- 28.06.2023

जारी करने की तारीख़/Date of Issue :- 28.06.2023

द्वारा पारित/Passed by:- लोकेश डामोर /*Lokesh Damor*
सयुक्त आयुक्त /*Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 11/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 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।
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध 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/15-237/OA/21-22 dated 23.04.2021 issued to M/s Sudhir Hiralal Thakar, J-5, Santoshnagar Flat, IOC Road, D Cabin, Chandkheda, Ahmedabad-380024.

BRIEF FACTS OF THE CASE :-

M/s Sudhir Hiralal Thakar, J-5 Santoshnagar Flat, IOC Road, D Cabin, Chandkheda, Ahmedabad-24 (hereinafter referred to as the 'said assessee' for the sake of brevity) having PAN No.AASPT6581D was engaged in providing taxable services without taking registration.

2. On perusal of the data received from CBDT for the financial year 2015-16 and 2016-17, it was noticed that the said assessee had earned substantial service income by way of providing taxable services, but had neither obtained service tax registration nor paid service tax thereon.

3. With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that were mentioned in the negative list were exempted.

4. The nature of activities carried out by the said assessee appeared to be covered under the definition of service and appeared to be not covered under the negative list as given in Section 66D of the Finance Act, 1994, as amended from time to time. These services also appeared to not be exempted under mega exemption notification no.25/2012-ST dated 20.06.2012, as amended from time to time, and hence the aforesaid services provided by the said assessee appeared to be subjected to service tax.

5. The service tax liability of the said assessee is ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the said 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. By considering the said amount as taxable income, the service tax liability was calculated as detailed below :-

(Amount in Rs.)

Sr No	F. Y.	Total Value for TDS(including 194C,194Ia,194Ib,194 J,194H)	Service tax rate	Service tax payable
1	2015-16	19406337	14.5%	2813919/-
2	2016-17	34674007	15%	5201101/-
				8015020/-

6. No data was available for the period 2017-18 (upto June-17), therefore, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 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 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 facts, it appeared that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J for the Financial year 2017-18 (Upto June-17) had not been disclosed thereof by the Income Tax Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) was not ascertainable at the time of issuance of 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. In light of the facts discussed hereinabove and the material evidences available on records, it was revealed that the assessee, M/s. Sudhir Hiralal Thakar had contravened the following provisions of Chapter-V of Finance Act, 1994, the Service Tax Rules, 1994;

(i) Section 69(1) of the Finance Act, 1994 read with notification no.33/2012-ST dated 20.06.12 in as much as they failed to obtain service tax registration.

(ii) Section 67 of the Finance Act, 1994 in as much as they 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 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 provisions

(v) Section 77 of the Finance Act, 1994 in as much as they failed to take registration

(vi) All the above acts of contravention on the part of the said assessee appeared 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 was 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 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

(vii) The said assessee was also liable to pay interest at the appropriate rates for the period from the 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.

10. 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 and 2016-17. Thus, the show cause notice relates exclusively to the information received from the Income Tax Department.

11. It was observed that the assessee had not obtained the service tax registration from the department for the services provided by them for the period 2015-16 to 2017-18 (upto June-17). Therefore, it appeared that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provisions of the Finance Act, 1994 and the Rules made thereunder relating to levy and collection of service tax, with intent to evade payment of service tax. The service tax amounting to Rs,80,15,020/- was therefore recoverable from them by invoking extended period of five years as per first proviso to sub section (1) of Section 73 of the Finance Act, 1994. For this reason applicable interest under Section 75 of the Finance Act, 1994 was also to be demanded and was recoverable from the assessee and the assessee was also liable to penalty under Section 78 of the Finance Act, 1994.

12. Further, the said assessee was liable to penalty under the provisions of Section 77(1)(a), 77(1)(c) and 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.

13. Therefore, a Show Cause Notice bearing F.No.STC/15-237/OA/2021 dated 23.04.2021 was issued to M/s. Sudhir Hiralal Thakar, J-5 Santoshnagar Glat, IOC Road, D Cabin, Chandkheda, Ahmedabad-24 to show cause to the Additional/Joint Commissioner, CGST & CX, Ahmedabad North having office at 1 Floor, Custom House, Navrangpura, Ahmedabad as to why:

(i) Service tax of Rs. 80,15,020/- which was not paid for the financial year 2015-16 and 2016-17 as mentioned above, should not be demanded and

recovered from them under the proviso to Sub Section (1) of Section 73 of the Finance Act, 1994;

(ii) Service tax liability not paid during the financial year 2017-18 (upto June-17) ascertained in future, should not be demanded and recovered from them under proviso to sub section (1) of Section 73 of the 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 (1) above under Section 75 of the Finance Act, 1994;

(iv) Penalty under the provisions of Section 77(1)(a), 77(1)(c) and 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 above.

