



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, 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>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220364WT000000CFD5

फा.सं./F.No. STC/15-106/OA/2020

आदेश की तारीख/Date of Order :- 30.03.2022

जारी करने की तारीख/Date of Issue :- 30.03.2022

द्वारा पारित/Passed by:-

मुकेश राठौर / Mukesh Rathore

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 113/ADC/MR /2021-22**

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

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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।

(3) उक्त अपील की प्रति।

(4) 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।

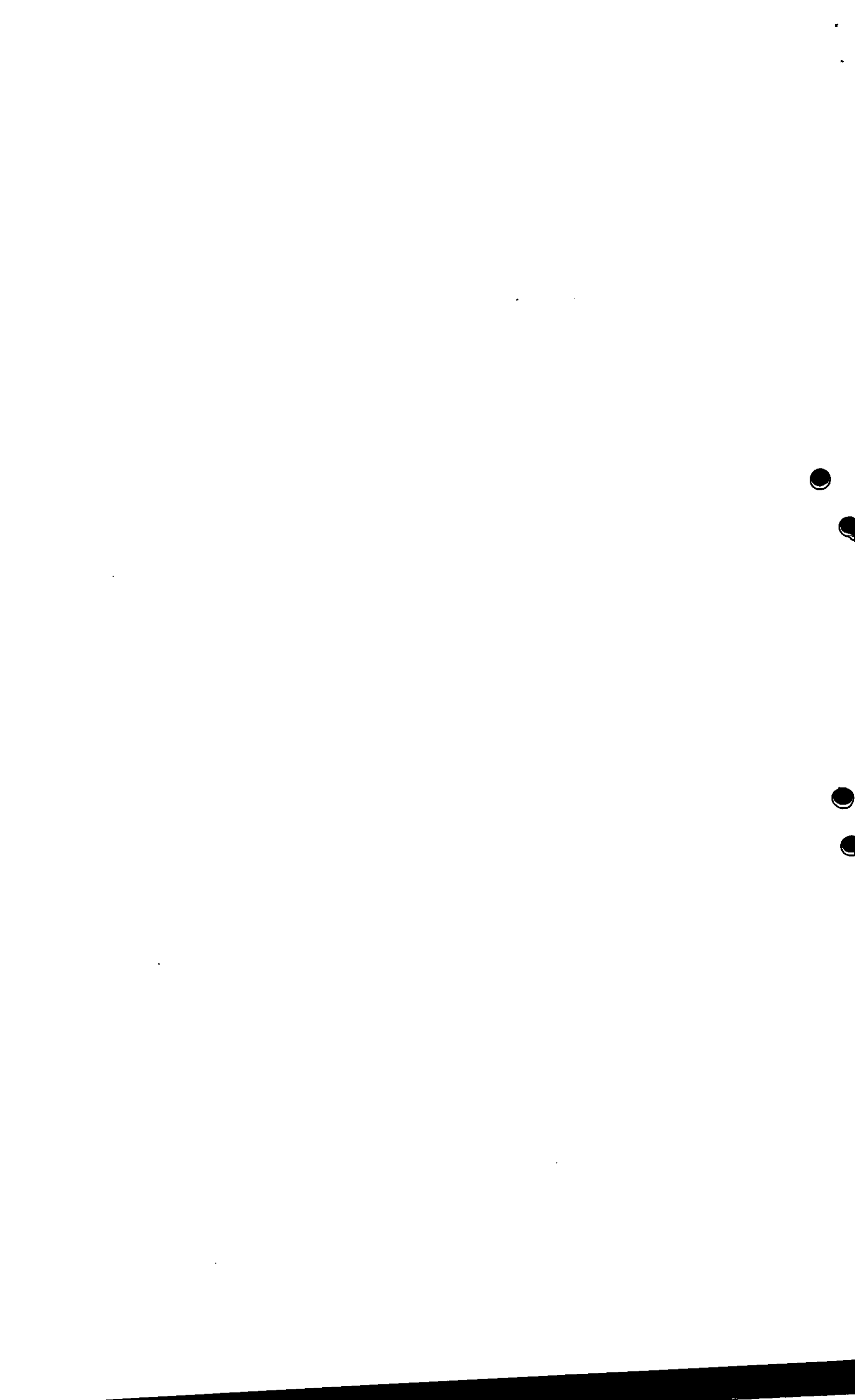
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(3) Copy of accompanied Appeal.

