
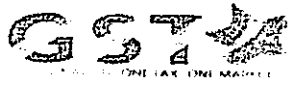


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: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

निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-71/OA/2018

आदेश की तारीख/Date of Order: - 13.07.2021
जारी करने की तारीख/Date of Issue :- 14.07.2021

DIN-20210746WT0000914825

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi
संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 13/JC/MT/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 विरुद्ध अपील, इसकी प्राप्ति से दो महिनो के अन्दर आयुक्त (अपील), केन्द्रीयजी.एस.टी., केन्द्रीयजी.एस.टी.भवन, अंवावाडी, अहमदाबाद - 380015 को प्रारूप संख्या एसटी-4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रूपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form ST-4 to the Commissioner(Appeals), GST Bhawan, Ambawadi, Ahmedabad-380015 within two months 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 की धनराशि का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeals) on giving proof of payment of pre-deposit as per rules.

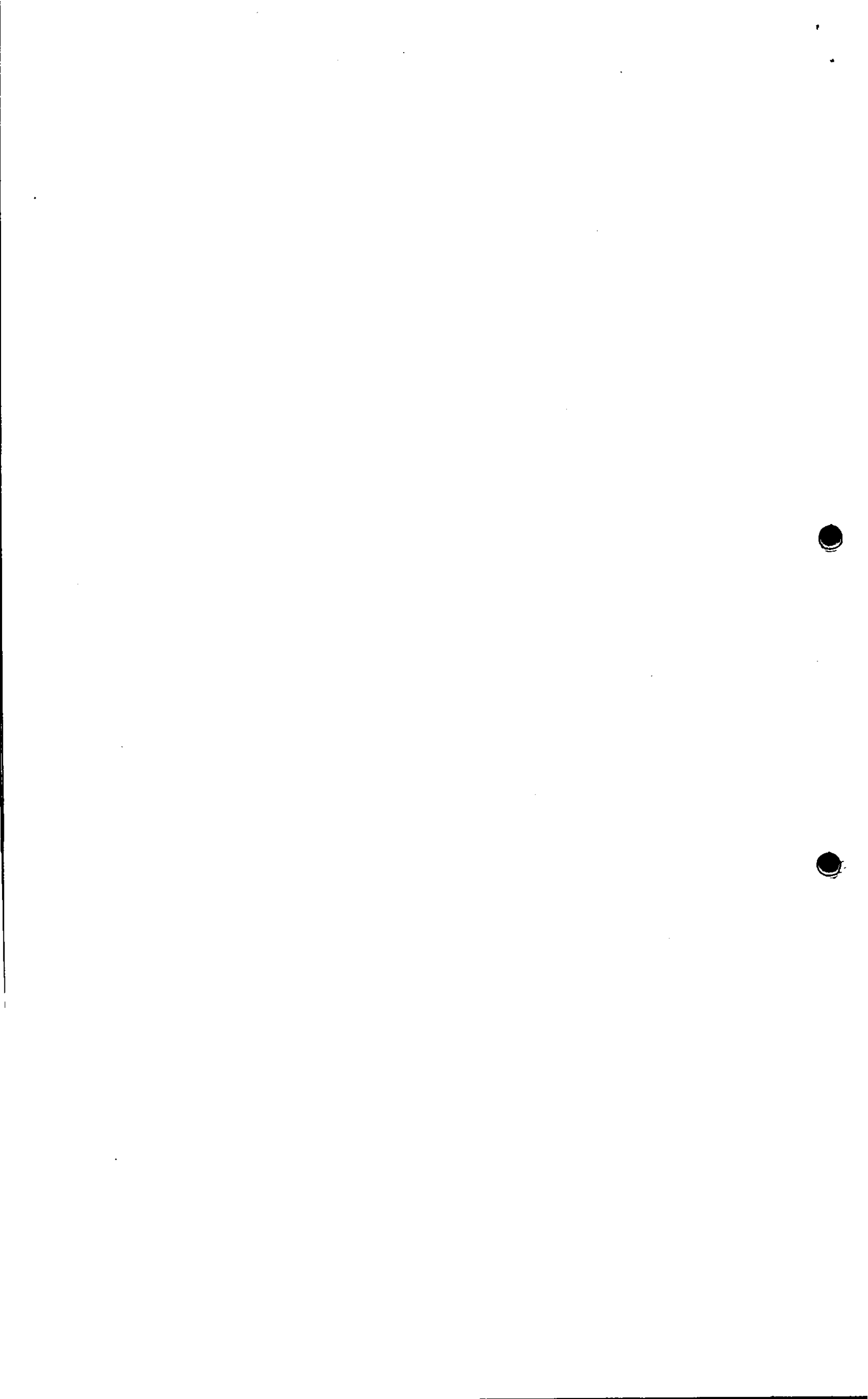
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एसटी-4 (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील), नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (1) उक्त अपील की प्रति
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रु. 5.00 (पांच रूपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form 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/ The Show Cause Notice No. STC/15-71/OA/2018 dated 10.12.2019 issued to M/s Aroma Realities Limited, U.G.F. 1, Milestone Building, Near Drive-in-Cinema, Thaltej, Ahmedabad-380052.



Brief Facts of the case

M/s Aroma Realties Limited, U.G.F. 1, Milestone Building, Near Drive-in-Cinema, Thaltej, Ahmedabad-380052 (hereinafter referred to as "the said assessee") were providing mainly the "Commercial or Industrial Construction Services" & "Construction of Residential complex services", which were classified under the category of "taxable services", defined under Section 65 (105) (zzq) & (zzzh) of the Finance Act, 1994, respectively and were holding Service Tax Registration No. AAHCA3306MST001 dated 17-12-2008 for providing / receiving Renting of Immovable Property service; Works contract service; Supply of Tangible Goods Service; Legal Consultancy Service ; Security/Detective Agency Service; Rent-a-cab scheme operator service; Manpower Recruitment/Supply Agency Service; Construction Services other than residential complex including commercial/industrial buildings or civil structures; Transport of Goods by Road/Goods Transport Agency service; Site formation and clearance, excavation, earth moving and demolition service and Construction of Residential Complex Service.

2.1 In the scheme of negative list with effect from 01.07.2012, all services other than those mentioned in the negative list as specified under Section 66D of the Finance Act, 1994 and services exempt under Mega Exemption Notification No. 25/2012-S.T. dated 20-06-2012, were taxable.

2.2 After 01.07.2012, in terms of Section 65 B(44) of the Finance Act, 1994, "service" means any activity carried out by a person for another, for consideration, and includes a declared service, but.....

2.3. Important ingredients of "service" are:

a) Any activity- The focus of the levy is now shifted to an activity which has a wide coverage. The word "activity" is not defined in the Finance Act, 1994 as amended from time to time. Any execution of an act or operation carried out or provision of a facility will also be included. A single activity is also covered in its ambit and it is not necessary that such activity should be carried on a regular basis. Even a passive activity or forbearance to act or to refrain from an act or to tolerate an act or a situation, would be regarded as service.

b) Carried out by a person for another- For a transaction of service, there must be two parties, one, the service provider and the other, service receiver.

c) For a consideration - Under the Indian Contract Act, 1872, the definition of "consideration" is, "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.



2.4 The nature of activity carried out by M/s Aroma Realities Limited viz. the "Commercial or Industrial Construction Services" & "Construction of Residential complex services" was covered under the definition of service and was not covered under the Negative List as given in the Section 66D of the Finance Act, 1994 as amended from time to time. This service was also not exempted under mega exemption notification No. 25/2012-S.T. dated 20-06-2012 as amended from time to time.

