


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>3574</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

फा.सं./F.No. STC/15-202/OA/2021-22

आदेश की तारीख/Date of Order: - 26.07.2021
जारी करने की तारीख/Date of Issue :- 26.07.2021

DIN-20210764WT0000777F48

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi
संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 16/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 महिनों के अन्दर आयुक्त (अपील), केन्द्रीयजी.एस.टी., केन्द्रीयजी.एस.टी.भवन, अंबावाड़ी, अहमदाबाद - 380015 को प्रारूप संख्या एसटी-4 (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 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।

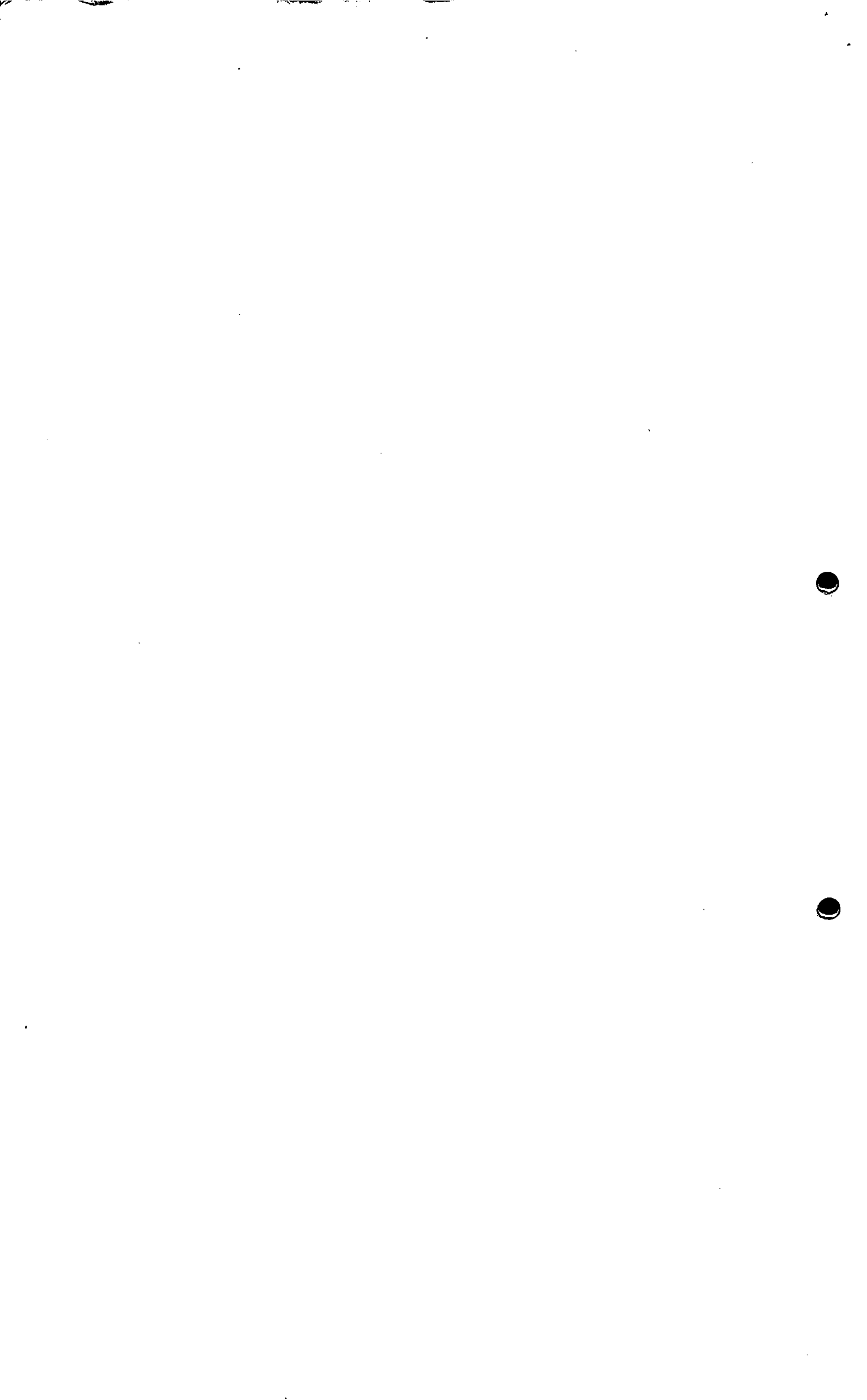
- (1) उक्त अपील की प्रति
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रू. 5.00 (पांच रूपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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/15-202/OA/2021-22 dated 23.04.2021 issued to M/s. P K PATEL AND CO., 34 manikamal society surdhara circle, sun n step club road, Thaltej Ahmedabad -380054.