(4) 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 No. STC/15-106/OA/2021-22 dated 30.09.2020 issued to M/s Naresh Prahladbhai Ayar, 36, Sweet Home Society, Krishna Nagar, Nava Naroda, Ahmedabnad, Gujarat.



## BRIEF FACTS OF THE CASE

M/s.Naresh Prahladbhai Iyar, 36, Sweet Home Society, Krishna Nagar, Nava Naroda, Ahmedabad Gujarat -382346 (hereinafter referred to as the 'noticee') was engaged with providing taxable services without taking registration.

2. On perusal of the data received from CBDT, it was noticed that the said assessee had earned substantial service income by pay of providing taxable services, but has neither obtained Service Tax registration nor paid service tax thereon. Letters dated 27.07.2020 & dated 17.08.2020 were issued to party with a request to produce the documents mentioned therein within a week time from the date of receipt of that letter/Summons. However, the assessee has failed to submit the required details / documents.
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 are mentioned in the negative list are exempted. The nature of activities carried out by the assessee as Service Provider appears to be covered under the definition of service and appears to be not 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 appears to be not 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 appears to be subjected to Service Tax.
4. Since the assessee has not submitted the required details of services provided during the Financial Year 2014-15 to 2017-18 (upto June 2017), the service tax liability of the service tax assessee was required to be 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. The Service tax payable is calculated on the basis 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 2014-15. By considering the said amount as taxable income, the service tax liability is calculated as detailed below:-

TABLE-A

(Amount in Rs)				
Sr. No	F.Y.	Sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J	Service Tax rate	Service Tax Payable
1	2014-15	43821429	12.36%	5416329/-

5. As no data was forwarded from HQ, Ahmedabad-North, for the period of 2015-16 to 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 issue of SCN it was not possible to quantify short

payment of Service Tax, if any, for the period of 2015-16 to 2017-18 (up to June 2017). Un quantified 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.'*

6. From the above facts, it appeared that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the F.Y. 2014-15 to 2017-18 (upto June 2017) 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 letters and summons from the Department. Therefore, the assessable value for the years 2015-16 to 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 2015-16 to 2017-18 (upto June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

7. The government has from the very beginning placed full trust on the service provider so far 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 placed on the service provider, no matter how innocently. From the evidence, 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 breach of trust deposited 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.

8. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the notice, NARESH PRAHLADBHAI AYAR have contravened the following 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) 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) 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 ;
- (iv) 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.
- (v) 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.
- (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 failed to take registration and did not provide required data/documents as called from them.

9. The above said service tax liabilities of the assessee NARESH PRAHLADBHAI AYAR, has been worked out on the basis of limited data/information received from the Income Tax Department for the financial years 2014-15. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

10. 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.2014-15, nor responded to correspondence made by the department in order to ascertain the actual taxable service income. Therefore, it appears 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 relating to levy and collection of service tax and the rules made there under, with intent to evade payment of service tax. The service tax amounting to Rs.5416329/- 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 27.06.2020 issued vide F.No CBEC-20/06/08/2020-GST. For this reason applicable interest under Section 75 of the Finance Act, 1994 is also demandable & recoverable from the assessee and the assessee are also liable to penalty under Section 78 of Finance Act, 1994. Further, the said assessee (a) who is liable to pay service tax or required to take

registration, fails to take registration in accordance with the provisions of section 69; (b) failed to furnish information / documents called for from them, accordingly the said assessee is liable to penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of Finance Act, 1994.