3.1 M/s Aroma Realities Limited was falling under the jurisdiction of Range-I, Division-I of the then Service Tax Commissionerate, Ahmedabad. Jurisdictional Range Superintendent had issued letter dated 20.06.2017 to the said assessee to provide the details of the taxable services provided by them during the period Oct,13 to March,17. However, the said assessee failed to provide the requisite details instead of issuance of the said letter.

3.2 With effect from 01.07.2017, Goods and Service Tax was introduced. Due to cadre restructuring and introduction of GST regime w.e.f. 01.07.2017, the then Service Tax Commissionerate, Ahmedabad was merged with the jurisdictional Central Excise Commissionerates and the jurisdiction of M/s Aroma Realities Limited was shifted from Range-I, Division-I of the then Service Tax Commissionerate to Range-II, Division-VII, Central GST & Central Excise, Ahmedabad North Commissionerate. The Proceedings under the above mentioned provisions of the Finance Act, 1994 and rules framed there under are saved by Section 174(2) of the Central Goods and Service Tax Act,2017. Accordingly, the case was transferred from Range-I, Division-I of the then Service Tax Commissionerate to Range-II, Division-VII, Central GST & Central Excise, Ahmedabad North Commissionerate on 06.07.2017.

3.3 Superintendent, Range-II, Division-VII, Central GST & Central Excise, Ahmedabad North Commissionerate vide letters dated 17.07.2017, 30.08.2017 and 02.11.2017 requested the assessee to provide the details of the taxable services provided by them during the period Oct,13 to March,17.

3.4 The said assessee vide letter dated 15.11.2017 furnished the copies of the Balance Sheet and Profit & Loss account for the period 01.04.2013 to 31.03.2016 and copies of the ST-3 Returns for the period 01.10.2013 to 30.09.2016 to the JRO. Subsequently, the said assessee furnished the copy of the Balance Sheet for the year 2016-17.

4.1 The documents submitted by the assessee were scrutinized by the Range Officers. On comparing the amount appearing in the financial documents vis-à-vis the taxable amount declared by the said assessee in its ST-3 Returns for the corresponding period, it appeared that the said assessee had not declared figures in their ST-3 Returns in consonance with the figures appearing in their financial records for the corresponding period and had thus suppressed their actual income with an intent to evade payment of Service Tax on the said amount.

4.2 Superintendent, Range-II, Division-VII, Central GST & Central Excise, Ahmedabad North Commissionerate vide summons dated 20.04.2018 and 15.06.2018, summoned the assessee to obtain the clarification with respect to the above difference in the figures appearing in Balance Sheets/P & L account vis-à-vis ST-3 Returns and also to record his statement under Section 14 of the Central Excise Act, 1944 as made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994. However, the said assessee neither appeared before JRO nor made any correspondence with respect to the said Summons.

4.3 Further summons were issued on 23.07.2019 whereby the assessee was asked to remain present before Superintendent, Range-II, Division-VII, Central GST & Central Excise, Ahmedabad North Commissionerate on 24.07.2019 to explain the said difference and also to give statement. In reply, the said assessee vide letter dated 24.07.2019 informed that DGGI was conducting an inquiry against them for short payment of Service Tax and pursuant to the directions of officers of DGST, Zonal Unit, Ahmedabad they had paid differential Service Tax to the tune of Rs.1.78 Crores alongwith interest and penalty.

5.1 The valuation provisions for charging service tax are contained in Section 67 of the Finance Act, 1994 and the same are as follows:

SECTION 67 Valuation of taxable services for charging service tax. —

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) 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.

(4) Subject to the provisions of sub-Sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation. — For the purposes of this Section, —

(a) "consideration" includes —

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

(b) [* * * *]

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

5.2 The provisions regarding the determination of point of taxation are contained in the Rule 3 of the Point of Taxation Rules, 2011 issued under sub-Section (2) of Section 67A and clause (a) and clause (hhh) of sub-Section 94 of the Finance Act, 1994. As per the explanation contained under Rule 3 of the point of Taxation Rules, 2011, for the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance. The explanation is as under:

"Explanation - For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance".

5.3 Whereas the said assessee was required to produce the detailed ledger account of gross receipt from their customers as per the sale deed executed by them with their respective customers in respect of construction of residential complex and construction of commercial complex and they were required to pay service tax liabilities on such considerations for providing taxable services. Superintendent, Range-II, Division-VII, Central GST & Central Excise, Ahmedabad North Commissionerate vide letter dated 06.11.2019 requested the assessee to provide Member's contribution Group Summary for the period from Oct,13 to March,14; April,14 to Sept,14 and Oct,14 to March,15. It appeared that the said assessee had furnished the details of Member's contribution Group Summary showing summary ledger account of advance from customers for the period from Oct,13 to March,14; April,14 to Sept,14 and Oct,14 to March,15 vide their letter dated 07.11.2019 to JRO.

5.4 On scrutiny of the Member's contribution Group Summary submitted by the assessee, it appeared that they had received the following amount/contribution as advance from their customers during the period Oct,13 to March,15, as detailed below:-

TABLE-I

Table Showing Member's Contribution during the period Oct,13 to March,14 prepared on the basis of Ledgers submitted by the assessee				
Scheme	Members Contribution (Rs.)	Member's Contribution ST recoverable (Shown as Credit) (Rs.)	Service Tax Receivable (Shown as Credit) (Rs.)	Residence/ Commercial
Tragad	10378000			Residence
Township Phase-I	31183341	674341	246866	Residence
Bavla	20826763	0	71657	Commercial
Bhiladi	620000			Commercial
Sthapatya	1000000			Residence
	1973000			Commercial
Sankod	48275			Plot
Ramol 722	150000	719		Residence
Odhav	0	6573		Shed
Kesar City-Akruti Phase-1	41372489			Residence
Kesar City-Shukan Phase-1	210000			Residence
Kesar City-Suyog Phase-1	34361868			Residence
TownShip-II	42099922		1769721	Residence
Vastral	10899454	2056458	309770	Residence
Vataman	2471186		40250	Plot
Vatva	27285186		0	Residence
	352000	0	0	Commercial
	225231484	2738091	2438264	

TABLE-II

Table Showing Member's Contribution during the period April,14 to Sept,14 prepared on the basis of Ledgers submitted by the assessee				
Scheme	Members Contribution (Rs.)	Member's Contribution ST recoverable (Shown as Credit) (Rs.)	Service Tax Receivable (Shown as Credit) (Rs.)	Residence/ Commercial
Tragad	15710111			Residence
Township Phase-I	15031130		84150	Residence
Bavla	32805415		114035	Commercial
Bhiladi	840000			Commercial
Sthapatya	3329500			Commercial
Sankod	125000			Plot
Ramol 722	0			Residence
Odhav	0			Shed
Kesar City-Akruti Phase-1	45603794			Residence
Kesar City-Shukan Phase-1	0			Residence
Kesar City-Suyog Phase-1	34467713			Residence

TownShip-II	20293554		227885	Residence
Deesa	675000			Commercial
Vastral	2116150			Residence
Vataman	1909650			Plot
Vatva	61454081			Residence
	925000		0	Commercial
	235286098	0	426070	