Brief Facts of the case:

M/s. P K PATEL AND CO (hereinafter referred to as "the said service provider"), "34 manikamal society surdhara circle, sun n step club road, THALTEJ Ahmedabad 24 380054.", having PAN No. AAPFP9848J and engaged in the business of providing services was found not registered with the Service Tax department.

2. An analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the information received from the Income Tax Department, the said service provider had earned substantial service income, however, they did not obtain service tax registration and did not pay service tax thereon.

4. Since the said Service Provider had failed to submit the required details of services provided during the Financial Year 2015-16 to 2016-17, the service tax liability of the Service Provider was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26-AS filed by the said Service Provider with the Income Tax Department. The figures/data provided by the Income Tax Department was considered as the total taxable value in order to ascertain the service tax liability under Section 67A of the Finance Act, 1994 as the said Service Provider failed to determine the correct taxable value.

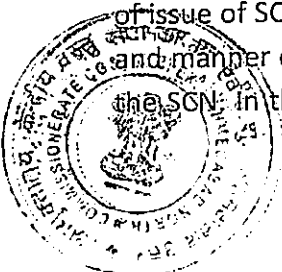
5. The Service tax payable was calculated on the basis of value of "sales of services under Sales/Gross Receipts from Services (Value from ITR)" as provided by the Income Tax Department for the Financial Year 2015-16 to 2016-17. By considering the said amount as taxable income, the service tax liability was calculated as under:-

Sr. No.	Financial Year	Sales/Gross Receipts from Services (ITR) (in Rs.)	Service Tax (in Rs.)
01	2015-16	79882734/-	11145195/-
02	2016-17	47863019/-	7139457/-
	TOTAL	127745753/-	18284653/-

6. Therefore, the said service provider had not discharged their Service Tax liability and thus was liable to pay Service tax including Cess [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and [@15% from 01-06-2016 to 31-03-2017] for amounting to Rs.18284653/- on the total value amounting to Rs.127745753/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

7. Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued 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 would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the notice are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (OIO) ELT 0844 (MP), the



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Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

8. From the facts, it appeared that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts from Services (From ITR)" for the F.Y. 2015-16 to 2016-17 had not been disclosed thereof by the Income Tax Department, nor the reason for the non-disclosure was made known to this department. Further, the said service provider had also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the F.Y. 2015-16 to 2016-17 was not ascertainable at the time of issuance of this Show Cause Notice, Consequently, if any other amount is disclosed by the Income tax Department or any other sources/agencies, against the said service provider, action will be initiated against the said service provider under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period F.Y. 2015-16 to 2016-17 covered under this Show Cause Notice, will be recoverable from the said service provider accordingly.

9. With effect from 01.07.2012, the negative list regime came into existence under which all services were taxable and only those services that were mentioned in the Negative list were exempted. The nature of activities carried out by the said Service Provider appeared to be covered under the definition of service and appeared that not covered under the Negative List as given in the Section 66D of the Finance Act, 1994 and also declared services given in Section 66E of the Finance Act, 1994, as amended from time to time. These services also appeared to be not exempted under Mega exemption Notification No. 25/ 2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the said Service Provider appeared to be subjected to Service Tax under the provisions Section 66B of Finance Act, 1994.

10. As per Section 69(1) of the Act, *every person liable to pay the Service Tax under this Chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*

11. As per Section 69(2) of the Act 1994, *any service provider, whose aggregate value of taxable service in a financial year exceeds Rs. 9 lakh is required to take Registration.* Further, according to Notification No. 33/2012-(Service Tax) dated 20.06.2012, Central Government had exempted taxable services of aggregate value not exceeding ten lakh rupees in preceding year from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act, 1994. Therefore, it appeared that the said Service Provider was required to obtain Service Tax Registration and comply the Service Tax laws accordingly.