11. Therefore Show Cause Notice was issued to M/s.NARESH PRAHLADBHAI AYAR called upon to show cause as to why:

- (i) Service Tax of Rs. 54,16,329/- which was not paid for the financial year 2014-15 as per above Table, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No CBEC-20/06/08/2020-GST.
- (ii) Service Tax liability not paid during the financial year 2015-16 to 2017-18 (up to 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

12. In the instant case the reply to SCN was submitted by his legal heir, his son, Mr. Ketan Nareshbhai Iyar on behalf of the noticee. The said noticee vide letter dated 25.09.2021 submitted their reply to SCN, wherein they stated that they were never statutorily liable to get the registration of service tax as per provisions of Finance Act, 1994 solely because they are providing the business as GTA as a sole proprietor. The Govt. of India, Ministry of Finance, has specified the person receiving the service shall be liable to pay service tax in respect of service provided or agreed to be provided by a Goods Transport Agency in respect of Transportation of Goods by Road vide Notification No.15/2012-service tax dated 17.03.2012. In view of the above facts as well as legal position explained, he was not liable to get registered and make payment thereof and requested to drop the inquiry.

13. The legal heir of the assessee, further vide letter dated 06.10.2020 submitted reply to SCN and stated that since the assessee have died on 26.09.2015, the reply was submitted by his legal heir, his son, Mr. Ketan Nareshbhai Iyar. He has also produced death certificate issued Government of Gujarat dated 03.10.2015. He further submitted copies of audit report for the year 2014-15. They further stated that they are engaged in the business of Transportation of goods by road which was covered under reverse charge, no service tax registration was taken and no service tax liability arises in the said case.

14. Vide letter dated 11.01.2022 it was further submitted that Shri Naresh Prahladbhai Ayar became late on 26.09.2015 and the said fact had already been brought to the notice of adjudicating authority. He further stated that any proceedings cum show cause notice issued in the name of deceased person is

legally unsustainable in the eyes of law as the same is without jurisdiction and liable to be quashed.

15. He further contended that it may kindly be appreciated that to tax a deceased is a contradiction in terms. Tax laws are made by the living to tax the living. There is no machinery provision under the Act for continuing the proceedings of non payment of service tax against the deceased individual. The stressed fact that an assessee under the Act means "the person" liable to pay the service tax. Short levy or non payment of service tax shall only be recovered from the person chargeable with the service tax that has not been paid. He is not a person liable to make payment of service tax in terms of section 73(1) of Finance Act, 1994. Further there is no machinery provision contained whether under the Act or Rules to proceed against the legal heirs of the deceased person. They have invited attention to the definition of the assessee given in sub section (12) of Section 65 B of the Finance Act, 1994 which reads as

" Assessee means as person liable to pay tax and includes his agent"

16. According to which the assessee does not include legal heirs. Therefore legal heirs of the deceased cannot be compelled to make payment service due from the person liable to make payment of service tax in terms of Section 73(1) of the Finance Act, 1994.

17. The apex court in the case of Commissioner of Sales Tax Commissioner Uttar Pradesh Vs. Modi sugar Mills 1961(2)SCR 189 at 98 held as under:

*" in interpreting an taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statute as to supply any assumed deficiency".*

18. Applying the same principles laid down by the Apex Court in the plethora of judgments to the facts of the present case, it may kindly be appreciated that the proceedings was initiated in the name on the deceased person which itself is void ab initio and shall not survive at the first instance. I am placing reliance on the judgement of the jurisdictional High Court of Gujarat in the case of Bharati Harendra Modi VS ITO 2019 (109) taxmann.com wherein the Hon"ble court held as under:

*"section 148, read with section 159 of the Income tax Act, 1961-income escaping assessment-issue of notice for (dead person)- assessment year 2012- 13-whether a notice issued under section 148 in the name of a dead person would not be a valid notice - held yes- original assessee namely- BHM - did on 26.05.2017- assessing officer issued a re opening notice under section 148 in the name if BHM on ground that on the basis of information in Annual Information Return, it was found that the said deceased assessee had sold one immovable property amounting to Rs.82.89 lakhs but die not file any income tax return, thus income to said extent had escaped assessment due to failure of BHM to submit his return of income- petitioner being heir and legal representative of BHM contended that BHM had already expired and, therefore, impugned notice in the name of BHM was not valid - whether impugned notice*