TABLE-III

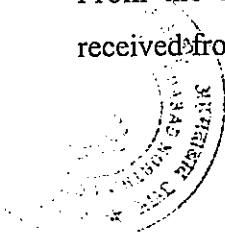
Table Showing Member's Contribution during the period Oct,14 to March,15 prepared on the basis of Ledgers submitted by the assessee				
Scheme	Members Contribution (Rs.)	Member's Contribution ST recoverable (Shown as Credit) (Rs.)	Service Tax Receivable (Shown as Credit) (Rs.)	Residence/ Commercial
Tragad	24560796		379508	Residence
Bavla	5317800	63499	14100	Commercial
Bhiladi	714000	8854		Commercial
Sthapatya	0			Commercial
Sankod	61280		9425	Plot
Ramol 722	0	5980		Residence
Odhav	46000	133828		Shed
Kesar City-Akruti Phase-1	37580742			Residence
Kesar City-Shukan Phase-1	0	20952		Residence
Kesar City-Suyog Phase-1	28181382			Residence
TownShip-II	8284825		708495	Residence
Deesa	1800000			Commercial
Vastral	1515270	52348	22350	Residence
Vataman	2947973			Plot
Vatva	66470539			Residence
	621000	0	0	Commercial
	178101607	285461	1133878	

5.6 On comparing the details of advance collected by the said firm from their members vis-à-vis the gross amount shown by them in their ST-3 Returns were tabulated as under:-

TABLE-IV

Period Covered	Nature of Service	Advance amount collected as per Ledger (Rs.)	Amount declared in ST-3 Return (Rs.)	Difference in amount (Rs.)
Oct,13 to March,14	Commercial	23771763	4299323	19472440
	Residential Complex	201459721	112214154	89245567
April,14 to Sept,14	Commercial	38574915	2402660	36172255
	Residential Complex	196711183	144906921	51804262
Oct,14 to March,15	Commercial	8498800	1306334	7192466
	Residential Complex	169602807	136734143	32868664

From the above table, it appeared that the assessee had not declared amount which they received from their customers as advances but suppressed the said amount unless it was unearthed



by the Department during the course of inquiry. The actual income/advance received were not declared in their periodical ST-3 returns. At no point of time, the said assessee had declared these mis-declared income of advance to the department thereby deliberately suppressed these facts with malafide intention and with a view to avoid payment of Service Tax.

6. Whereas, a statement of Shri JayeshR.Shah, Authorised signatory of M/s Aroma Realities Limited, U.G.F.1, Milestone Building, Near Drive-in-Cinema, Thaltej, Ahmedabad – 380052 was recorded on 21.11.2019 before the Superintendent of CGST & Central Excise, Range-II, Division-VII, Ahmedabad North, under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. The same recorded in form of question answer which is reproduced below:

Q-1 : Please describe in brief the nature of business of your company and names of the Directors of your company.

A-1: M/s Aroma Realities Limited is mainly engaged in providing construction of Commercial Complex services. The other Directors of the Company apart from myself are (1) Shri HimanshuGehlot and (2) Shri KamleshDesai. We are holding Service Tax Registration No. AAHCA3306MST001 received on 17-12-2008 for providing / receiving services under the category of Renting of Immovable Property service; Works contract service; Supply of Tangible Goods Service; Legal Consultancy Service ; Security/Detective Agency Service; Rent-a-cab scheme operator service; Manpower Recruitment/ Supply Agency Service; Construction Services other than residential complex including commercial/industrial buildings or civil structures; Transport of Goods by Road/Goods Transport Agency service; Site formation and clearance, excavation, earth moving and demolition service and Construction of Residential Complex Service.

Q-2 : Who is looking after the work of the company?

A-2 : All the three Directors are looking after the work of the company. However, taxation matters are looked after myself.

Q-3 : Are you discharging Service tax liability on monthly basis ?

A-3 : Yes, we are discharging Service Tax liability on monthly basis.

Q-4: Please clarify whether your company has paid Service Tax during the financial year 2013-14 to 2014-15.

A-4: Yes. Our company M/s Aroma Realities Limited had filed ST-3 Returns for the period 2013-14 to 2014-15 and had also paid Service Tax (thro' PLA as well as by debiting Cenvat Account) as mentioned in the said ST-3 Returns.

Q-5: Are you aware that details/ documents for period viz. Oct,13 to March,17 were called for from your company by the Jurisdictional Service Tax/ GST authorities vide letter dated 20.06.2017, 17.07.2017, 30.08.2017 and 02.11.2017

A-5. Yes, I am aware of the above facts. We had submitted the required details vide our letter dated 15.11.2017 to Superintendent, Central GST & Central Excise, Range-II, Division- VII, Ahmedabad North.

Q-6: Did you inform about the figures of advance payments received towards the flats/shops etc. constructed by your company for sale as appearing in your books of accounts, for the period Oct,13 to March,15, in any manner to the Department?

A-6. Prior to furnishing the copies of the Balance Sheets/Profit & Loss Account, for the period Oct,13 to March,17, vide our letter dated 15.11.2017, we had not informed about such figures for the period Oct,13 to March,15, in any manner, to the Department.

Q-7: Kindly peruse your letter dated 24.07.2019 addressed to AC, DIV-VII, CGST, Ahmedabad wherein you had informed that an inquiry regarding short payment of Service Tax was being

under taken by the officers of DGGI, Zonal Unit, Ahmedabad. Briefly state the outcome of such inquiry/ investigation carried out by DGGI, Zonal Unit, Ahmedabad.

A.7 On completion of inquiry/ investigation by DGGI, Zonal Unit, Ahmedabad, they had pointed out short payment of Service Tax to the tune of Rs.1,60,57,938/- for the period April,15 to Jan,17. We have discharged all our Service Tax liability of Rs.1,60,57,938/- as pointed out by DGGI alongwith interest of Rs.33,55,507/- and penalty @ 15% amounting to Rs.24,08,713/-. Our request to waive issuance of SCN has been considered by DGGI and the case against us has been concluded.

Q-08: Are you aware that summons dated 20.04.2018 and 15.06.2018, were issued in the name of your company for obtaining the clarification with respect to the difference in the figures appearing in your financial records vis-à-vis ST-3 Returns and also to record statement under Section 14 of the Central Excise Act, 1944 as made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994

A-08. Yes, I am aware of the above facts. However, I couldn't attend the summons because my father was expired at the particular.

Q.09 Kindly peruse the Ledgers of the Member's Contributions submitted by you vide your letter dated 07.11.2019 for the period Oct,13 to March,14 ; April,14 to Sept,14 and Oct,13 to March,14. Kindly confirm that the said sheets submitted by you covers the entire transactions of your company for the said period with your members and no entries are left over?

A.09 I confirm that the sheets of Ledgers of the Member's Contributions submitted by me covers the entire transactions of our company for the period Oct,13 to March,14 ; April,14 to Sept,14 and Oct,14 to March,15 and no entries are left over.