12. As per 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 is liable to pay Service Tax at the rate prescribed in Section 66B to Central Government by the 5th of the month/ quarter immediately following the calendar month/ quarter in which the taxable service is deemed to be provided (except for the month of March which is required to be paid on 31st March).*



liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

19. It further appeared that on account of all the above narrated acts of commission and omissions on the part of the said service provider, they had rendered themselves liable to penalty under the following proviso of the Finance Act, 1994 and Rules framed there under:-

➤ Section 70 and Section 77 of the Finance Act, 1994 as amended in as much as they failed to correctly self assess the tax due on the services provided and have not filed the correct ST-3 return and contravened the provisions of Service Tax laws.

➤ Section 78 of the Finance Act, 1994, in as much as they have suppressed the material facts from the department about service provided and value realized by them with intent to evade payment of service tax.

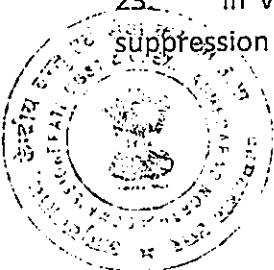
20. As per Section 70 of Finance Act, 1994, the fees for the late filing of return are prescribed. When the nature of default for late filing of fees is less than 15 days, the amount of penalty is Rs. 500 for 15 days; where the nature of default is more than 15 days & less than 30 days, the amount of penalty is Rs. 1000; and where the nature of default is more than 30 days, the amount of penalty is Rs. 1000 + Rs. 100 for each day subject to maximum penalty of Rs. 20000/-. Hence, they were liable for payment of late fees for non filing of ST 3 returns for the aforesaid period in stipulated time.

21. Section 70 of the Finance Act, 1994 stipulated that every person liable to pay the Service Tax shall himself assess the tax due. The Government had introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the Service Tax on the Service Provider. The definition of "assessment" available in Rule 2(b) of Service Tax Rules, 1994 is reproduced as under:-

"Assessment" includes self assessment of service tax by the assessee, re-assessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed."

22. In the instant case, the said service provider had failed to properly assess the Service Tax liability. Thus, they have resorted to suppression of material facts by not reflecting the correct taxable income incurred in respect of the services liable to Service Tax in their ST-3 returns. Accordingly, it appeared that the Service Tax as quantified herein above is liable to be recovered by invoking the extended period of limitation as provided for under Sec. 73 of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994. The said Service Provider had not disclosed full, true and correct information about the value of the service provided by them, and thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appeared that all these material information had been concealed from the department deliberately, consciously and purposefully to evade payment of Service Tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of proviso to Section 73(1) of Finance Act, 1994 to demand the Service Tax short not paid.

23. In view of discussion in the fore going paras, it appeared that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are on the



13. According to Section 70 of the Finance Act, 1994 read with Rule 7(1) of the Service Tax Rules, 1994, every person liable to pay Service Tax shall himself assess the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in ST-3 returns.

14. It appeared that the said Service Provider had neither obtained a Service Tax registration for the services provided by them for the period of F.Y. 2015-16 to F.Y. 2016-17, concealed the value from the department, declared to the income tax department. Therefore, it appeared that the said Service Provider had not paid correct service tax by way of willful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the service tax amounting to Rs. 18284653/- was recoverable from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and also rendered himself liable for penal action under Section 78 of Finance Act, 1994.

15. As per the provisions of Section 72 of the Finance Act, if any person, liable to pay service tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

16. As per the provisions of Section 73(1) of the Finance Act where any service tax has not been levied or paid or has been short levied or short paid by the reasons of willful misstatement or suppression of facts with intent to evade payment of service tax, the Central Excise Officer may within five years from the relevant date, serve notice on the person chargeable with service tax which has not been levied or paid of which has been short levied or short paid requiring him to show cause why he should not pay amount specified in the notice.

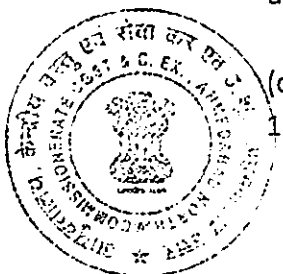
17. As per Rule 6 of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit their service tax returns in the form of ST-3 within the prescribed time.

18. In view of above, it appeared that the said service provider had contravened the provisions of :

(a) Section 66 of the Finance Act, 1994 in as much as they have failed to collect and pay the service tax as detailed above, to the credit of Central Government.

