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| <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> |
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20230664WT0000315037

फा.सं./F.No. STC/15-116/OA/2021

आदेश की तारीख/Date of Order :- 30.06.2023

जारी करने की तारीख/Date of Issue :- 30.06.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor
सयुक्त आयुक्त /Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 14/JC/ LD /2023-24

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.
इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के 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 रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

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

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

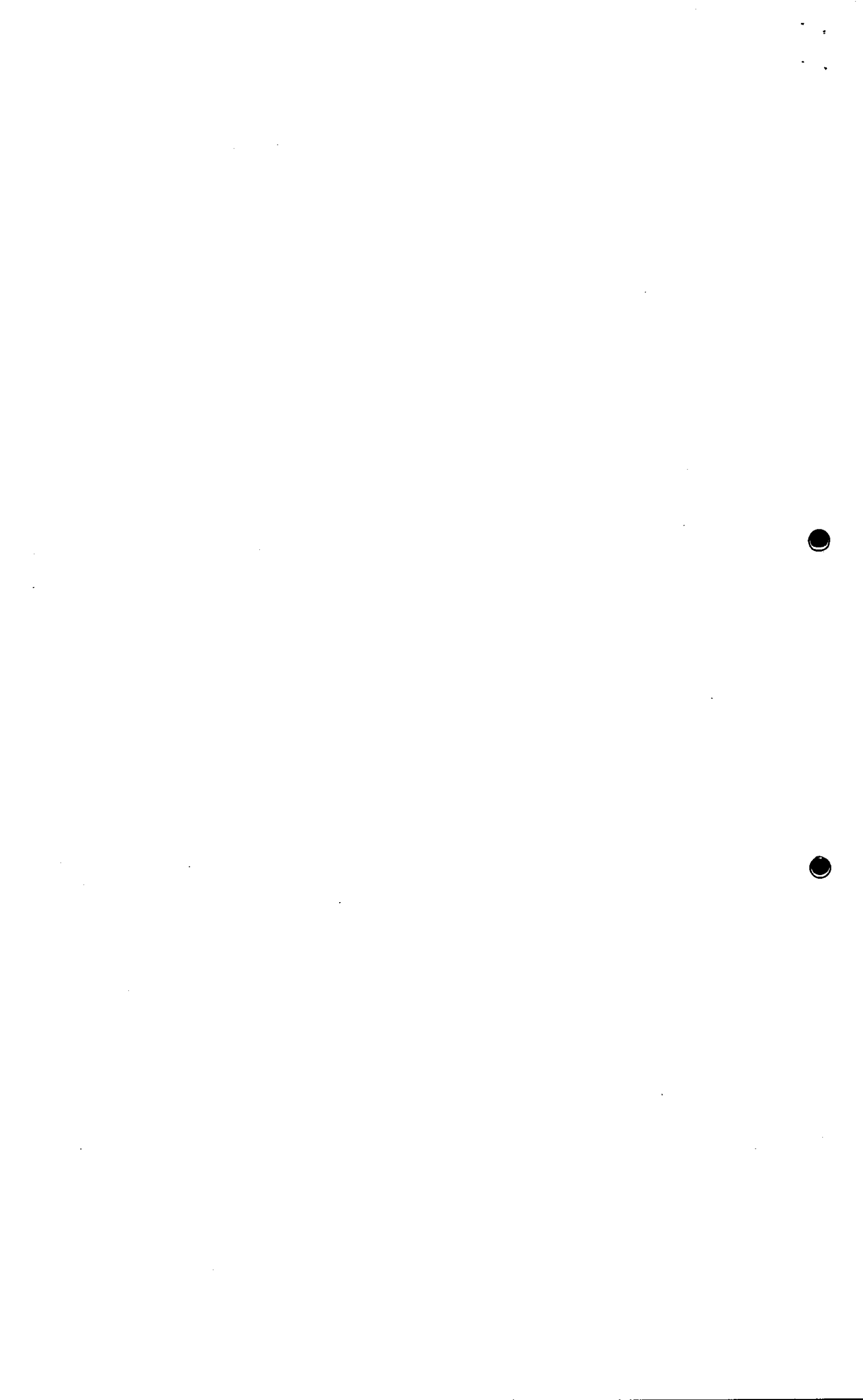
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-116/OA/21-22 dated 23.04.2021 issued to M/s Trupti Ben Harshadbhai Gediya, 2269, Kumbhar Vas, Shakti Estate, Chenpur Road, Gota, Ahmedabad-382481.