Q.10 As per the said ledgers, you have collected following amount from your members during the said period Do you agree?:-

Oct,13 to March,14				
Scheme	Members Contribution (Rs.)	Member's Contribution ST recoverable (Rs.)	Service Tax Receivable (Rs.)	Residence/ Commercial
Tragad	10378000			Residence
Township Phase-I	31183341	674341	246866	Residence
Bavla	20826763	0	71657	Commercial
Bhiladi	620000			Commercial
Sthapatya	1000000			Residence
	1973000			Commercial
Sankod	48275			Plot
Ramol 722	150000	719		Residence
Odhav	0	6573		Shed
Kesar City- Akruvi Phase-1	41372489			Residence
Kesar City- Shukan Phase-1	210000			Residence
Kesar City- Suyog Phase-1	34361868			Residence
TownShip-II	42099922		1769721	Residence
Vastral	10899454	2056458	309770	Residence
Vataman	2471186		40250	Plot
Vatva	27285186		0	Residence
	352000	0	0	Commercial
	225231484	2738091	2438264	

April,14 to Sept,14				
Scheme	Members Contribution (Rs.)	Member's Contribution ST recoverable (Rs.)	Service Tax Receivable (Rs.)	Residence/ Commercial

Tragad	15710111			Residence
Township Phase-I	15031130		84150	Residence
Bavla	32805415		114035	Commercial
Bhiladi	840000			Commercial
Sthapatya	3329500			Commercial
Sankod	125000			Plot
Ramol 722	0			Residence
Odhav	0			Shed
Kesar City- Akruti Phase-1	45603794			Residence
Kesar City- Shukan Phase-1	0			Residence
Kesar City- Suyog Phase-1	34467713			Residence
TownShip-II	20293554		227885	Residence
Deesa	675000			Commercial
Vastral	2116150			Residence
Vataman	1909650			Plot
Vatva	61454081			Residence
	925000		0	Commercial
	235286098	0	426070	

Oct,14 to March,15				
Scheme	Members Contribution (Rs.)	Member's Contribution ST recoverable (Rs.)	Service Tax Receivable (Rs.)	Residence/ Commercial
Tragad	24560796		379508	Residence
Bavla	5317800	63499	14100	Commercial
Bhiladi	714000	8854		Commercial
Sthapatya	0			Commercial
Sankod	61280		9425	Plot
Ramol 722	0	5980		Residence
Odhav	46000	133828		Shed
Kesar City- Akruti Phase-1	37580742			Residence
Kesar City- Shukan Phase-1	0	20952		Residence
Kesar City- Suyog Phase-1	28181382			Residence
TownShip-II	8284825		708495	Residence
Deesa	1800000			Commercial
Vastral	1515270	52348	22350	Residence
Vataman	2947973			Plot
Vatva	66470539			Residence
	621000	0	0	Commercial
	178101607	285461	1133878	

A.10 Yes, I agree.

Q.11 You have shown certain amount as Exempt from Service Tax. Kindly explain the same and also produce corroborative evidences in support of your defense.

A.11 I state that whenever the property was booked/sold after obtaining the Building Use (BU) permission, the same is considered as sale and no Service Tax is applicable on such transactions. Such entries appearing in ledger where Service Tax Exempt is mentioned signifies

that these properties were sold after obtaining the BU permission. As regards producing corroborative evidences in support of my defense, I state that I may require atleast 2 months time to produce the same since the documents are voluminous.

Q.12 On perusal of the said ledgers, it appears that some of the entries have been shown as 'Cancel'. If the booking of the property as per the said entries have been cancelled by the members, can you produce correspondences/agreements with respect to the said cancellations and also evidences showing that the amount contributed by the members were returned to them on cancellation of bookings by them?

A.12 Wherever the word Cancel is appearing in the ledger, it signifies that members have cancelled the bookings of their property. As regards the copies of the copies of the correspondences/agreements with respect to the said cancellations and also copies of proof showing that the amount contributed by the members were returned to them on cancellation of bookings by them, I state that since the said details are very old, I may be given atleast 2 Months time to submit the same since the documents are voluminous.

Q.13 On perusal of the ledgers, it appears that you have sold Plots at Vataman and Sankod. You have also shown amount as Service Tax on Plotting receivable. Can you segregate the Service Portion from the figures of member's contribution shown towards booking of plots?

A.13 No.

Q.14 The details of advance collected by you from your members vis-à-vis the gross amount shown by you in your ST-3 Returns are tabulated as under:-

Period Covered	Nature of Service	Advance amount collected as per Ledger (Rs.)	Amount declared in ST-3 Return (Rs.)	Difference in amount (Rs.)
Oct, 13 to March, 14	Commercial	23771763	4299323	19472440
	Residential Complex	201459721	112214154	89245567
April, 14 to Sept, 14	Commercial	38574915	2402660	36172255
	Residential Complex	196711183	144906921	51804262
Oct, 14 to March, 15	Commercial	8498800	1306334	7192466
	Residential Complex	169602807	136734143	328686644

Kindly explain the above difference.

Ans.14 At present I don't remember the exact reasons for the above difference. However, some difference may be due to the booking cancelled by the members to whom we had returned the booking amount received in advance (shown as cancel in ledger). Similarly, some difference may be due to the fact that the member's contribution received after receipt of BU permission (shown as Service Tax exempt in ledger).

Q.15 On perusal of the ledgers submitted by you vide letter dated 07.11.2019, it appears that you have shown Debit amount as member contribution -Service Tax Recoverable. Similarly, it also appears from the ledgers that you have shown Credit amount as member's contribution-Service Tax receivable. Thus, from these entries, it appears that you have charged and collected Service Tax from the members.

A.15. Yes, I agree that we have charged and collected Service Tax from the members at the time of sale agreement.

Q.16 Kindly peruse your ST-3 Return for the period April, 14 to Sept, 14. Do you agree that the correct figures for the Construction of Residential Complex Service should be Rs. 19,67,11,183/- instead of Rs. 3,85,74,915/- and Construction of Complexes other than Residence should be Rs. 3,85,74,915/- instead of Rs. 19,67,11,183/-, as shown in the ST-3 Return.

A.16 Yes, I agree.

Q-17: Apart from the above, do you want to add anything in your statement?

A-17. No.

7.1 The Service Tax liability of the said assessee was worked out on the differential amount as under:-

TABLE-V

Table Showing differential Service Tax to be recovered for the period Oct,13 to March,14 prepared on the basis of ledgers vis-à-vis ST-3 Returns filed by the assessee							
Category of Service	Members Contribution (Rs.)	Amount declared in ST-3 Return (Rs.)	Difference in amount (Rs.)	Rate of abatement %	Taxable Amount (Rs.)	Rate of Service Tax %	Differential Service Tax to be recovered (Rs.)
Residential Complex	201459721	112214154	89245567	75%	22311392	12.36	2757688.02
Other than Residence	23771763	4299323	19472440	70%	5841732	12.36	722038.0752
							3479726.096

TABLE-VI

Table Showing differential Service Tax to be recovered for the period April,14 to Sept,14 prepared on the basis of ledgers vis-à-vis ST-3 Returns filed by the assessee							
Category of Service	Members Contribution (Rs.)	Amount declared in ST-3 Return (Rs.)	Difference in amount (Rs.)	Rate of abatement %	Taxable Amount (Rs.)	Rate of Service Tax %	Differential Service Tax to be recovered (Rs.)
Residential Complex	196711183	144906921	51804262	75%	12951066	12.36	1600751.696
Other than Residence	38574915	2402660	36172255	70%	10851677	12.36	1341267.215
							2942018.911

TABLE-VII

Table Showing differential Service Tax to be recovered for the period Oct,14 to March,15 prepared on the basis of ledgers vis-à-vis ST-3 Returns filed by the assessee							
Category of Service	Members Contribution (Rs.)	Amount declared in ST-3 Return (Rs.)	Difference in amount (Rs.)	Rate of abatement %	Taxable Amount (Rs.)	Rate of Service Tax %	Differential Service Tax to be recovered (Rs.)
Residential Complex	169602807	136734143	32868664	75%	8217166	12.36	1015641.718
Other than Residence	8498800	1306334	7192466	70%	2157739.8	12.36	266696.6393
							1282338.357

It appeared that in the ledgers of the Member's Contribution submitted by the assessee, some of the entries had been shown as 'Cancel'. However, the assessee couldn't produce correspondences/agreements with respect to the said cancellations and also evidences showing that the amount contributed by the members were returned to them on cancellation of bookings by them. Similarly, it appeared that in the ledgers of the Member's Contribution submitted by the assessee certain amount was appearing as Exempt from Service Tax. However, the assessee couldn't produce Building Use (BU) permission & evidence showing that the said

transactions were made after receipt of BU permission, in respect of such entries. Hence, all such entries had been considered for the purpose of calculation of differential Service Tax from the said assessee. Similarly, Plot had been considered as part of Residential complex and Shed had been considered as part of other than Residential complex.

