
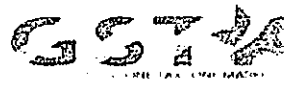


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:aaahmedabad2@gmail.com">aaahmedabad2@gmail.com</a></p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-26/OA/2020

आदेश की तारीख/Date of Order: - 30.07.2021  
जारी करने की तारीख/Date of Issue :- 30.07.2021

DIN-20210764WT000082360E

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi  
संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 17/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 (पाँच रुपये) 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 (पाँच रुपये) 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:

Copy of accompanied Appeal.

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. DGGI/AZU/Gr-A/36-26/2020-21 dated 31.07.2020 issued to M/s Aroma Enterprises (India) Ltd., First Floor, Pipe House, Near HCG Hospital, Beside Sola Over bridge, S.G. Highway, Ahmedabad.





Brief Facts-

M/s Aroma Enterprises (India) Ltd., First Floor, Pipe House, Near HCG Hospital, Beside Sola Over bridge, S.G. Highway, Ahmedabad (henceforth referred to as "M/s Aroma") were registered with erstwhile Service Tax Department and were holding Service Tax Registration No. AADC50854JSD001 for providing taxable services namely "Business Auxiliary Service".

2. Investigation done by the officers of Directorate General of GST Intelligence (DGGI), Zonal Unit, Ahmedabad, indicated that M/s Aroma had received a compensation amount of Rs. 8,33,75,000/- from M/s Ardor Global Pvt. Ltd. for tolerating an act of non-compliance of contract agreement committed by M/s Ardor Global Pvt. Ltd. It also indicated that M/s Aroma had received Rs. 1,69,84,440/- from M/s Rajpath Club Ltd., as compensation for relinquishing their right to buy the land in favour of M/s Rajpath Club Ltd. Thus it appeared that M/s Aroma had provided services viz. "agreeing to the obligation to refrain from an act, or to tolerate an act or situation" which incidentally is "declared service" under the provisions of Section 66 E(e) of the Finance Act, 1994. Accordingly, the consideration of Rs. 8,33,75,000/- received by M/s Aroma from M/s Ardor Global Pvt Ltd and consideration of Rs. 1,69,84,440/- received by M/s Aroma from M/s Rajpath Club Ltd. was liable to be subjected to Service Tax at applicable rate. However, M/s Aroma by not discharging the service tax on the said transactions had resorted to evasion of service tax of Rs. 1,28,52,816/-. The Investigation also indicated that M/s Aroma had not paid service tax under reverse charge mechanism on payment of Rs. 57,30,000/- made to the directors as sitting fees and thereby evaded payment of service tax amounting to Rs. 8,28,342/- Thus the total Service Tax evasion by M/s Aroma worked out to be Rs. 1,36,81,158/.

3. During investigation inspection of the documents available at premises of M/s Aroma was carried out and statements of Shri Chirag Raval, one of the directors were recorded. After conclusion of investigation based on their financial and other related records and statements of Shri Chirag Raval , M/s Aroma and Shri Snehal Patel ,Managing Director was issued the instant SCN to show cause to the department as to why -

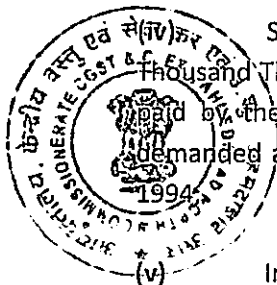
(i) The services, provided by M/s Aroma to M/s Ardor Global Ltd. and M/s Rajpath Club Ltd. should not be determined to be a taxable service viz. "Declared Service", as defined under Section 66E(e) of Chapter V of the Finance Act, 1994;

(ii) The extended period envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 should not be invoked to demand and recover the Service Tax, which they had not paid by reason of willful misstatement and suppression of facts

(iii) Service Tax (Including Cess) amounting to Rs. 1,28,52,816/- (Rupees One Crore twenty eight lakhs fifty two thousand eight hundred sixteen only), willfully evaded by them, on the consideration of Rs. 10,03,59,440/- received, for providing the Declared Service viz. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", from M/s Ardor Global Ltd. and M/s Rajpath Club Ltd. , should not be demanded and recovered from them under the proviso to Section 73(1) of the erstwhile Finance Act, 1994;