BRIEF FACTS OF THE CASE

M/s.Trupti Ben Harshadbhai Gediya, 2269 Kumbhar Vas, Shakti Estate, Chenpur Road, Gota, Ahmedabad-382481 (hereinafter referred to as the 'said assessee') was registered under Service Tax having registration No.AYTPG9525FSD001 and was engaged in taxable services.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it was observed that the assessee had declared less taxable value in their Service Tax Return (ST- 3) for the F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value they had declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

| Sr. No. | F.Y. | Taxable value as per ST-3 returns (In Rs.) | Gross Receipts from services (Value from ITR/26AS) (In Rs.) | Difference between value of services from ITR/26AS and gross value in service tax provided (In Rs.) | Resultant Service Tax short paid (In Rs.) |
|---------|---------|--|---|---|---|
| 1 | 2015-16 | 0 | 44203623 | 44203623 | 6409525/- |
| 2 | 2016-17 | 0 | 45703653 | 45703653 | 6855547/- |
| | | | | | 1,32,65,073/- |

3. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as worked out as above in Table for Financial Year 2015-16 and 2016-17.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee had 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 2017-18 (upto June-2017).

With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN however if due to some genuine grounds it is not possible to quantify the short



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

5. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider had not assessed the tax dues properly, on the services provided by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider had failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

7. In view of above, it appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs. 1,32,65,073/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR / Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(l)(d) of Service Tax Rules, 1994.

8. It has been noticed that at no point of time, the Assessee had disclosed or intimated to the Department regarding receipt/providing of Service of the differential value that has come to the notice of the Department only after going through the third



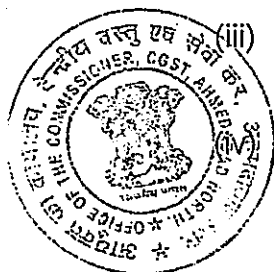
party CBDT data generated for the Financial Year 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 1,32,65,073/-. It appeared that the above act of omission on the part of the Assessee resulted into nonpayment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appeared to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

9. The said assessee was given an opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

10. Therefore, a Show Cause Notice bearing F.No.STC/15-116/OA/2021 dated 23.04.2021 was issued to M/s.Trupti Ben Harshadbhai Gediya, 2269 Kumbhar Vas, Shakti Estate, Chenpur Road, Gota, Ahmedabad-382481 to show cause to the Additional/Joint Commissioner, CGST & CX, Ahmedabad North having office at 1 Floor, Custom House,.Navrangpura, Ahmedabad as to why:

- (i) The demand for Service tax to the extent of Rs. 1,32,65,073/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed



to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY:

11. The assessee has not filed any defence reply with reference to subject show cause notice dated 23.04.2021.

PERSONAL HEARING:

12. Personal Hearing in this case has been granted to the said assessee on 11.05.22, 23.06.22, 19.01.23, 23.02.23, and 28.03.23. However the said P.H. letters were returned by the postal authorities with the remark "Left/Not known". Thereafter, vide this office letter dated 08.06.23, the Deputy Commissioner, CGST & CE, Div-VII, Ahmedabad North was requested to inform whether the said assessee had filed ST-3 returns or not and if yes, to provide the details of income declared in ST-3 returns and copies of ST-3 returns for the period 2015-16 and 2016-17. The Dy. Commissioner vide mail dated 26.06.2023 forwarded ST-3 returns for the period 2015-16 and 2016-17 in respect of M/s.Trupti Ben Harshadbhai Gediya. As the assessee was given five opportunities of personal hearing, but they neither availed any of these opportunities, nor filed any submissions in response to SCN, I am therefore bound to decide the case on the basis of the available facts on record.

DISCUSSION AND FINDINGS:

13. 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.

14. I have carefully gone through the records of the case, SCN and I find that the issue to be decided is to whether the said assessee is liable to pay service tax amounting to Rs. 1,32,65,073/- for financial year 2015-16 and 2016-17 on account of difference between value as per ITR/P&L account and value as per ST-3 returns or not.

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

decide the case ex-parte based upon the records available with this office.