7.2 It appeared that the said amount of Service Tax amounting to Rs. 77,04,083/- (Rupees Seventy Seven Lakhs Four Thousand And Eighty Three only), which had been short paid by the said assessee was required to be recovered from the assessee by invoking the extended period, as per provisio to Sub Section (1) of Section 73 of the Finance Act, 1994 alongwith interest at applicable rate under the provisions of Section 75 of the Finance Act, 1994. Whereas the above said service tax liabilities of the noticee had been worked out on the basis of ledgers received from assessee.

8.1 It appeared that as per Rule 7C of the Service Tax Rules, 1994, "*Where the Return prescribed under Rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of*

(i) *fifteen days from the date prescribed for submission of such return, an amount of five hundred rupees;*

(ii) *beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and*

(iii) *beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return:*

Provided that the total amount payable in terms of this rule, for delayed submission of return, shall not exceed the amount specified in Section 70 of the Act."

8.2 It appeared that in the instant case the said assessee had not filed ST3 returns for the period Oct, 2013 to March, 2017, within the due date prescribed under Rule 7 of Service Tax Rules, 1994 read with Section 70 of Finance Act, 1994. Accordingly, it appeared that the amount liable to be paid by said assessee for delay in filing of returns in terms of Rule 7C of Service Tax Rules, 1994 read with Section 70 of Finance Act, 1994 was as under:-

TABLE-VIII

Period of filing ST-3 Return	Due date for filing ST-3 Return	Actual date for filing ST-3 Return	ST-3 return filed late by No. of days	Late fee (Rs.)
Oct,13 to March,14	25.04.14	17.12.14	236	20,000
April,14 to Sept,14	14.11.14	30.07.15	258	20,000
Oct,14 to March,15	25.04.15	08.09.15	136	11,600
TOTAL				51,600

8.3 Thus, it appeared that the said assessee had not paid mandatory late fee/ amount of Rs.51,600/- for delay in furnishing returns which is liable for recovery under Section 70 of Finance Act, 1994 read with Rule 7C of Finance Act, 1994.

9. Legal Provisions:-

9.1 Section 65(105)(zzq) of the Finance Act, 1994 defines the term taxable service for "Commercial or industrial construction services" as under:

"Taxable service means any service provided or to be provided to any person by any other person, in relation to commercial or industrial construction".

9.2 Section 65(105)(zzzh) of the Finance Act, 1994 defines the term taxable service for "construction of residential complex services" as under:

"Taxable service means any service provided or to be provided to any person by any other person, in relation to construction of complex".

Explanation.—For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorized by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer.

9.3 Section 66 of the Finance Act, 1994 provides that there shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent of the value of taxable services referred to in sub-clauses (a), (d)

..... (zzza) and (zzzzw) of clause (105) of Section 65 and collected in such manner as may be prescribed.

9.4 Section 68(1) of the Finance Act, 1994: "Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed."

9.5 Whereas, as per the Provision of Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, every person providing taxable service to any person, liable to pay service tax at the rate prescribed in Section 66 (substituted to "66B" w.e.f. 1-7-2012) to Central Government by the 5th of the month / quarter immediately following the calendar month / quarter in which the payments are received towards the value of taxable services (except for the month of March which is required to be paid on 31st March).

9.6 Section 70(1) of the Finance Act, 1994: "Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such

frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed."

9.7 Section 73(1) of the Finance Act, 1994 : *"Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :*

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of -

- (a) Fraud; or
- (b) collusion; or
- (c) willful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words 'thirty months' the words "five years" had been substituted.

10.1 In the era of assessee friendly governance, the assessee was required to self-assess its tax liabilities and make compliance thereof; that the department only scrutinizes the returns, there was no assessment power with the department, hence, the duties of the assessee had increased manifold; that the ST-3 return contains memorandum according to which the assessee had to declare that the information given in this return is true, correct and complete in every respect; that the ST-3 returns were very simple, no complex data, were given with the ST-3 returns. It appeared that the assessee had filed ST-3 Returns for the period under dispute showing details of the Service Tax liability as well as the payment of Service Tax made by them. It appeared that verification of these returns would not reveal whether the assessee had correctly declared the taxable amount in their ST-3 Returns in consonance with the amount of advance collected by them from their members for the corresponding period; that unless the assessee furnished the copy of the Ledgers/Balance Sheets/ Profit & Loss account to the Range/ Division or to the Department, the Range/Divisional Officers won't be able to raise any objection that the amount of Service Tax liability discharged by the assessee was not correct or had short paid the Service Tax. Therefore, it appeared that when the ledger accounts submitted by the said assessee were compared with the amount of taxable amount declared by the assessee in their ST-3 Returns for the corresponding period, it came to the knowledge of the Department that the said assessee had short paid Service Tax, as worked out above, which was in utter disregard to the requirements of law and breach of trust deposed on them and was certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime. Thus, when the department explores such hidden facts, it was empowered to invoke larger period. Thus, it appeared that the short payment of Service Tax by the assessee was unearthed after conducting inquiry by the

Jurisdictional Range Officers of Department and therefore had the said short payment not been detected during inquiry, it would have remained unnoticed; that in the case of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241, it had been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai, it was held that extended period is evocable when department came to know of Service charges received by appellant on verification of his accounts. Therefore, it appeared that this is a case of improper assessment on the part of the assessee by resorting to deliberate non-declaration and suppression of relevant and vital information with a willful intention to evade payment of Service Tax. It appeared that the said act of mis-statement/suppression on the part of the assessee, in conscious disregard to the statutory provisions, with intent to evade payment of service tax have rendered them liable to penal action under provisions of Section 78 of the Finance Act, 1994 as amended from time to time and accordingly, the ingredients for invoking the extended period of five years under the proviso to sub section (1) of Section 73 of the Finance Act, 1994 as amended from time to time, exists in the instant case. In the similar manner Education Cess as per Section-95 of the Finance (No. 2) Act, 2004 and Secondary and Higher Secondary Education Cess as per clause 136 and 140 of the Finance Act, 2007 are also recoverable.

10.2 It appeared that so far as 'suppression of facts' is concerned, the phrase implies that withholding of information is suppression of facts. P. RamanathaAiyar's Concise Law Dictionary [1997 Edition Reprint 2003 – page 822] defines the phrase lucidly and accurately as – *Where there is an obligation to speak, a failure to speak will constitute the "suppression of fact" but where there is no obligation to speak, silence cannot be termed "suppression"*; that it is manifestly clear from this that intention to evade payment of duty is implied in the suppression of facts; that it appeared that since the said assessee was liable to self assess the liability to pay service tax, they had an obligation to furnish the correct and complete information and the value of services whether taxable or otherwise.