(iv) Service Tax (Including Cess) amounting to Rs. 8,28,342/- (Rupees Eight Lakhs Twenty Eight Thousand Three Hundred Forty Two only), willfully evaded by them, on the amount of Rs. 56,75,000/- paid by them to the Directors of the company, for having received their services, should not be demanded and recovered from them under the proviso to Section 73(1) of the erstwhile Finance Act,

(v) Interest at the appropriate rates and as applicable in force under the relevant periods, under Section 75 of the erstwhile Finance Act, 1994 should not be demanded and recovered from them on Service Tax demanded vide sr. no. (iii) and (iv) above;



(vi) Penalty should not be imposed upon them under the provisions of Section 76 and/or Section 78 of the Finance Act, 1994 for failure to pay Service Tax demanded vide Sr. No. (iii) and (iv) above;

(vii) Penalty should not be imposed upon them under Section 77 (1)(a) of the Finance Act, 1994 for not having amended their ST-1 despite having under provided taxable services viz. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", to M/s Ardor Global Ltd. and M/s Rajpath Club Limited, in contravention of Section 69 of the Finance Act, 1994 read with Rule 4(5A) of the Service Tax Rules, 1994;

(viii) Penalty should not be imposed upon them under the provisions of Section 77 (1)(c) of the Finance Act, 1994 for failure to file correct Service Tax Returns i.e. ST-3 in contravention to the provisions of Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994;

(ix) Penalty should not be imposed upon them under Section 77(c) of the Finance Act, 1994 for failure to issue invoices in respect of the taxable services viz. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", provided by them to M/s Ardor Global Ltd. and M/s Rajpath Club Limited, in contravention of Rule 4A of the Service Tax Rules, 1994.

(x) Penalty under Section 78A of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 should not be imposed upon Shri Snehal Patel, Managing Director of M/s Aroma Enterprises (India) Ltd. for willfully suppressing the facts for evading Service Tax liability.

#### Defence Reply-

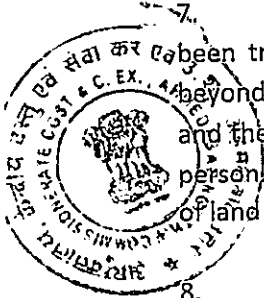
4. Reply to the SCN was filed by the noticee vide letter dated 09.11.20. In their reply, they have given submissions regarding the three transactions in respect of Rajpath Club, M/s Ardor Global Ltd. and amount paid by them to the Directors for receiving their services.

5. Noticee have submitted that they had entered into agreement for purchase of land owned by farmers (Banakhat) in the financial year 2011-12. The time limit given in the Banakhats to materialize the actual sale of the properties was 30 days from the date of conversion of the land into Non-agricultural. Further, they have submitted that the demand of service tax in respect of sale of land is not sustainable. The property was not got registered by the noticee in its own name as the land use was not get changed by the land owners. Subsequently, when the land owners tried to sell off the property to M/s. Rajpath Club Ltd., the noticee called upon the land owners to get the property registered in their name as per the terms of the agreement to sell.

6. Thereafter the noticee has entered the deal in the capacity of person who has purchased the property on agreement to sell and the noticee has sold this property to Rajpath Club Ltd. wherein, the land owners have got part amount while the noticee has got the balance amount. The total amount received by the noticee as well as the land owners is reflected as the consideration for sale of land in the agreement to sell dated 03.03.2017 drawn in favour of M/s Rajpath Club Ltd in para 2 of the said agreement to sell, the seller and the confirming party i.e. the original land owner and the noticee respectively, have been jointly addressed to as the sellers.

7. The said transaction between the farmers, M/s Rajpath club Ltd and the noticee company has been treated as a transaction for sale of land by the Revenue Department of the State establishes beyond and iota of doubt that the said transaction is a transaction of sale of land (immovable property) and there is no provision of any service by the noticee company to M/s Rajpath Club Ltd. or any other person. The revenue department of the state has treated the full amount as consideration for purchase of land and charged stamp duty accordingly.