(b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they have not paid the service tax as mentioned above to the credit of the Government of India within the stipulated time limit;

(c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax



part of said service provider that they had willfully suppressed the facts, nature and value of service provided by them by not assessing and paying due Service Tax liability, therefore, the above said amounts of Service Tax of Rs. 18284653/- (Non-payment of Service Tax for the period 2015-16 to 2016-2017 on Income from taxable service provided by them), and Late fee (Non filing of Service Tax returns) for the above period was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. In view of the facts discussed in foregoing paras and material evidence available on record, it appeared that the said service provider had contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they failed to determine; collect and pay Service Tax amounting to Rs. 18284653/- (including applicable EC, SHEC, SBC & KKC) for the period F.Y. 2015-16 to 2016-17 as detailed above and they had failed to declare value of taxable service to the department and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

24. Further, the said Service Provider failed (a) to take Service Tax Registration in accordance with the provisions of section 69 *ibid*; (b) to keep, maintain or retain books of account and other documents as required in accordance with the provisions of Finance Act, 1994; and (c) to pay the tax, accordingly the said Service Provider was liable to penalty under the provisions of Section 77(1) of Finance Act, 1994.

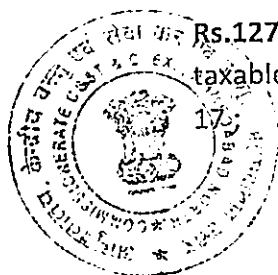
25. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said service provider had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said the said service provider appeared to have rendered themselves liable to penalty under Section 76 & Section 77 of the Finance Act.

26. Moreover, in addition to the contravention, omission and commission on the part of the said service provider as stated in the foregoing paras, it appeared that the said service provider had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994.

27. The said assessee was given opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 23.04.2021 but the said assessee did not appear for the same

28. Therefore, M/s, P K PATEL AND CO, "34 manikamal society surdhara circle, sun n step club road, THALTEJ Ahmedabad 24 380054." were called upon to show cause to the Joint Commissioner, Central GST & Central Excise, Ahmedabad North, vide Show Cause Notice F.No.STC/15-202/OA/2021-22 dated 23.04.2021 as to why :-

- The services rendered by them should not be considered as "taxable services" under Section 65 of the Finance Act, 1994, as amended, and the total/gross amount of Rs.127745753/- received towards rendering such services should not be considered as taxable value of the said taxable services charged by them for the F.Y. 2015-16 to 2016-



- Service Tax of Rs. 18284653/- (Rupees One Crore Eighty Two Lakh Eighty Four Thousand Six Hundred Fifty Three Only) which was not paid for the F.Y.2015-16 to 2016-17 as per Table in para-5 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994; read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws(Relaxation of Certain Provisions) Ordinance, 2020(No. 2 of 2020) promulgated on 30.03.2020 by invoking extended period of time limit ;
- Interest at the prescribed rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act,1994 ;
- Prescribed late fee, should not be recovered from them for each S.T.-3 return filed late, for the relevant period, under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 ;
- penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit ;
- Penalty should not be imposed upon them under Section 77(1) of the Finance Act, 1994 for failure to take Service Tax registration as per the provisions of Section 69 of the Finance Act, 1994 ;
- Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for non-payment of Service Tax by willfully suppressing the facts from the department with intent to evade the payment of Service Tax as explained herein above.

Defence Reply:

29. Vide their letter dated nil received in this office on 12.07.2021, M/s. P. K. Patel & Co stated that their company is a partnership firm and civil contractor engaged in the provision of services of works contract for construction of dams, canals etc. The company is compliant assessee with the books of accounts being audited by a qualified chartered accountant. They submitted copy of audit report for the period under reference. During the period under reference their firm along with its JV Partner K. M Patel & Co. were awarded contract for canal work by M/s. Sardar Sarovar Naramada Nigam Limited. They submitted copy of work order. Their case was selected under the third party verification and pre SCN consultation notice dated 22.04.2021 was issued to them to produce details for period 2015-16 and 2016-17. Due to the lockdown in wake of COVID-19 second wave emergency they were unable to submit the details. Further the date of pre show cause consultation was fixed on next day i.e. on 23.04.2021. However amidst the second lockdown during the unprecedented wave of COVID-19, they were unable to avail the opportunity as the commercial establishments were closed due to lockdown.