10.3 The Government has from the very beginning placed full trust on the assessee so far as the payment of service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable assessee is not required to maintain any statutory or separate records under the provisions of Finance Act, 1994 and Rules made thereunder as considerable amount of trust is placed on the assessee and private records maintained by him for normal business purposes are accepted, practically for all the purpose. All these operate on the basis of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the assessee.

10.4 It appeared that there was no discretion to impose lesser amount of penalty in light of the Apex Court decision of Dharmendra Textile Processors & Others [2008 (231) E.L.T. 3 (S.C.)] and Rajasthan Spinning & Weaving Mills [2009 [238] E.L.T. 3 (S.C.)] and the mandatory penalty equivalent amount of duty determined under Section 11 A[2] of the Central Excise Act, 1944, should be imposed under Section 11 AC of the Central Excise Act, 1944. It

appeared that the ingredients mentioned in Section 11 AC of the Central Excise Act, 1944, are *parimateria* with the ingredients mentioned in Section 78 of the Finance Act, 1994 and in this case the specified criteria mentioned in Section 78 are completely satisfied and therefore the decision of Apex Court cited above though related on Section 11AC of the Central Excise Act, 1944, are applicable in the service tax matter also.

10.5 It appeared that in the decision in the case of CCE, Hyderabad-III Vs Prudential Spinners Ltd. [2011(267)291(S.C.)], where there was delays of one or two days in payment of duty and also payment made before issuance of Show Cause Notice, the Hon'ble Supreme Court of India held that once the section is held to be applicable, the authority concern would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under Section 11 A(2) of the Central Excise Act, 1944; that in the said judgment the Apex Court had considered the scope and ambit of mandatory penalty under Section 11 AC *ibid*, following the judgments of Rajasthan Spinning & Weaving Mills and CCE Vs. Lanco Industries reported in 2009 (13) SCC 448 = 2009 (238) E.L.T. 3(S.C.), wherein, it was held that once Section 11 AC is held applicable, the authority having no discretion in quantum of penalty. Thus, it appeared that the said assessee was liable for penalty under Section 78 of the Finance Act, 1994, equivalent to the amount of duty.

10.6. It is established principle of law that fraud and justice do not dwell together. An assessee acting in defiance of law has no right to claim innocence when he failed to exercise due care and diligence. It was so held in the case of K.I. International Ltd. Versus Commissioner of Custom, Chennai - 2012 (2) ECS (126) (Tri-Chen).

The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd - 2010 (260) E.L.T. 17 (S.C.) – had held:

"12. Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty. The extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five years, it needs to be construed strictly. The initial burden is on the department to prove that the situation visualized by the proviso existed. But the burden shifts on the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section."

10.7. It had been held by Apex Court in case of Commissioner of Customs, Kandla v. Essar Oil Ltd.-2004 (172) E.L.T. 433 (S.C.) that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the deceived. Undue advantage obtained by the deceiver, will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changalvaraya Naidu V. Jagannath [1994(1) SCC 1]).

10.8 As discussed above and also from the statement recorded on 21.11.2019 of Shri Jayesh R. Shah, authorized signatory of M/s. Aroma Realities Limited, wherein it had been confirmed that there was a difference in the amount received as advance from their members vis-à-vis the gross amount declared by them in their ST-3 Returns, during the period Oct,13 to March,15. It also appeared that they had suppressed the figures in their ST-3 returns as compared to the amount received as advance from their members, as appearing from the ledgers.

Para 3.7 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, clarified as under:

“Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is legally not tenable. However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently. For example, in cases where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of wilful mis-statement regarding the clearances made under appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to sustain as the department comes in possession of all the facts after the time of first SCN. Therefore, as a matter of abundant precaution, it is desirable that after the first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation. “

In the present case, the said assessee did not declare amount which they received from their customers as advances but hidden the said amount which the department unearthed during the course of inquiry. These income were never declared in their periodical ST-3 returns. At no point of time, the said assessee had declared these mis-declared income thereby deliberately suppressed these facts with malafide intention and with a view to avoid payment of Service Tax. Thus, the said assessee deliberately suppressed the material facts to the Department, therefore, in view of para 3.7 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, the present show cause notice was issued.

11.1 Provisions of Section 75 of the Finance Act, 1994 read as - ***Interest on delayed payment of service tax.***

75. Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, for the period by which such crediting of the tax or any part thereof is delayed.

11.2 It appeared that as per the provisions of Section 68 of the Finance Act, 1994 read with Rule 6(1)(i) or (ii) of the Service Tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by the 6th day of the month, if the duty is deposited electronically through internet banking; and by the 5th day of the month, in any other case, immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard. In the instant case the service tax had not been paid by the said assessee to the credit of the Central Government within the period specified under Rule 6 of the Service Tax

Rules, 1994, therefore, simple interest at the applicable rate was also required to be paid by the said assessee.

11.3 Hon'ble Bombay High Court in the case of CCE & C, Aurangabad Vs. Padmashri V.V. Patil S.S.K. Ltd. had opined that:-

'Language of Section 11AB is unambiguous; that the person, who is liable to pay duty short levied/short paid/not levied/unpaid, etc. , is liable to pay interest at the rate as may be determined by the Central Government from time to time; that this is evident from the opening part of sub Section (1) of Section 11; interest chargeable u/s 11AB is sort of civil liability of the assessee, who has retained the amount of public exchequer with himself and which ought to have gone in the pockets of the Central Government much earlier; that upon reading Section 11AB together with Section 11A and 11 AA, we are of firm view that interest on the duty evaded is payable and the same is compulsory and even though the evasion of duty is not mala fide or intentional'.

The ingredients mentioned in Section 11 AA and 11AB of the Central Excise Act, 1944, are *parimateria* with the ingredients mentioned in Section 75 of the Finance Act, 1994 and therefore the decision of Hon'ble Bombay High Court cited above though related on Section 11AA/ 11AB of the Central Excise Act, 1944, appeared to be applicable in the service matter also.

12. It appeared that Section 70 of the Finance Act, 1994 casts an obligation on the service provider to assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency. In absence of such assessment and filing of the prescribed return correctly, the department is absolutely in the dark as to whether the service provider is engaged in any sort of business which is covered under the service tax net. In the instant case, it appeared that the service provider had failed to discharge the obligation cast upon them regarding correct assessment of tax liabilities in terms of the provisions of Section 70 of the Finance Act, 1994 which leads to the clear inference that the service provider had suppressed the material facts regarding the value of services rendered in their ST-3 returns. The said act of the assessee had rendered them liable for penalty under Section 78 and Section 77(2) of the Finance Act, 1994.

13. In light of the facts discussed here-in-above and the material evidences available on records, it was revealed that the noticee had contravened the following provisions of Chapter-V of the Finance Act, 1994, the Service Tax Rules, 2004:

- (i) failed to declare correctly, assess and pay the service tax due on the taxable services viz. "Construction of Residential Complex Service"/ Construction service other than residential complex", including commercial/industrial buildings or civil structures"/ Declared service, 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) All the above acts of contravention as detailed herein above on the part of the said assessee appeared to had been committed by way of suppression of facts with malafide intention to evade payment of service tax, and thereby, the said evaded service tax not paid by them was required to be demanded and recovered from them under proviso 1 of Section 73 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 publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (v) 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.
- (vi) Section 77 of the Finance Act, 1994, in as much as they failed to file correct and true ST-3 returns.