8. Further they have submitted that the amount received by them from M/s Ardor Global Pvt. Ltd. is not for rendering any service to them but as compensation for their failure to perform their obligation as per contract. Due to non-supply of goods by M/s Ardor, the noticee company suffered a hug financial loss due to appreciation of cost of the said goods. The noticee company had the option of claiming



damages from M/s Ardor by filing a civil suit or by going into arbitration. Such damages may be awarded by a court of law or may be mutually agreed upon or decided by the parties to the contract. Whichever method may be adopted, the basic character of the payment made for breach of contract remains that of a compensation only. In their balance sheet also, they have described the amount received as 'compensation received for non-performance of contract from Ardor Global Pvt. Ltd. Further, they have stated that compensation amount received by them cannot be subjected to levy of service tax by taking resort to the service tax (Valuation) Rules or the Mega exemption notification as the purpose of the service tax (Valuation) Rules is to provide a mechanism for valuation of the service and not for identifying what amounts to service. Similarly, the purpose of the mega exemption notification is to provide exemption to a service tax and not to determine what amounts to service. Hence the demand of service tax on the compensation amount received from M/s Ardor Global Ltd. is not sustainable.

9. Further, they have submitted that the directors have been paid salary as the directors are executive directors of the company who are involved in the day to day working of the company. The amounts paid to them as remuneration is in the nature of salary only even though it has been referred to as 'sitting fees' in the books of the noticee. The services provided by an employee to the employer is specifically excluded from the definition of the term 'service' as contained in Section 65B(44) vide clause (b) thereof. Hence Service tax is not leviable on the remuneration paid to directors.

10. Further, they have contented regarding invocation of extended period of limitation as they have not suppressed any information from the department. They have requested to drop the proceedings initiated by the instant show cause notice.

#### Personal Hearing-

11. Personal Hearing in the matter was attended by noticee's advocate Shri Kamaljeet Singh on 14.07.21 through virtual mode. He pleaded on three points i.e.

- i) Sale of land, no service element is involved.
- ii) Compensation due to increase of price for non supply of goods
- iii) Directors salary- They are working directors so no question of service tax.

Further, when all transactions are in knowledge of department law of limitation should apply. He further, reiterated their written submission dated 09.11.2020.

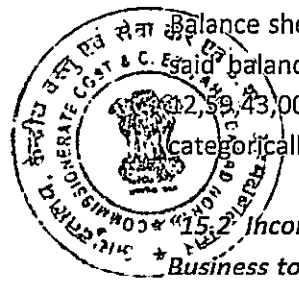
#### Discussion and findings-

12. There are two issues for which Service Tax liability is alleged in the SCN first for providing the Declared Service viz. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", to M/s Ardor Global Ltd. and M/s Rajpath Club Ltd and receiving consideration from them and second Service Tax evasion on Director's fee which was payable under RCM by service receiver M/s Aroma.

13. The first issue contains two transactions noticed in the financial records. On perusal of the Balance sheet, for the financial year 2015-16, it was observed by officers of DGGI that at note 15 of the "Revenue from Operations" balance sheet, meant for "Revenue from Operations" M/s Aroma had declared an amount of 12,59,43,000/- as 'income from other operations' and in note 15.2 of the said balance sheet they had categorically mentioned:

15.2- *Income From Other Operations include Commission Income for assistance in Coal Trading Business to the party and Compensation received for Non-Performance of Contract from Ardor Global Pvt. Ltd."*

14. Further, on perusal of the Balance Sheet for the financial year 2016-17 it was observed that at note 16 of the said balance sheet, meant for "Revenue from Operations", M/s Aroma declared an



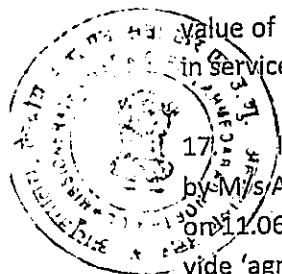
amount of Rs. 1,88,03,826/- as 'Income from other operations'. Further, the remarks to the said note categorically mentioned:

*"Other Non Operating Income includes Rs. 18725916/- received from Rajpath Club Ltd. as compensation for waiver of right on the title of Land vide S.No 315, 353, 354, 360 and 362 to be purchased by the company"*