*issued under section 148 against BHM was to be quashed and set aside- held yes in favour of assessee".*

19. The very same proceedings continued by the Additional Commissioner of Central Excise, Ahmedabad North instead of dropping the same which shall have no legal sanctity in the eyes of law. The apex court in the case of SHABINA ABRAHAM & ORS Vs COLLECTOR OF CENTRAL EXCISE & CUSTOMS in CIVIL APPEAL NO.5802 OF 2005 has held as under:

*"While interpreting the provisions of Central Excise & Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions.*

*We do not find any provisions in the Act which foists any such liability in the case of interstate succession. In other words, there is no provision which empowers the authorities to recover duty from a deceased assessee by proceedings against his legal heirs. The way section 11 and 11A are worded, it is amply clear, the legislature has consciously kept away the legal heirs from answering to liabilities under the Act."*

*"in interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed. It cannot import provisions in the statute so as to supply any assumed deficiency.*

*34. We, therefore, are of the view that this appeal must be allowed and the judgement of High Court of Kerala, is accordingly set aside and that the learned single judge restored"*

20. In view of settled legal precedent, the present proceedings under the service tax continued in the name of legal heir Mr. Ketan Nareshbhai Ayar is illegal and bad in law. Hence, it may please be dropped with immediate effect. Copies of the order of apex court is enclosed. Proceeding cum show cause notice issued in the name of deceased person is time barred thereby liable to be dropped.

21. Further according to section 73(1), the notice is to be served on or before 25.04.2020 as the same belongs to the year 2014-15. However the Notice has been served on 30.09.2020 looking into the provisions of Section 73(1) of the Finance Act, 1994 the impugned SCN is time barred and it was not served upon the person chargeable with the service tax. They further contended that the service tax liability computed in the SCN is exorbitantly high as compared to actual liability if any. They have further submitted that it is an undisputed fact that late Mr. Naresh Prahladbhai Ayar running the business of GTA and he was not obliged to take registration as well as payment of service tax as per Noti.No.15/2012 service tax dated 17.03.2012. That was the main reason he did not obtain registration of service tax. As far the demand and liability determined in the SCN dated 30.09.2020 is derived considering the gross receipts liable for payment of service tax. The following adjustments remained to be considered

- Reduction of gross receipts on account of services provided to companies and partnership firms where liability to pay service tax rests with the service receiver (reverse charge)
- Reduction of gross receipt on account of services provided to other GTA



- Abatement of 75% from gross receipts liable for payment of service tax.

22. Without admitting the liability for payment of service tax they have provided reconciliation statement for consideration. They requested to drop the proceedings. If it is not inclined to accept the objections and contentions raised on legal ground they requested to dispose off legal objection by way of passing a speaking order.

#### PERSONNEL HEARING

23. Personnel Hearing was granted on 11.03.2022 and Shri Palak Bhatt, CA, appeared on behalf of M/s.Naresh Prahladbhai Ayar. He has submitted that his written submissions and re iterated the same at the time of personnel hearing. Further he requested to drop the proceedings.

#### DISCUSSION AND FINDINGS

24 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.

25. I have carefully gone through the records of the case, submission made by the noticee, Audited Balance Sheet, ITR, STR and copies of invoices for the year 2014-15. In the instant case, Show Cause Notice was issued to the deceased noticee demanding Service Tax of Rs. 54,16,329/- for the financial year 2014-15 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 deceased noticee is liable to pay service tax of Rs. 54,16,329/ on the differential taxable value for the financial year 2014-15 under proviso to section 73(1) of Finance Act, 1944 or not.