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

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

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

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

(Emphasis Supplied)"

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

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

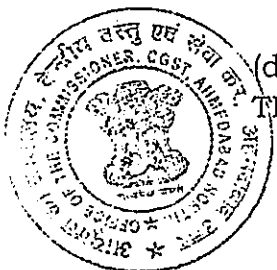
(Emphasis supplied)"

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

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

(Emphasis Supplied)"

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II



reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), has observed that;
 “Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]
 (Emphasis Supplied)”

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.L.T. 1296 (S.C.), has observed as under:
 “Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing.
 - If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]
 (Emphasis Supplied)”

(f) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), has observed as under;
“7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

17. I observe that after introduction of new system of taxation of services in negative list regime w.e.f. 01.07.2012, any activity carried out by a person for another person for a consideration is taxable service except those services specified in the negative list or exempt list by virtue of mega exemption notification or covered under exclusion clauses provided under the meaning of “service” as per Section 65B(44) of Finance Act, 1944.

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

“service” means any activity carried out by a person for another for consideration, and includes a declared service”



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

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

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

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

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

19. On the basis of records available, I find that the said assessee is registered with Service Tax Department and holding Service Tax Registration bearing No. AYTPG9525FSD001 in the name of M/s Stone Fixer. Mrs. Truptiben Harshadbhai Gediya is the Proprietor of M/s Stone Fixer. I find that they have filed ST-3 returns for the period from April-2015 to March-2016 and from April-2016 to March-2017, respectively.

On perusing the said ST-3 Returns filed by the assessee, the following details are forthcoming:

| Details as per ST-3 Returns for FY 2015-16 | | | | |
|--|-------------------|-------------------|---------------|--|
| Description of service Provided: Works Contract Service | | | | |
| Period | Apr 2015-Sep 2015 | Oct 2015-Mar 2016 | Total | |
| Gross amount in relation to service provided or to provided (including exempt and export of service) | 22409305 | 21724637 | 4,41,33,942/- | |
| Less Amount charged for Exempted service | 21371682 | 8689855 | 3,00,61,537/- | |
| Less Amount claimed as abatement | 622574 | 13034782 | 1,36,57,356 | |
| Less Any other amount claimed as deduction | 207526 | 0 | 207526 | |
| Net Taxable Value | 207523 | 0 | 207523 | |



| Details as per ST-3 Returns for FY 2016-17 | | | | |
|---|--|-----------------------|-------------------------|-------------|
| Description of service Provided: Works Contract Service | | | | |
| | Period | Apr 2016- Sep 2016 | Oct 2016- March 2017 | Total |
| | Gross amount in relation to service provided or to provided (including exempt and export of service) | 17976886 | 27607880 | 4,55,84,766 |
| Less | Amount charged for Exempted service | 7190754 | 11043152 | 1,82,33,906 |
| Less | Amount claimed as abatement | 10786132 | 16564728 | 2,73,50,860 |
| | Net Taxable Value | 0 | 0 | 0 |

20. As can be seen from the subject SCN, the difference of taxable value has been worked out by comparing the value of services appearing in ITR/26AS vis-à-vis Value of services declared in ST-3 Returns, for demanding the service tax from the assessee. It is also seen that the entire value of service reflecting in ITR/26AS has been considered to be taxable value for demanding service tax for FY 2015-16 & 2016-17, considering the value of service declared in ST-3 Returns to be "ZERO". I find that though the assessee has filed ST-3 Returns and the taxable value of services rendered by them has been declared in ST-3 Returns filed by them, the value of service declared in ST-3 Returns has been shown to be "ZERO" in the subject SCN, which is factually not correct. I also find that the department has not adduced any other evidence other than the data shared by CBDT, to substantiate the charges levelled against the assessee. From this factual matrix, I find that the difference in value of service as has been worked out in the subject SCN, is not correct. Thus, the correct difference needs to be worked out, considering the taxable value of services declared in ST-3 Returns filed by the assessee for FY 2015-16 and 2016-17.

21. I would like to discuss the issue year wise.

Financial year :2015-16 :-

I find that the Value difference in ITR and Service Tax Return as per the Show Cause Notice is Rs.4,42,03,623/-. I have gone through the copy of ST-3 return filed by the said assessee and find that they have filed ST-3 returns for the period April-2015 to March-2016 declaring Rs. 4,41,33,942 /- as their gross income and paid appropriate service tax on the same. I find that value of Rs.69,681/- has been declared less in the ST-3 returns. Thus, I find that the assessee is liable to pay service tax amounting to

Rs.10,104/- on differential value of service of Rs. 69,681/- and the remaining demand of



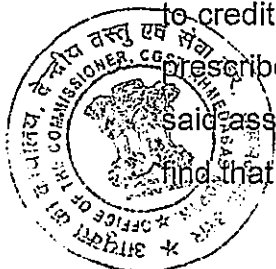
service tax amounting to Rs.63,99,421/- is liable to be dropped.