They further submitted as under:-



- The Department has erred in law by levying of service tax on Canal work service provided to Sardar Sarovar Narmada Nigam Ltd
- Their firm is a civil contractor engaged in provision of works contract services mainly construction of dams, canals etc. They had entered into joint venture agreement with M/s. K. M. Patel & Co. for securing bid for SSNL for construction of canals. The assessee firm as part of the JV was awarded work of Rs.291031997/- as the JV partner by SSNL for construction of canals. During the period under reference they have only carried on the work awarded by the SSNL. They had raised RA bills (Running Account Bills – sales invoice) of Rs. 79882734/- and Rs. 47863019/- for the financial year 2015-16 and 2016-17 respectively. They submitted copies of sales ledger and RA Bills.
- The Department merely relying upon the 26AS and data analysis received from the CBDT without undertaking any verification merely on presumption surmises and conjecture assumed that the assessee was engaged in providing taxable services. The entire show cause notice is merely drawn on conjecture without establishment of any findings in the case of the assessee. They stated that during the period under reference the assessee along with its JV Partner had only carried on work contract services for construction of canals. The said services are exempted from levy of tax itself vide the mega exemption notification No.25/2012-ST. They produced relevant clause of the said Notification.
- The noticee stated that from reading of the aforesaid provision it is clear the canal work service provided to the Government, a local authority or Governmental authority is exempted from the levy of service tax.
- They drawn attention of the definition of Governmental Authority as defined by the notification no. 02/2014 dated 30th January, 2015.
- M/s. Sardar Sarovar Narmada Nigam Limited, a wholly owned company of the Government of Gujarat, is a special purpose entity formed to form a large water reservoir and supply water for domestic and other purposes. It is a wholly owned company by the Government of Gujarat. They produced copy of shareholder details as by SSNNL with registrar of Companies.
- The services undertaken by the SSNNL are clearly covered in Entry 5 of the Twelfth Schedule of the Constitution of India.
- 1. They submitted that they satisfied both the conditions laid down in Sr. 12 of the Notification 25/2012 i.e. (1) The services of construction of canal if provided to Governmental Authority is exempted (2) SSNNL is a Governmental Authority.
- In light of aforesaid mega exemption notification and fulfillment of the conditions, the services provided by them are exempted from the levy of service tax u/s. 66B of the Act. As the services provided by them are exempted, they requested to drop the proceedings initiated against them.



➤ The noticee submitted that the entire proceeding to initiate service tax audit in the case of the assessee is void and bad in the eyes of law and relied the following judicial pronouncements:

1. *In the case of OWS Warehouse Services LLP v. Union Of India, the Hon'ble Gujarat High Court held:*
2. *In the case of M/s M/s. Sulabh International Social Service Organization Vs Union of India 1599 of 2019, the hon'ble Jharkand High Court held as under:*
3. *Similar view has been taken by the Delhi High Court in the case of M/s T.R. Sawhney Motors Pvt. Ltd. Versus Union of India and another [W.P.(C) 2138/2019 & CM Appl. No. 10002/2019 and the proceedings are stayed.*

➤ The noticee stated that with the omission of Entry 92C form List-1 of the Seventh Schedule of the Constitution i.e. "92C. Taxes on services" has been omitted effective from 01.07.2017. Once the constitutional levy itself has been omitted, Department has no jurisdiction to initiate any inquiry under the Finance Act, 1994. They relied on the following judicial pronouncements:

1. *In the case of Mascot Entrade (P.) Ltd. v. Union Of India, the Hon'ble Guwahati High Court, 90 taxmann.com 223, held that:*

➤ The noticee stated that the show cause notice is barred by limitation of time and thus bad.

➤ The noticee stated that in the show cause notice penalty u/s 76 and 78 of the Finance Act has been proposed which itself shows that the Department have not made up the mind of whether there is any mens rea in the case of the assessee. They drawn attention to the CBEC master Circular 1053/02/2017 dated 10 March 2017. They relied the Apex Court's decision in the case of M/s Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.), which has laid the law on the subject very clearly. They requested to drop the proceedings initiated against them.