15. On scrutiny of documents related to transactions and correspondences submitted by M/s Aroma with M/s Ardor Global Pvt. Ltd., and in view of the statement of Shri Chirag Raval recorded on 11.06.2020, it was observed by officers of the DGCI that vide purchase order dated 03.04.2015, M/s Aroma had placed order of 7000 MT of LABSA (Linear Alkyl benzene Sulphonic Acid) @ Rs. 96,000/- per MT NOM + MODVAT + VAT along with 7500 MT of Dodecyl Benzene @ Rs. 95,000/- per MT NOM + MODVAT + VAT, to M/s Ardor Global Pvt. Ltd. The prime condition for said purchase order was that entire quantity of both the products should be delivered to them in the month of April 2015. M/s Ardor, vide their letter dated 04.04.2015 confirmed the said order and agreed to the terms and conditions for supply of said goods. They agreed to supply the entire quantity of goods in the month of April 2015. M/s Ardor failed to supply the said goods within prescribed time limit and price of the goods was increased in the mean time. M/s Aroma vide their letter dated 23.05.2015 issued to M/s Ardor raised a debit note No. 2015-2016/A001 dated 23.05.2015 for Rs. 8,33,75,000/- as compensation for non supply of 7000 MT of LABSA and 7500 MT of Dodecyl Benzene, which was paid by M/s Ardor later on.

16. I find that though named as compensation, the nature of the same appeared to be consideration collected by M/s Aroma specifically for tolerance of the act of default in supply of the goods as per the contractual obligations mentioned in the Purchase Order dated 03.04.2015. Thus in this transaction there is a person who tolerated an act committed by other person for a consideration. In view of the provisions of Section 66E of the Finance Act, 1994, it appeared that the said act, on part of M/s Aroma Enterprises, of tolerating non-supply of goods by M/s Ardor, was an activity, which would surely fall under the purview of the activity stipulated under the provision of section 66E of the Finance Act, 1994, i.e. "(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;". Accordingly, it is evident that M/s Aroma have provided the Declared service of 'tolerating an act or a situation' to M/s Ardor Global Ltd. for a consideration of Rs. 8,33,75,000/- and the said service was taxable service under the provisions of Finance Act, 1994 under Section 65B(51) of the Finance Act, 1994 and was chargeable to service tax under the provisions of Section 66B of the Finance Act, 1994. The noticees contention that compensation amount is not liable to service tax is not tenable as compensation against loss paid to M/s Aroma by M/s Ardor are leviable to service tax as the compensation being paid as consideration for the said non-compliance of contract agreement, falls under clause (e) of Section 66E of the Finance Act, 1994 as a declared service as, "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" which is leviable to service tax. I also find that M/s Aroma Enterprises have failed to raise any invoice for the said transactions. In terms of proviso to Rule 3(a) of the Point of Taxation Rules, 2011, in case the invoice is not issued the point of taxation will be the date of completion of provision of the service. In the present case as the Debit note no. 2015-2016/A001 was issued on 23.05.2015, the point of taxation will be 23.05.2015. The rate of service tax for the period 01.10.2014 to 31.05.2015 was 12.36% of the value of service (12% Service Tax + Education cess @ 2% of ST + Secondary & Higher Secondary Education Cess @ 1% of ST). In terms of the Section 67 of the Finance Act, 1994 the gross value charged for the service provided is the value of services on which the service tax is to be charged. In the present case the gross value charged by M/s Aroma Enterprises for the said service provided to M/s Ardor Global, as evident from their Debit Note No. 2015-2016/A001 dated 23.05.2015 was Rs. 8,33,75,000/-. Accordingly, the value of said taxable services provided by M/s Aroma to M/s Ardor comes to Rs. 8,33,75,000/- resulting in service tax evasion of Rs. 1,03,05,150/-.