DEFENCE REPLY

14. In response to Show Cause Notice dated 23.04.2021, the said assessee has not filed any reply till date even though they are required to file reply within 30 days of the receipt of the SCN.

PERSONAL HEARING

15. Personal Hearing in this case has been granted to the said assessee on 18.10.22, 10.11.22, 24.01.23, 16.03.23, 29.03.23 and 17.04.23. However the said P.H. letters were returned by the postal authorities with the remark "Left/Not known". Therefore, another P.H. notice for 17.05.23 was issued to the assessee and the same was forwarded to jurisdictional CGST office, Div-VII, CGST & CE, Ahmedabad North. However the jurisdictional Dy. Commr vide letter dated 21.06.2023 submitted that the premises of the said assessee was not found to be in existence at the mentioned business place. Hence the same was served as per Section 37C(1)(c) of the Central Excise Act, 1944. As the assessee was given seven opportunities of personal hearing, but they neither availed any of these opportunities, nor filed any submissions in response to SCN, I am therefore bound to decide the case on the basis of the available facts on record.

DISCUSSION AND FINDINGS

16. 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.

17. I have carefully gone through the records of the case, SCN and I find that the issue to be decided is to whether the said assessee is liable to pay service tax amounting to Rs.80,15,020/- for financial year 2015-16 and 2016-17 on account of income earned by providing taxable service but not obtaining service tax registration and not paying servie tax.

18. I have carefully gone through the records of the case and the facts available on record. It is noticed that seven opportunities of personal hearing were given to the said assessee, however, they had not availed the same to defend their case. They had also not filed any reply to SCN in this regard. Therefore, I am proceeding to decide the case ex-parte based upon the records available with this office.

19. In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals, in several judgments/decision, have held that ex-parte decision will not amount to violation of principles of Natural Justice, when sufficient opportunities for personal hearing have been given for defending the case.

In support of the same, I rely upon the following judgments/orders as under:-

a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. OLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;

"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

(Emphasis Supplied)"

b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, deciding on 13-9-1963, has observed that;

"Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the assessee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - *It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]*

(Emphasis supplied)"

(c) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.)., has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

(Emphasis Supplied)"

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), has observed that;

"Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. *[para 5]*

(Emphasis Supplied)"

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.L.T. 1296 (S.C.)., has observed as under:

"Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing.

- If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(Emphasis Supplied)"

(f) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), has observed as under;

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired. the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."

20. I observe that after introduction of new system of taxation of services in negative list regime w.e.f. 01.07.2012, any activity carried out by a person for another person for a consideration is taxable service except those services specified in the negative list or exempt list by virtue of mega exemption notification or covered under

exclusion clauses provided under the meaning of "service" as per Section 65B(44) of Finance Act, 1944.

The term **"Service"** has been defined under Section 65B (44) of the Finance Act, 1994 ('Act') as under:

> *"service" means any activity carried out by a person for another for consideration, and includes a declared service"*

The term **"Taxable Service"** has been defined under Section 65B (51) of the Act as under:

> *"taxable service" means any service on which service tax is leviable under section 66B*

Section 66B provides for levy of service tax, which reads as under:

> ***SECTION [66B.** Charge of service tax on and after Finance Act, 2012. —There shall be levied a tax (hereinafter referred to as the service tax) at the rate of [fourteen per cent.] on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

21. I find that prior to 01.07.2012 i.e. before introduction of a new system of taxation of services, the tax was levied on services of specified description only, as provided under Section 66 (in force at the material time) of the Act. In other words, the service tax was levied on services of specific description provided under the statute. The new taxation system of services had widened the scope of levy of tax on services without specific description of service. Accordingly, any activity carried out by a person for another person in lieu of the consideration is "service" and is liable to service tax unless it is covered under negative list of services or exempt services under mega exemption notification or covered under exclusion clauses of "service".

22. Further, I find that the said assessee is not registered with the department and have therefore not filed ST-3 returns and paid service tax.

23. The Service tax payable of Rs. 28,13,919/- for financial year 2015-16 and Rs. 52,01,101/- for financial year 2016-17 is arrived at on the basis of income mentioned in the ITR returns and Form 26AS filed by the said assessee with the Income Tax Department. As per the data, the total value as per Income Tax Return is Rs. 1,94,06,337/- for the FY 2015-16 and Rs.3,46,74,007/- for the FY 2016-17. By considering the said amount as taxable income, the service tax liability of Rs. 28,13,919/- for financial year 2015-16 and Rs.52,01,101/- for financial year 2016-17 is calculated as tabulated supra.

24. A taxable person is required to provide information/documents to the department as and when required. However, in this case the assessee failed to

furnish/provide the required documents to prove that they are not liable to service tax being the service tax provider. The said assessee neither filed any reply to the show cause notice nor attended the personal hearings granted to them. In view of the above facts, it is proved that the said assessee may not have the data of the service receivers or they might have been try to avoid furnishing the details which may lead to proof that the service provider is liable to pays service tax.