26. On perusal of SCN and other records, I find that the assessee was providing GTA Services but he neither take service tax registration nor paid any service tax. Show Cause Notice was issued to recover service tax of Rs. 54,16,329/- on value of Rs.4,38,21,429/- shown in the Form 26 AS.

27. On perusal of the reply to SCN and related documents, I find that the reply to SCN was submitted by Shri Ketan Nareshbhai Ayar s/o. late Shri Naresh Prahladbhai Ayar on behalf of the assessee. He vide letter dated 06.10.2020 informed that his father Shri Naresh Prahladbhai Ayar, the noticee, has expired on 26.09.2015. He has also attached a Death Certificate issued by Department of Health (Births & Deaths), Ahmedabad Municipal Corporation in this effect. I have gone through the Certificate and find that the same was issued on 03.10.2015 wherein it was specifically mentioned the name of Shri Nareshbhai Prahladbhai Aiyar, 36, Sweet Home Society, Nr. Bapasitaram Chowk, Navanaroda, Ahmedabad died on 26.09.2015. On perusal of the name & address of the noticee mentioned in the SCN, I find the name and address of the noticee is matched with the same mentioned in the death certificate. Therefore I find that the assessee to whom the Department issued the Show Cause Notice is no more as he expired on 26.09.2015.

28. I have gone through the reply filed by Shri Ketan Nareshbhai Ayar s/o. late Shri Naresh Prahladbhai Ayar on behalf of the noticee wherein he stated that it may kindly be appreciated that to tax a deceased is a contradiction in terms. Tax laws are made by the living to tax the living. There is no machinery provision under the Act for continuing the proceedings of non payment of service tax against the deceased individual. The stressed fact that an assessee under the Act means "the person" liable to pay the service tax. Short levy or non payment of service tax shall only be recovered from the person chargeable with the service tax that has not been paid. He is not a person liable to make payment of service tax in terms of section 73(1) of Finance Act, 1994. Further there is no machinery provision contained whether under the Act or Rules to proceed against the legal heirs of the deceased person. They have invited attention to the definition of the assessee given in sub section (12) of Sectionn65 B of the Finance Act, 1994 which reads as

" Assessee means as person liable to pay tax and includes his agent"

29. According to which the assessee does not include legal heirs. Therefore legal heirs of the deceased cannot be compelled to make payment service due from the person liable to make payment of service tax in terms of Section 73(1) of the Finance Act, 1994. On perusal of the above contention of Shri Ketan Nareshbhai Ayar s/o. late Shri Naresh Prahladbhai Ayar submitted on behalf of the noticee, I find that the assessee is defined as the person liable to pay tax includes his agent. It does not included the legal heir as the assessee, hence the contention of the assessee is acceptable. Further the point that there is no machinery provision contained whether under the Act or Rules to proceed against the legal heirs of the deceased person. On perusal of Service Tax Act and Rules made thereunder is silent about such situations and therefore the point raised by the legal heir is also acceptable.

30. I have also gone through various case laws referred by Shri Ketan Nareshbhai Ayar s/o. late Shri Naresh Prahladbhai Ayar on behalf of the noticee in this regard. On perusal of the reply to SCN and on the basis of various case laws, I find that the matter to decide is the question is whether an assessment proceeding under the Service Tax can continue against the legal representatives/estate of a sole proprietor/manufacture after he is dead or not.

31. In the instant case, I find that Shri Ketan Nareshbhai Ayar s/o. late Shri Naresh Prahladbhai Ayar on behalf of the noticee is heavily relied upon the decision of Hon'ble Supreme Court in the case of SHABINA ABRAHAM & ORS Vs COLLECTOR OF CENTRAL EXCISE & CUSTOMS in CIVIL APEAL NO.5802 OF 2005. In this connection, I intend to go through the case law in detail to decide the matter.