17. I find that on scrutiny of the documents related to transactions and correspondences submitted by M/s Aroma with M/s Rajpath Club Limited, and in view of the statement of Shri Chirag Raval recorded on 11.06.2020, 12.06.2020 and 30.07.2020, it was observed by the officers of the DGCI that M/s Aroma, vide 'agreements to sale' entered into an agreement with the land owners of Survey No. 315, 353, 354,



358 and 360 for agreeing to purchase their land. In terms of the said agreements to sale, M/s Aroma gave the landowners some token money and set the condition that the landowners would get their land converted from 'Agriculture Land' to 'Non-Agriculture land'. The said agreement to sale also stipulated that the sale deed will be drawn only after the landowners would get their land converted from 'Agriculture Land' to 'Non-Agriculture land' category. The land owners could not get their land converted to 'Non-Agriculture land' category, consequently, the sale deed could not materialize. As the landowners and M/s Aroma could not finalise the sale deed, the title of land was not passed on to M/s Aroma Enterprises and in the land records the name of M/s Aroma Enterprises was not mentioned as 'Land owners'. Later on M/s Rajpath Club Ltd. desired to purchase the said pieces of lands from the farmers and accordingly, M/s H Desai & Co., Advocates and Solicitors, published an advertisement in the newspaper 'Divya Bhaskar' published on 17.01.2017. From the said advertisement, M/s Aroma came to know that the farmers were in talks with M/s Rajpath Club Ltd. for sale of the land for which M/s Aroma were holding the rights to purchase. Accordingly, M/s Aroma issued a letter to M/s H Desai & Co., Advocates and Solicitors, expressing their objection to the deal between the farmers and M/s Rajpath Club Ltd. Thereafter all the concerned parties viz the original land owners, M/s Aroma Enterprises and M/s Rajpath Club Ltd, reached an agreement whereby M/s Aroma agreed to waive off their rights to purchase the said land for consideration of Rs. 1,88,99,916/- to be received from M/s Rajpath Club Ltd. In the said arrangement, for each land deal the farmers were the seller and M/s Rajpath Club Ltd. was the buyer, M/s Aroma became the confirming party. The sale deeds dated 31.08.2018 duly registered, submitted by M/s Rajpath Club Ltd., reflects the farmers as the land owners, M/s Aroma as the confirming party and Rajpath Club Ltd as the buyer. The said transaction was recorded under Note 16 in the Balance sheet for the F.Y. 2016-17, which mentions that the amount of Rs. 1,87,25,916/- was received as compensation for waiver of right on the title of land survey no. 315, 353, 358, 360 and 362. However the actual amount to be received (as per ledger and other supporting documents) was Rs. 1,88,99,916/- out of which they have received Rs. 1,69,84,440/- in the month of March 2017 and remaining payment has been received by them after June 2017.

18. The noticee submitted that they have sold the land as sellers and they are jointly considered as sellers of the land with actual owners i.e. the farmers and the revenue department of state government has taken stamp duty on full amount received by the confirming party and the actual land owners by M/s Rajpath Club Ltd so service tax is not livable upon them on such sale of land. It is a fact that title of the said land was never transferred in the name of the noticee. The Revenue Department of state government has considered the full amount only for computation of stamp duty which has nothing to do with service tax. Some states like state of Maharashtra considers deemed sale of the land as in the present case as sale of land and stamp duty is charged on amount of such deemed sale. The present case belongs to state of Gujarat.

19. I find that M/s Aroma Enterprises never held the title of land for which they received the consideration of Rs. 1,88,99,916/- from M/s Rajpath Club Ltd (Out of which Rs. 1,69,84,440/- was received in March 2017 and remaining Rs. 19,15,476/- was received after June 2017). Hon'ble Supreme Court of India, in their decision dated 04.10.2019, in Special Leave Petition (E) No.37479/2016 filed by Durgawati Devi, has held that execution of a sale agreement does not transfer ownership/title. The Hon'ble Supreme Court also ruled that ownership can only be acquired by a registered deed of conveyance. The relevant part of the said order is reproduced below for better appreciation of the facts:

*"The petitioner only had an agreement for sale in her favour. It is well-settled that execution of a sale agreement does not transfer ownership/title. Ownership can only be acquired by a registered deed of conveyance."*

20. Further, The Hon'ble Supreme Court of India in their landmark decision, in case of SLP(E) No. 13917 of 2009 filed by M/s Suraj Lamp & Industries Pvt. Ltd, at para 15 and 16 has ruled that Sales Agreement of General Power of Attorney or Will transactions do not convey any title nor create any interest in an immovable property. The Hon'ble Supreme Court also ruled that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance.