➤ The noticee placed reliance on following judicial pronouncements:

- (a) *1997(89) ELT 123 (Tri) - Hindustan Construction Co. Vs. CCE, Chandigarh.*
- (b) *1994(73) ELT 91 (Tri) - Jaypee Rewa Cement Vs. CCE, Raipur.*
- (c) *1997 (23) RLT 260 (Cegat) - Bhawanthadi Minerals Vs. CCE, Raipur.*
- (d) *1998 (27) RLT 474 (Tri) - New Vikram Cement Vs. CCE, Indore.*
- (e) *1998 (104) ELT 505 - Duriappa Lime Products Vs. CCE, Madras.*

➤ The noticee submitted that only those assesses' liable to pay tax are required to obtain service tax registration. In the case of the assessee the entire services are exempted and hence no registration under the finance Act is required. Further once the requirement of registration is itself not applicable as no tax is payable there is no requirement on the part of the assessee to furnish any



returns under section 70 of the Act. In this regard, they drawn attention to CBIC Circular 97/8/07-ST clearly carrying that the assessee's providing exempted services are not required to file service tax return. They placed reliance on the following judicial pronouncement:

1. In the case of Suchak Marketing Private Limited v. Comm. of Service Tax, Kolkata [2013 (6) TMI 641].
2. Amrapali Barter Pvt Ltd v. Comm. of Service Tax, Kolkata [2013 (32) STR 456].

➤ The noticee stated that in light of aforesaid submission and judicial pronouncements, the late fees as leviable under Rule 7C of the Service Tax Rules is required to be dropped.

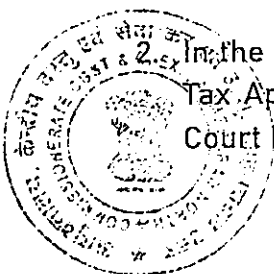
➤ The noticee stated that it is crystal clear that penalty under section 76 of the Act can levied when there is failure to pay tax. In their case the works contract services provided by them to SSNNL is exempted and thus no tax is payable. Once it has been established that no tax is leviable, no penalty could be imposed u/s. 76 of the Act. They placed reliance on the following judicial pronouncement:

1. Commissioner of Central Excise, Coimbatore, v. Busy Bee [2015] 37 STR 932.
2. Commissioner of Central Excise & Service Tax v. Arora Construction [2016] 53 GST 126.
3. Commissioner Vs Jaiprakash industries Ltd. vs. CCE, Chandigarh [2016] 53 GST 126.

➤ The noticee stated that it is clear that penalty u/s. 78 could be levied in case "fraud", "collusion", "wilful mis-statement" or "suppression of facts". In their case they are acting on the bona-fide belief that the works contract services provided by the assessee to SSNNL are exempted under the mega exemption notification. They did not obtain service tax registration under bona fide impression that since the works contracts service provided for construction of canals is exempted from service tax liability under Section 66D of the Finance Act. This is not a case wherein there is any attempt to willfully suppress tax and interest liability with an intention to evade payment of tax. Further penalty under Section 78 of the Finance Act, 1994, imposed is per se impermissible, as there is no mens-rea on the part of the assessee to evade the tax liability. The fact that there is no clear cut finding with regards to menas-rea is also clear form the fact that Department have initiated penalty u/s, 76 and 78 of the Act. After amendment to the Finance Act, 1994 it is a settled provision of law that the penalty u/s. 76 and 78 cannot be invoked simultaneously. They relied on the following judicial pronouncements:

1. Commissioner of Jubilant Agri & Consumer Products Ltd. v. Customs, Excise & Service Tax Appellate Tribunal, 64 taxmann.com 35.

In the case of Commissioner of Ajay Kumar Gupta v. Customs, Excise & Service Tax Appellate Tribunal, 58 taxmann.com 57, the Hon'ble Punjab & Haryana High Court held that:



3. Commissioner of Saswas Mali Sugar Factory Ltd. v. Commissioner of Central Excise, Pune-III, 44 taxmann.com 149.
 4. Commissioner of Jivant Enterprise v. Commissioner of Service Tax, Appeal No. ST/664 of 2010.
- The noticee stated that in light of aforesaid submission of facts and judicial pronouncements the entire proceedings initiated against them is bad, illegal and requested to drop the proceedings.

Personal Hearing:

30. Personal hearing in this case was fixed on 16.07.2021. Shri Ronak Jain, Advocate, appeared for the personal hearing duly authorised by the noticee. He stated that their service is covered under Sr.No.12(d) of Mega exemption Notification No.25/2012-ST. Shri Jain also stated that his client is exclusively providing services to SSNL which is a Government undertaking. He also agreed to furnish undertaking to that effect.