32. The Hon'ble Supreme Court while deciding the matter referred the point as " The precise question that arises in the present case is whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacture after he is dead". The details of the case referred as follows:

"One Shri George Varghese was the sole proprietor of Kerala Tyre and Rubber Company Limited. By October, 1985, this proprietary concern had stopped manufacture and production of tread rubber. By a show cause notice dated 12-6-1987, for the period January, 1983 to December, 1985, it was alleged that the assessee had manufactured and cleared tread rubber from the factory premises by suppressing the fact of such production and removal with an intent to evade payment of Excise duty. The provisions of Section 11A, as they then stood, of the Central Excises and Salt Act were invoked and duty amounting to Rs. 74,35,242/- was sought to be recovered from the assessee together with imposition of penalty for clandestine removal.

3. On 14-3-1989, the said Shri George Varghese died. As a result of his death, a second show cause notice was issued on 18-10-1989 to his wife and four daughters asking them to make submissions with regard to the demand of duty made in the show cause notice dated 12-6-1987. By their reply dated 25-10-1989, the said legal heirs of the deceased stated that none of them had any personal association with the deceased in his proprietary business and were not in a position to locate any business records. They submitted that the proceedings initiated against the deceased abated on his death in the absence of any provision in the Central Excises and Salt Act to continue assessment proceedings against a dead person in the hands of the legal representatives. The said show cause notice was, therefore, challenged as being without jurisdiction.

4. As the Central Excise Authorities posted the matter for hearing and refused to pass an order on the maintainability of the show cause notice alone, the legal heirs approached the High Court under Article 226 of the Constitution by filing a Writ Petition in January, 1990. The learned single Judge of the High Court quashed the proceedings against the legal heirs stating that the Central Excises and Salt Act did not contain any provisions for continuing assessment proceedings against a dead person. Against this, revenue went in appeal. The Division Bench of the High Court of Kerala reversed the single Judge's judgment."

While deciding the case the Hon'ble Supreme Court find that

"It remains to consider a judgment cited by learned counsel for the appellants, namely, Commissioner of Central Excise, Bangalore-III v. Dhiren Gandhi, 2012 (281) E.L.T. 64 (Karnataka) = 2012 (27) S.T.R. 452 (Kar.). This judgment is correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To the extent that this judgment holds what is set out herein below, it is correct :-

"We do not find any provision in the Act which foists any such liability in the case of intestate succession. In other words, there is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. The way Section 11 and 11A are worded, it is amply clear, the legislature has consciously kept away the legal heirs from answering to liabilities under the Act." (at page 69)

The Hon'ble Supreme Court has also observed that

7. Recovery of duty. - Every person who produces, cures or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty or duties leviable on such goods, at such time and place and to such persons as may be

designated, in, or under authority of these rules, whether the payment of such duty or duties is secured by bond or otherwise.

Provided that nothing contained in this rule shall apply to molasses produced in a khandsari sugar factory.

Provided further that in respect of goods falling under Chapter 62 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), manufactured on job work, the provisions of these rules shall apply subject to the provisions of Rule 7AA."

8. On a reading of the aforesaid provisions, it is clear that Shri Rajshekhar Rao, learned counsel appearing on behalf of the appellants is correct - there is in fact no separate machinery provided by the Central Excises and Salt Act to proceed against a dead person when it comes to assessing him to tax under the Act.

The Hon'ble Supreme court also held that

"17. It will be seen that the definition of "assessee" contained in Section 4(3)(a) of the Central Excises and Salt Act is similar to the definition of assessee contained in the Income Tax Act, 1922. Under that Act, as we have already seen, an assessee means "a person by whom income tax is payable." Under the Central Excises and Salt Act, an assessee means "the person who is liable to pay the duty of excise under this Act". The present tense being used, it is clear that the person referred to can only be a living person as was held in *Ellis C. Reid (supra)*. Further, the only extension of the definition of "assessee" under the Central Excises and Salt Act is that it would also include an assessee's agent, which has nothing to do with the facts of the present case. It is well settled that a "means and includes" definition is exhaustive in nature and that there is no scope to read anything further into the said definition."