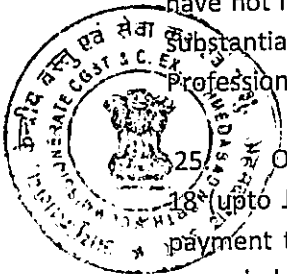
21. I find that there is no deed of conveyance occurred between the noticee and the farmers and the farmers have the title of the land till the sale to M/s Rajpath Club Ltd. So this transaction for the noticee cannot be termed as sale of land.

22. I find that in transaction between M/s Aroma Enterprises and M/s Rajpath Club Ltd., M/s Aroma Enterprises had agreed to obligation to refrain from purchasing the said land from the actual land owners, for which they had entered into agreement to sale, upon receipt of consideration of Rs. 1,88,99,915/- from M/s Rajpath Club Ltd. In view of the provisions of Section 66E of the Finance Act, 1994, so the said act, on part of M/s Aroma Enterprises, of allowing M/s Rajpath Club Ltd. to purchase the land from actual land owners, was an activity, which would squarely fall under the purview of the activity stipulated under the provision of section 66E(e) of the Finance Act, 1994, i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;". Accordingly, M/s Aroma Enterprises had provided the declared service of 'agreeing to the obligation to refrain from an act' to M/s Rajpath Club Ltd. for a consideration of Rs. 1,88,99,915/- (Out of which Rs. 1,69,84,440/- was received in March 2017 and remaining Rs. 19,15,476/- was received after June 2017) and the said service was taxable service under the provisions of Section 65B(51) of the Finance Act, 1994 and was chargeable to service tax under the provisions of Section 66B of the Finance Act, 1994.

23. I find that M/s Aroma was liable to pay service tax on the value of the said taxable services provided by them to M/s Rajpath Club Ltd under the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. From the ST-3 returns filed by M/s Aroma Enterprises, it is evident that they have failed to pay the service tax on provision of said services, of agreeing to obligation to refrain from purchasing the said land from the actual land owners, for which they had entered into Agreement to Sale", to M/s. Rajpath Club Ltd., for which, M/s Rajpath Club Ltd. had agreed to pay a consideration of Rs. 1,88,99,915/-. M/s Aroma Enterprises had failed to raise any invoice for the said transactions. In terms of proviso to Rule 3(a) of the Point of Taxation Rules, 2011, in case the invoice is not issued the point taxation will be the date of completion of provision of the service. In the present case the Sale Deeds for purchase of said land by M/s Rajpath Club Ltd., were signed on 16.10.2017 so the date of completion of provision of the service would be 16.10.2017. However, M/s Aroma Enterprises have received the payment of Rs. 1,00,00,000/- on 25.03.2017 and Rs. 69,84,440/- on 31.03.2017 i.e. before completion of service. Thus in terms of Rule 3(b) of Point of Taxation Rules, 2011, the point of taxation would be the date of receipt of payment. The rate of service tax for the for the period 01.06.2016 to 30.06.2017 was 15% of the value of service (14% Service Tax + 0.5% Swachh Bharat Cess + 0.5 % Krishi Kalyan Cess). In terms of the Section 67 of the Finance Act, 1994 the gross value charged for the service provided is the value of services on which the service tax is to be charged. In the present case the gross value charged by M/s Aroma Enterprises for the said service provided to M/s Rajpath Club Ltd. was Rs. 1,88,99,915/- out of which Rs. 1,69,84,440/- was received in advance during the pre-GST period. Accordingly, service tax not paid by M/s Aroma Enterprises on said transaction was Rs. 25,47,666/-. The case laws quoted by the noticee are of no use to them as they are not squarely applicable in present facts and circumstances of the case and on the contrary Supreme Court's orders on land deals as discussed above are in favour of the Revenue.

24. The third transaction is related to the director's fee. I find that Shri Chirag Raval, Director of M/s Aroma stated in his statement dated 30.07.2020 stated that under the Accounting Head "Legal and Professional charges", the expenses made towards payment to Auditors, lawyers or any other professionals are booked. During the period from October 2014 to June 2017, his company, M/s Aroma have not incurred any Legal expenses on which they were required to pay Service Tax under RCM. To substantiate the same, Shri Chirag Raval produced the copy of Ledger Account for "Legal and Professional charges" for the period from October 2014 to July 2017.