31. Subsequently, on 19.07.2021, the noticee produced an undertaking in their letter-head stating that there's are a partnership firm and civil contractor engaged in providing services of Works Contract for construction of dams, canals, etc, to Sardar Sarovar Narmada Nigam Ltd (SSNNL) owned by the Government of Gujarat, that the income for the year 2015-16 and 2016-17 is solely from canal construction works of Sardar Sarovar Narmada Nigam Ltd owned by Gujarat Government in Gujarat, that no other income except SSNNL works contract and if found any other income apart from SSNNL which is liable under Service Tax, then they are liable to pay. They also submitted reconciliation of income (bill-wise) for the year 2015-16 and 2016-17.

Discussion and Findings:

32. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice and also during the course of personal hearing.

33. In the present case, Show Cause Notice has been issued to the noticee demanding Service Tax of Rs.1,82,84,653/- for the financial year 2015-16 and 2016-17 on the basis of data received from Income Tax authorities and finding that the noticee had not obtained Service Tax registration and also not filed the ST-3 Returns as stipulated in the Finance Act, 1994 and rules made thereunder. The Show Cause Notice alleged non-payment of Service Tax, not taking Service Tax registration and also their failure to furnish the requisite ST-3 Returns for the two years. The SCN also proposed charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 76, 77 and 78 of the Finance Act, 1994.

34. In reply to the show cause notice, the noticee has stated that their company is a partnership firm and civil contractor engaged in providing of services of works contract for construction of dams, canals etc. They have complied with the law, books of accounts being audited by a qualified chartered accountant and submitted copy of audit report for the disputed period. During the period under reference, their firm along



with its JV Partner K. M Patel & Co. were awarded contract for canal work by M/s. Sardar Sarovar Narmada Nigam Limited. They submitted copy of work order.

35. They further submitted that during the period under reference they have only carried on the work awarded by the SSNL. They had raised RA bills (Running Account Bills – sales invoice) of Rs. 79882734/- and Rs. 47863019/- for the financial year 2015-16 and 2016-17 respectively. The said services are exempted from levy of Service Tax vide the mega exemption notification No.25/2012-ST. The noticee stated that the canal work service provided to the Government, a local authority or *Governmental authority* is exempted from the levy of service tax. M/s. Sardar Sarovar Narmada Nigam Limited, a wholly owned company of the Government of Gujarat, is a special purpose entity formed to form a large water reservoir and supply water for domestic and other purposes. It is a wholly owned company by the Government of Gujarat. They submitted that they satisfied both the conditions laid down in Sr. 12 of the Notification 25/2012-ST. In view of mega exemption notification and fulfillment of the conditions, the services provided by them are exempted from the levy of service tax u/s. 66B of the Act. As the services provided by them are exempted, they requested to drop the proceedings initiated against them.

36. With reference to the noticee's contention that the service rendered by them is exempted under Mega Notification No.25/2012-ST dated 20.06.2012, I have perused the exemption notification No. 25/2012-ST. Sr.No.12 of the said Notification reads as under:-

"12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

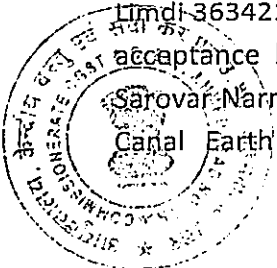
(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;"

37. From the above, it is clear that Sr.No.12(d) of the Notification No.25/2012-ST, i.e. Canal, dam or other irrigation works for which services rendered are exempted from payment of Service Tax. From the documents submitted by the noticee viz, bills, contract agreement between the Executive Engineer, SBC Division No.4/2, 2nd Floor, Taluka Seva Sadan, NH 8-A, Limdi-363421 (The Sardar Sarovar Narmada Nigam Limited SSNNL and the noticee, Work Order acceptance letter No.SBCDn-4/2/CAD Work/Slice-2/AB/189 dated 10.02.2014 by M/s.Sardar Sarovar Narmada Nigam Ltd, it is seen that the work executed by the noticee are Constructing Canal Earth work, Structures & Service Roads which falls under the Mega Exemption