Financial year :2016-17 :-

I find that the Value difference in ITR and Service Tax Return as per the Show Cause Notice is Rs.4,57,03,653/-. I have gone through the copy of ST-3 return filed by the said assessee and find that they have filed ST-3 returns for the period April-2016 to March-2017 declaring Rs.4,55,84,766/- as their gross income and paid appropriate service tax on the same. I find that value of Rs.1,18,887/- has been declared less in the ST-3 returns. Thus, I find that the assessee is liable to pay service tax amounting to **Rs.17,834/-** on differential value of service of Rs. 1,18,887/- and the remaining demand of service tax amounting to Rs.68,37,714/- is liable to be dropped.

22. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. From the information/data received from CBDT, it appeared that the assessee has not discharged service tax liability in spite of declaring before Income Tax Department. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposited on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax amounting to **Rs.10,104/- for the period 2015-16 and Rs.17,834/- for the period 2016-17 (Totally amounting to Rs.27,938/-)** as discussed above is required to be recovered from them under Section 73 (1) of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

23. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the said assessee had failed to pay their Service Tax liabilities in the prescribed time limit, I find that the said assessee is liable to pay the said amount along with interest. Thus, the



said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

24. The said assessee failed to determine the correct value of taxable service provided by them and failed to file correct service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, thereby rendering themselves liable for penalty under Section 77(2) of the Finance Act, 1994.

25. As far as imposition of penalty under Section 78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of Finance Act, 1994 as they failed to pay the correct duty with the intend to evade the same. It is also a fact that they had deliberately suppressed the value of services provided by them, with an intent to evade the proper payment of service tax on its due date. These facts would not have come to light had the CBDT not shared the data. The assessee had thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. Hence it is found that the said assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence, I find that this is a fit case to impose penalty under Section 78 of Finance Act, 1994.

26. In this regard, I rely upon the decision of Larger Bench of Hon'ble Supreme Court in the case of *UIO Vs Dharmendra Textile Processors -2008 (231)ELT 3(SC)* and further clarification in the case of *M/s Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C)* wherein, it was, inter alia held that:

"23. The decision in Dharmendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no jurisdiction in quantifying the amount and penalty must be imposed equal to the duty determined under sub section (2) of Section 11 A. that is what Dharmendra Textile decides". With the above observation, the Hon'ble Apex court held that mens rea is not an essential ingredient to impose penalty under Section 11AC of the Central Excise Act, 1944 and there is no discretion available



on quantum of penalty imposable under that section. As penal provisions of Section 78 of the Finance Act, 1944 and Section 11 AC of Central Excise Act, 1944 are pari materia, the ratio of decision of the Apex court is applicable to Service Tax matters also.

27. On perusal of para 4 & 5 of the SCN, I find that the levy of service tax for Financial Year 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I, however, do not find any charges levelled for demand for financial year 2017-18 (upto June 2017) in charging part of the SCN.

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

ORDER

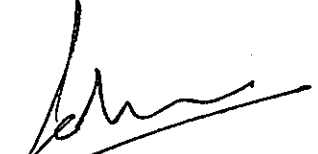
- (i) I hereby confirm the demand of service tax of **Rs.27,938/-** (Rupees Twenty Seven Thousand Nine Hundred Thirty Eight Only), not paid by the assessee and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I drop the remaining demand of Service Tax amounting to Rs. 1,32,37,135/- as discussed above;
- (ii) I confirm the demand of Interest at the appropriate rate and order to recover the same from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (iii) I impose penalty of Rs.10,000/- on M/s.Truptiben Harshadbhai Gediya under Section 77(2) of the Finance Act, 1994;
- (iv) I impose Penalty of **Rs.27,938/-** (Rupees Twenty Seven Thousand Nine Hundred Thirty Eight Only), under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Truptiben Harshadbhai Gediya pays the



amount of Service Tax as determined at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Truptiben Harshadbhai Gediya shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

29. Accordingly the Show Cause Notice bearing F.No. STC/15-116/OA/2021 dated 23.04.2021 is disposed off.




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

BY RPAD
F.No. STC/15-116/OA/2021

Dt. 30.06.2023

To
M/s.Trupti Ben Harshadbhai Gediya,
2269 Kumbhar Vas,
Shakti Estate,
Chenpur Road, Gota,
Ahmedabad-382481

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Division-VII Ahmedabad North.
3. The Superintendent, Range-IV, Division-VII, Central GST & Central Excise, Ahmedabad North
4. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
5. Guard File.