14. The assessee was called for Pre Show Cause Notice Consultation on 04.12.2019 at 4.00 PM vide letter dated 26.11.2019, in view of the instruction issued by CBEC vide F.No.1080/11/DLA/CC Conference/2016 dated 08.07.2016. Pre-consultation was attended by Shri Jayesh Shah, Authorised representative & Accountant of M/s Aroma Realities Ltd. He did not agree for the said demand but failed to produce any submission and documents in their favour. He told that he will reply the demand notice accordingly.

15. 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.'

16. Therefore, M/s Aroma Realities Limited, U.G.F. 1, Milestone Building, Near Drive-in-Cinema, Thaltej, Ahmedabad-380052 was called upon to show cause to the Additional/Joint Commissioner of CGST & Central Excise, HQ, Ahmedabad- North having his office at 1st Floor, Custom House, Navrangpura, Ahmedabad- 380009 as to why:

- (i) The amount of Rs.63,86,19,189/-which is the advance collected by them from the members as appearing in the ledgers for the period Oct,13 to March,15 should not be considered as taxable value under Section 67 of the Finance Act,1994 for the purpose of charging service tax;

- (ii) Differential Service Tax (including cesses) totally amounting to Rs. 77,04,083/- (Rupees Seventy Seven Lakhs Four Thousand And Eighty Three only), as detailed in Table-VI, VII and VIII above, 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 appropriate rate should not be recovered from them under Section 75 of Finance Act, 1994;
- (iv) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 non-payment of service tax on account of suppression of facts and contravention of provisions of Finance Act, 1994 and Service Tax Rules, 1994 with an intent to evade payment of service tax ;
- (v) Penalty should not be imposed upon them under provisions of Section 77(2) of the Finance Act, 1994 for their failure to correctly assess and discharge their Service Tax liability and also failure to file correct ST-3 returns under the provisions of the Finance Act, 1994;
- (vi) Late fee amounting to Rs. 51,600/-, (as detailed in table VIII) should not be recovered from them under the provisions of Rule 7C of the Service Tax Rules, 1994 read with provisions of Section 70 of the Finance Act, 1994 for their failure in filing the service tax returns in time prescribed under the law.

Defence Reply

17. The said assessee vide letter dated 03.01.2020 and 12.06.2021 submitted their defence reply to the show cause notice. Vide said letters they have submitted copy of ledgers, copies of BU permission for their different projects and Annexures mentioning exempted supplies i.e. units sold after receipt of BU permission. The said assessee submitted that the show cause notice was issued straightway on the basis of gross receipt and exempted supplies were not considered. They claimed that they have attached all documentary evidences with their reply which reflects their exempted supplies.

Personal Hearing

18. Personal Hearing in the matter was held on 01.06.2021 before the undersigned, which was attended by Shri Jayesh R. Shah, Accountant of M/s Aroma Realities Limited, U.G.F. 1, Milestone Building, Near Drive-in-Cinema, Thaltej, Ahmedabad-380052. Shri Jayesh R. Shah said that SCN was issued on gross income and exempted supplies were not considered. They added that they will submit all documentary evidences in support of their claim within one week of personal Hearing. They assured to submit reconciliation of taxable and exempted supplies and said that they had nothing more to add.

Discussion and Findings

19. I have carefully gone through the facts of the case, the material on record and the submissions of the assessee M/s Aroma Realities Limited. The issues involved are-

(i) whether advance collected by the said assessee from their members as appearing in their ledgers for the period Oct,13 to Mar,15 should be considered as taxable or it includes exempted

supplies as claimed by the said assessee and the Service Tax demanded to the tune of Rs. 77,04,083/- is justified.

(ii) whether extended period under section 73(1) of the Finance Act, 1994 has been rightly invoked

20. Firstly, I take up the matter whether the documentary evidences submitted by the assessee proves that exempted supplies such as units sold/booked after receipt of BU permission, cancellation of units were added to the taxable value. The said assessee were providing "Commercial or Industrial Construction Services" & "Construction of Residential complex services", which were classified under the category of "taxable services", defined under Section 65 (105) (zzq) & (zzzh) of the Finance Act, 1994, respectively. The said services neither mentioned in the negative list as specified under Section 66D of the Finance Act, 1994 nor services exempt under Mega Exemption Notification No. 25/2012-S.T. dated 20-06-2012, therefore, no dispute that the services provided are taxable. It was alleged in the SCN that the said assessee had not declared figures in their ST-3 Returns in consonance with the figures appearing in their financial records for the corresponding period and had thus suppressed their actual income with an intent to evade payment of Service Tax on the said amount.

20.1 The said assessee has claimed that they had sold units after obtaining the Building Use (BU) permission which was considered as sale but no service tax was applicable on such transaction. I have gone through the assessee's reply wherein they have shown certain receipt after BU permission. On going through available documents it has been found that the evidences/documents produced are insufficient to establish that the units were sold after obtaining the Building Use (BU) permission. The said assessee has produced Annexures reflecting some of the transactions as exempted, but they cannot be treated as exempted in absence of documentary evidences such as sale deed executed with their customers. In absence of these important evidences, it cannot be concluded that the particular transaction was exempted from service tax. For Example- The said assessee had submitted ledger account for the period 1 April 2012 to 17-May 2021 in respect of Shop No. 111 of their Bavla Commercial Scheme. The first transaction for the said shop has been shown on 08.02.2013 after issuance of BU permission (BU permission given on 25.04.2012). The said assessee had claimed that the amount received on 17.10.2013 and 21.10.2013 which sums up as Rs 58,870/- are exempted as the transactions have taken place after issuance of BU permission and are covered under the show cause notice. The said transactions claimed as exempted have taken place after issuance of BU permission but from ledger for period 1 April 2012 to 17-May 2021 it can not be concluded that no transaction had taken place before 1 April 2012 and therefore the documents produced are insufficient to say that particular shop was booked/sold after issuance of BU permission. In short, the assessee failed to produce verifiable evidences/documents to prove their claim that the sale has taken place after they received the BU permission. Therefore, I am not inclined to accept the assessee's contention. In order to get further clarification with respect to their reply, the

said assessee vide this office letter dated 18.06.2021 was requested to clarify on the following points-

1. The documents produced are insufficient to conclude that certain transactions were exempted as they have been made after receipt of BU permission. In absence of evidences which clearly indicates that sale deed execution and payment receipt was done after issuance of BU permission, the entries cannot be treated as exempted from service tax.
2. Further, some of entries have been shown as "Cancel". In this regard, no correspondences/ agreements with respect to the said cancellations have been produced. Also, evidences are absent which show that cancellation amount were returned to the members.
3. The documents are not signed by you and not certified with the CA.

The said assess vide their letter dated 26.06.2021 replied to the above queries and their reply are as under-

1. We have already submitted our various sitewise BU permission received from a competitive authority, Ahmedabad municipal corporation, where our project located within a corporation area. Moreover, where our project located outside the corporation area we have received a certified engineers certificate for building utilization. Hence, there is no question of not allowing us to the receipts after BU permission as a exempt services.
2. In our books of accounts, in some site we have marked a ledger by "cancel". In this regard, we hereby kindly clarify, for smoothly and easiness of tracing a cancel flats we have marked the said word "Cancel" in the respective ledgers. Please note that we have already return back the booking amount for cancellation of booking. Tracing the evidences for the same before 6/7 years to be very time taking matter, however we can justify the same payment tracking record. We are trying to trace out the very old record, which will take some time.
3. As the all returns are been filed by learned professionals/chartered accountants there is no need for CA certification of the documents submitted. Moreover, we have already given a audited for the company for the same period.