Notification No.25/2012-ST. They have produced copies of bills raised to M/s.Sardar Sarovar Narmada Nigam Ltd for the year 2015-16 and 2016-17. The bills are found to serially numbered. The total amount of bills matched with the figures (value) mentioned in the show cause notice. They have also produced copies of balance sheet for the financial year 2015-16 and 2016-17 and as per the P/L account the figures tallied with the total bill amount. The noticee also stated that they had exclusively rendered their services during the year 2015-16 and 2016-17 to M/s.Sardar Sarovar Narmada Nigam Ltd only and not to any other clients. I find that M/s.Sardar Sarovar Narmada Nigam Ltd is a wholly owned Govt. Of Gujarat undertaking) and therefore, for the service rendered to the Sardar Sarovar Narmada Nigam Ltd, are eligible for exemption in terms of Exemption Notification No.25/2012-ST.

38. The noticee has submitted a lengthy written submission, produced copies of the balance sheet to prove the value of their service provided and relied a large number of case laws in their favour to show that the show cause notice is not sustainable, extended period is not invocable, interest and penalty is not applicable in the present case. I am not discussing those issues separately as I am of the view that the Service rendered by the noticee is to a government body wholly owned Government Undertaking (Sardar Sarovar Narmada Nigam Ltd) and the Service Tax is exempted for the service rendered to the SSNNL in terms of Sr.No.12 of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

39. In view of the above facts, I find that the services rendered by the noticee are eligible for exemption under Notification No.25/2012-ST. As such, the noticee is not liable to pay Service Tax for the notice issued and the Service Tax demanded in the present show cause notice is not sustainable in law and liable to be dropped. As the show cause notice is not sustainable, interest and penalty proposed in the show cause notice are also not sustainable and liable to be dropped except in the case of penalty proposed under Section 77(1) of the Finance Act, 1994.

40. I find that the SCN proposed penalty under Section 77(1) of the Finance Act, 1994 for not obtaining Service Tax registration by the noticee. In reply to the show cause notice, the noticee themselves admitted that they provide Works Contract. Works Contract is a taxable Service. As per Taxmann's Service Tax Manual, 22nd Edition (incorporating Notifications issued on 19th May 2015, Enforcing Provisions of Finance Act, 2015), Service Tax (Registration of Special Category of Persons) Rules, 2005) under Rule 3 (2), under 'Registration' reads as under-

(2) "Any provider of taxable service whose aggregate value of taxable service in a financial year exceed (nine) lakh rupees shall make an application to the jurisdictional Superintendent of Central Excise in such form as may be specified, by notification, by the Board, for registration within a period of thirty days of exceeding the aggregate value of taxable service of (nine) lakh rupees."

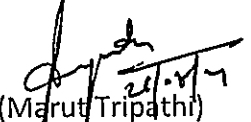
41. Though the value limit for taking the registration has been enhanced, the fact remains that any provider of taxable service has to obtain registration. In the present case, though the service rendered by the noticee has been exempted by virtue of Notification No.25/2012-ST, I am of the view that they should have obtained Service Tax Registration, Filed ST-3 Return and claimed the exemption under the said Notification and mention its serial number by declaring the exempted value and service. If they have done so, this notice would not have been issued. Therefore, I am of the firm view that the penalty proposed under Section 77(1) of the Finance Act, 1994, in the present show cause notice is maintainable and the noticee is liable to pay penalty in terms of Section 77(1) of the Finance Act, 1994.

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



ORDER

- (i) I drop the Service Tax demand for Rs.1,82,84,653/-.
- (ii) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s.P.K.Patel & Co, 34, Manikamal Society, Surdhara Circle, Sun n Step Club Road, Thaltej, Ahmedabad 380 054 under Section 77(1) of the Finance Act, 1994.


 (Marut Tripathi)
 Joint Commissioner,

F. No. STC/15-202/OA/2021-22

Date: 26 /07/2021

BY REGD. POST A.D./SPEED POST/Hand Delivery

To,

M/s P K PATEL AND CO

34 Manikamal Society, Surdhara circle,
 Sun n Step Club Road, THALTEJ,
 Ahmedabad 380054.

Copy to:

- (1) The Commissioner Central GST & Central Excise, Ahmedabad North.
- (2) The Deputy/Assistant Commissioner, Division-VI, CGST & Central Excise, Ahmedabad
- (3) The Superintendent, Central GST & Central Excise, Range-II, Division-VI, Ahmedabad North
- (4) Guard File. ✓