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 Service by not taking service tax registration and by not filing ST-3 Returns during the period 2015-16 and 2016-17. 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 Sudhir Hiralal Thakkar 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 2015-16:-

(i) Section 69(1) of the Finance Act, 1994 in as much as they failed to obtain service tax registration.

(ii) Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable service provided by them as discussed above.

(iii) Failed to register with the department and failed to declare correctly assessable value 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 Finance Act, 1994 read with Rule 6 & 7 of the service Tax Rules, 1994.

(iv) Section 66B and Section 68 of Finance Act, 1994 and Rule 2&6 of Service Tax Rules, 1994 in as much as they failed to pay service tax correctly at the appropriate rate within the prescribed time in the manner and a the rate as provided under the said provision.

(v) Section 77 of Finance Act, 1994, in as much as they failed to take registration.

(vi) All the above acts of contravention on the part of the said assessee appeared 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.

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

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 under Section 78 of Finance Act,1994.

31. In view of facts stated hereinabove, the Value of Services mentioned/declared in the income tax return for Financial Year F.Y. 2015-16 and 2016-17 is considered as taxable Value of Services provided and since the said assessee 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/mentioned in the income tax return filed by the said assessee has been considered for non-payment of total service tax, which comes to Rs.28,13,919/- for financial year 2015-16 and Rs. 52,01,101/- for financial year 2016-17 (including cess).

32. 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 of Rs.28,13,919/- for financial year 2015-16 and Rs. 52,01,101/- for financial year 2016-17 not paid by the said assessee worked out in Tables supra is required to be recovered from them under Section 73 (1) of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

33. 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 behaviour. The said assessee deliberately not supplied their documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due

as per the provisions of Section 75 of the Finance Act, 1994.

27. 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 said 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 the said assessee have rendered themselves liable for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

28. 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.

29. The said assessee was liable to pay service tax on the services provided by them and therefore was required to take registration thereby rendering themselves liable for penalty under Section 77(1)(a) of the Finance Act, 1994; that they failed to furnish information thereby rendering themselves liable for penalty under Section 77(1)(c) of the Finance Act, 1994; that they failed to determine the correct value of taxable service provided by them and failed to pay the service tax correctly at the appropriate rate thereby rendering themselves liable for penalty under Section 77(2) of the Finance Act, 1994.

30. As far as imposition of penalty under Section 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 Financé Act, 1994 as they failed to pay the correct duty with the intend to evade the same. It is also a fact that they had deliberately not take registration and suppressed the value of services provided by them, with an intent to evade the proper payment of service tax on its due dates. These facts would not have come to light had the CBDT not shared the data. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. Hence it is found that the assessee, as a service provider, deliberately suppressed the actual provision of the

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

date, but only after going through the CBDT data these facts had 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.

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 priory 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 the Show Cause Notice

34. On perusal of para 6 & 7 of the SCN, I find that the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against 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 and the service tax liability was to be recoverable from the assessee accordingly. I, however, do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part 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 shown in the income tax return. I therefore refrain from discussing the taxability on income other than the income shown in the income tax return.

35. In view of the above discussion and findings, I pass the following order:-

ORDER

(i) I confirm the demand of Service Tax of **Rs.80,15,020/-** (including cess) (Rs. . 28,13,919/- for financial year 2015-16 and Rs. 52,01,101/- for financial year 2016-17) (Rupees Eighty Lakh Fifteen Thousand Twenty Only), which was not paid/short paid during the Financial Year 2015-16 and 2016-17 as per Table supra and order to recover the same from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;

(ii) I confirm the demand of Interest at the appropriate rate and order to recover the same from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;

(iii) I impose penalty of Rs.10,000/- on M/s. Sudhir Hiralal Thakar under Section 77(1)(a) of the Finance Act, 1994;

(iv) I impose penalty of Rs.10,000/- on M/s. Sudhir Hiralal Thakar under Section 77(1)(c) of the Finance Act, 1994;

(v) I impose penalty of Rs.10,000/- on M/s. Sudhir Hiralal Thakar under Section 77(2) of the Finance Act, 1994;

(vi) I impose Penalty of **Rs.80,15,020/-** (Rupees Eighty Lakh Fifteen Thousand Twenty Only), under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s Sudhir Hiralal Thakar pays the amount of Service Tax as determined at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s Sudhir Hiralal Thakar 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.

36. Accordingly the Show Cause Notice bearing F.No. STC/15-237/OA/2021 dated 23.04.2021 is disposed off.

(Lokesh Damor)
Joint Commissioner
Central GST & Central Excise
Ahmedabad North

BY RPAD
F.No. STC/15-237/OA/2021

Dt. 28.06.2023

To
M/s Sudhir Hiralal Thakar,
J-5 Santoshnagar Flat,
IOC Road,
D Cabin,
Chandkheda,
Ahmedabad-24

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-V, 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.