In view of the above reply, I find that the said assessee has not provided any further clarification or some specific documentary evidence, however, repeated the same which they have already submitted. The said assessee also stated that there were certain bookings which were cancelled by their customer and the amount were returned to them on cancellations of such bookings. They claimed that the amount in respect of these bookings should not be considered as taxable. Again, no correspondences/ agreements with respect to the said cancellations have been produced to substantiate their claim that the said amount were returned to their clients.

20.2 It has been noticed that during the statement of Shri Jayesh R.Shah, Authorised signatory of M/s Aroma Realities Limited, recorded on 21.11.2019 they had stated that they need two months time to submit the documentary evidences that whenever the property was

booked/sold after obtaining the Building Use (BU) permission, the same is considered as sale and no Service Tax is applicable on such transactions. They further added that such entries appearing in ledger where Service Tax Exempt is mentioned signifies that these properties were sold after obtaining the BU permission. However, the assessee could not produce specific evidences in support of their claim although they were having ample time after issuance of show cause notice.

20.3 The said assessee during personal hearing assured that they will submit reconciliation of taxable and exempted supplies. However, they failed to provide calculation which shows taxable and exempted supplies differently and sum of them also not matching with the gross receipt during the period. I find that even after giving sufficient time after personal hearing and requesting them vide letters 11.06.2021 and 18.06.2021 to produce documentary evidences in support of their claim, they failed to produce documents which could establish the fact that certain transactions were exempted which were wrongly added with taxable value. I find that advance collected by the said assessee from their members as appearing in their ledgers for the period Oct,13 to Mar,15 should be considered as taxable. In view of the discussion the said assessee is liable to pay service tax on differential amount as quantified in Table-V, Table-VI and Table-VII above.

21. The said assessee had not declared amount which they received from their customers as advances but suppressed the said amount unless it was unearthed by the Department during the course of inquiry. The actual income/advance received were not declared in their periodical ST-3 returns.. In the trust based environment between trade and tax authorities the assessee is required to correctly assess their tax liabilities and discharge the same through the ST-3 returns. In the present case the said assessee has shown less taxable value than actual in their ST-3 return which has been unearthed after conducting inquiry by the Jurisdictional Range Officers of Department and therefore had the said short payment not been detected during inquiry, it would have remained unnoticed. The department has relied upon the case of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241, wherein it was been held that if facts are gathered by department in subsequent investigation extended period can be invoked. I find that the said assessee had deliberately suppressed the figures in their ST-3 returns as compared to the amount received as advance from their members, as appearing from the ledgers. At no point of time, the said assessee has declared these mis-declared income of advance to the department thereby deliberately suppressed these facts with malafide intention and with a view to avoid payment of Service Tax. The said assessee deliberately suppressed the material facts to the Department, therefore, in view of para 3.7 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, I find that the department has rightly invoked extended period under section 73(1) of the Finance Act,1994.

22. I further find that the said assessee had not filed ST3 returns for the period Oct,2013 to March, 2017, within the due date prescribed under Rule 7 of Service Tax Rules, 1994 read with Section 70 of Finance Act, 1994. The said assessee failed to file their ST-3 return with in due

time limit, therefore, liable to pay late fee as prescribed under Rule 7 of Service Tax Rules, 1994 read with Section 70 of Finance Act, 1994. The calculation of the late fee are as under

Period of filing ST-3 Return	Due date for filing ST-3 Return	Actual date for filing ST-3 Return	ST-3 return filed late by No. of days	Late fee (Rs.)
Oct,13 to March,14	25.04.14	17.12.14	236	20,000
April,14 to Sept,14	14.11.14	30.07.15	258	20,000
Oct,14 to March,15	25.04.15	08.09.15	136	11,600
TOTAL				51,600

23. I find that in the present case, the show cause notice has been issued on the basis of the figures submitted by the assessee. I also find that during the course of the statement of Shri Jayesh Shah, recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, he agreed to have collected the amount from the members for the period October 2013 to March 2015, he agreed to have collected advance from Oct-2013 to March 2015, he agreed to have collected Service Tax from members at the time of sale agreement. I also find that he agreed that the correct figures for the Construction of Residential Complex Service should be Rs. 19,67,11,183/- instead of Rs. 3,85,74,915/-, as shown in the ST-3 Return. I find that the assessee failed to produce satisfactory evidences to prove their claim that no Service Tax is payable by them. I also find that the assessee's claim that they have paid the differential Service Tax when the matter taken up by the DGGST officials is not correct as the present show cause notice period is different. Therefore, I hold that the show cause notice has been rightly issued by the Department invoking the extended period of limitation, proposing penalty and interest under the relevant provisions of Finance Act, 1994 and rules made thereunder.

24. In view of the above, I find that the assessee have short paid Service Tax amounting to Rs. 77,04,083/- and the same is required to be recovered from them by invoking the extended period, as per provisio to Sub Section (1) of Section 73 of the Finance Act, 1994 along with interest at applicable rate under the provisions of Section 75 of the Finance Act, 1994. They are also liable to penalty in terms of Section 77 and 78 of the Finance Act, 1994. I also find that the assessee is also liable to penalty for late filing of Returns as discussed above.

25. In view of the above discussion and my findings, I pass the following orders

ORDER

(i) I confirm the Service tax amounting to Rs 77,04,083/- (Rupees Seventy Seven Lakhs Four Thousand Eighty Three only) under Section 73(1) of the Finance Act, 1994 and order M/s **Aroma Realities Limited**, Ahmedabad to pay the said Service Tax amount immediately.

(ii) I order that interest at the appropriate rate be charged and recovered from M/s **Aroma Realities Limited**, Ahmedabad under Section 75 of the Finance Act, 1994 on the demand at (i) above.

(iii) I impose a penalty of Rs. Rs 77,04,083/- (Rupees Seventy Seven Lakhs Four Thousand Eighty Three only) on M/s Aroma Realities Limited, Ahmedabad under Section 78(1) of the Finance Act, 1994 on the Service Tax confirmed at (i) above

(iv) I confirm late fee amounting to Rs. 51,600 (Rupees Fifty One Thousand Six Hundred Only) under the provisions of Rule 7C of the Service Tax Rules, 1994 read with provisions of Section 70 of the Finance Act, 1994 for their failure in filing the service tax returns in time prescribed under the law

(v) I further order that in the event the entire amount confirmed as above is paid within thirty days from the receipt of this Order along with applicable interest, the amount of penalty liable to be paid by them shall be 25% (twenty five per cent) of the penalty imposed at Sr. No. (iii) above, subject to the condition that such reduced penalty is also paid within the said period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

(vi) I impose penalty of Rs.10,000/- (Rupees ten thousand only) on M/s Aroma Realities Limited, Ahmedabad under provisions of Section 77(2) of the Finance Act,1994.

(Manoj Tripathi)
Joint Commissioner,
Central GST & Central Excise,
Ahmedabad-North

F. No. STC/15-71/OA/2018
RPAD/By Hand Delivery To

Date-14.07.2021

M/s Aroma Realities Limited,
U.G.F. 1, Milestone Building,
Near Drive-in-Cinema, Thaltej,
Ahmedabad-380052

Copy to:

1. The Commissioner, CGST & Central Excise., Ahmedabad- North
2. The Deputy/Assistant Commissioner of CGST, Div- VII, Ahmedabad- North
3. The Superintendent of CGST, AR-II, Division-VII, Ahmedabad- North.
- ✓ 4. Guard File.