And finally the Hon'ble Supreme Court concluded that

"34. We are, therefore, of the view that this appeal must be allowed and the judgment of the High Court of Kerala is, accordingly set aside and that of the learned Single Judge restored".

35. On perusal of the above order of the Hon'ble Supreme Court, there is no separate enabling provision in Act to recover the duty from legal heirs of a deceased person. The definition of assessee as contained in Sec.4(3)(a) of Central Excise Act provides that an assessee means "the person who is liable to pay the duty of excise under this Act. The present tense being used, it is clear that the person referred to can only be a living person. Such use of present tense indicates that the one of modes of recovery as provided in sec.11 by way of attachment of property of the assessee even if the estate was available cannot be so attached. Thus, the legal heirs inheriting the estate of deceased person cannot be make liable to pay duty as payable by assessee during his life.

36. Further in the case of *Azad Engineering Works Vs Commissioner Of C. Ex. & S.T., Allahabad's 2019 (24) G.S.T.L. 46 (Tri. - All.)* the Honble CESTAT decided that in a similar issue Recovery of Service Tax dues of proprietorship firm cannot be effected against legal heirs of partner after his death - Section 87 of Finance Act, 1994. [para 1] Finance Act, 1994 - Provisions of Section 87 of

Finance Act, 1994 are pari materia to provisions of Section 11 of Central Excise Act, 1944. While deciding the case the Hon'ble CESTAT observed that

*"We note that Learned Counsel for the appellant has relied on ruling by Hon'ble Supreme Court in the case of Shabina Abraham v. Collector of Central Excise & Customs reported as 2017 (50) S.T.R. 241 (S.C.). Learned AR fairly agrees with that the said ruling of Hon'ble Supreme Court is squarely applicable in the present case. We note that Hon'ble Supreme Court in the said case of Shabina Abraham had held that "in the absence of machinery provisions for proceeding against dead person's legal heirs, duty and other sums do not become payable to apply recovery provisions under Section 11 of Central Excise Act, 1944." We note that present proceedings are initiated under Finance Act, 1994 and Section 87 of Finance Act, 1994 is invoked for recovery. We also note that provisions of Section 11 of Central Excise Act, 1944 and provisions of Section 87 of Finance Act, 1994 are pari materia. We, therefore, hold the ruling of Hon'ble Supreme Court in the case of Shabina Abraham is squarely applicable in the present case. Therefore, we hold that the demand confirmed through Order-in-Original dated 25-2-2014 sustained through impugned Order-in-Appeal cannot be recovered from the legal heirs of Shri Kailash Nath Singh.*

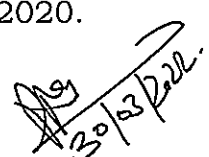
*2. In above terms the appeal is allowed."*

37. On perusal of the above refereed orders of Hon'ble Supreme Court and CESTAT and other aspects of the case, I find that the assessment proceedings against a deceased person is not lawful and proper. Therefore the show cause notice issued in the name of the deceased person late Shri Naresh Prahladbhai Ayar is liable to be vacated. As the SCN itself is vacated, the question of charging interest or imposing of penalty does not arise.

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

#### O R D E R

I vacate the proceedings of Show Cause Notice initiated for recovery of Rs.54,16,329/- vide F.No.STC/15-106/OA/2020 dated 30.09.2020.

  
(MUKESH RATHORE)  
Additional Commissioner  
Central Excise & CGST,  
Ahmedabad North

By Regd. Post AD./Hand Delivery

F.No.STC/15-106/OA/2020

Date:

To

Naresh Prahladbhai Ayar  
36 SWEET HOME SOCIETY,  
KRISHNA NAGAR, NAVA NARODA.  
AHMEDABAD, GUJARAT-382346

Copy to:

1. The Commissioner, CGST & CX, Ahmedabad North.
2. The Dy./Asstt. Commissioner, DIV-II, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-I, Division-II, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
- ✓ 5. Guard File.