25. On perusal of the balance sheets and ledger accounts for the year 2015-16, 2016-17 and 2017-18 (upto June 2017) it was observed that M/s Aroma Enterprises had shown expense on account of payment to the Directors of the company. In terms of Notification no. 30/2012-ST dated 20.06.2012 amended vide Notification No. 45/2012-ST dated 07.08.2012, the company is liable to pay service tax on the amount paid by the company to its directors for the services received by the company from the





directors. In the present case it is pertinent to note that M/s Aroma Enterprises had paid Rs. 57,30,000/- to their Directors as 'Sitting Fees'. This fact is evident from the entries made by them in their financial records. From the ST-3 returns filed by M/s Aroma Enterprises, it is clear that have failed to pay service tax of Rs. 8,28,342/- on the amount paid by them to their Directors as 'Sitting Fees'.

26. The assessee's contention that the Director's sitting fees is actually salary to the executive directors is not tenable as it is not supported by their financial records and statement of Shri Chirag Raval, Director recorded by DGGI officers and the documents on record. Further any proof has not been provided by the noticee of being the said amount to be salary.

27. I find that M/s Aroma had failed to disclose the above details in their ST-3 Returns during the aforesaid period. Thus, M/s Aroma had suppressed the material facts from the Department by not disclosing the fact about receipt of the Liquidated Damages/Penalty, in their ST-3 Returns. This appeared to be done intentionally so as not to bring their activities to the notice of the Department, though they were registered for receiving various taxable services, as discussed earlier. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the taxpayers, but has to be established through evaluation of tax behavior. In this case evaluation of tax behavior of M/s Aroma shows intent to evade payment of service tax by an act of omission in as much as, M/s Aroma though being well aware of the unambiguous provisions of the erstwhile Finance Act, 1994 and Rules made there under, failed to disclose to the department at any point of time, regarding the non-payment of service tax on amounts recovered as compensation and also on the remuneration paid to the Directors of the company towards their services, during the period from October, 2014 to June, 2017. M/s Aroma had deliberately not shown in their ST-3 Returns, the actual receipts/recovery of compensation amount and payment made to Directors towards sitting fee and Service Tax involved thereon, with intent to evade the proper payment of Service Tax on its due date, but for the investigation proceedings conducted by DGGI, Zonal Unit, Ahmedabad, these facts would have not come to light. M/s Aroma had failed to declare the collection of 'compensation' in the ST-3 Returns filed by them during the aforesaid period. Further, M/s Aroma had not claimed any exemption for the said charges collected and provision of the 'Declared Service' viz. 'agreeing to the obligation to tolerate an act or situation' during the aforesaid period in the ST-3 Returns, nor had they sought any specific clarification from the jurisdictional Service Tax Assessing Authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. The same suppression was made by them in case of Director's remuneration on which, they were liable to pay Service Tax on Reverse Charge basis. In view of the specific omissions and commissions as elaborated earlier, it is apparent, that M/s Aroma had deliberately suppressed the facts of collection of 'Compensation' and provision of the 'Declared Service' viz. 'agreeing to the obligation to tolerate an act or situation or to refrain from an act' in the ST-3 Returns during the said period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax. The non-payment of Service Tax on the amounts so collected by M/s Aroma, which appeared to be the consideration for providing the declared services viz. 'agreeing to the obligation to tolerate an act or situation or to refrain from an act', came to the knowledge of the DGGI only due to specific investigations carried out as spelt out earlier. Therefore, the extended period of limitation as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 is invocable to demand Service Tax for the period from October 2014 to June, 2017.

In this regard, I rely upon the decision of Larger Bench of Hon'ble Supreme Court in the case of *Union of India 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 imposed 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. In view of the above facts and discussions, I find that this is a fit case to impose penalty u/s.78 of Finance Act, 1994 and accordingly I hold that M/s Aroma is liable to pay penalty u/s.78 of Finance Act, 1994.

28. I find that Shri Snehal Patel, Managing Director of M/s Aroma is the person responsible for taking all the decisions including taxation issues of the company on the basis of facts and evidences on record. The aforesaid acts of non-payment of service tax on the compensation amount received from M/s Ardor Global Pvt. Ltd and M/s Rajpath Club Ltd. in addition to non-payment of service tax under reverse charge for the amounts paid by the company as Director's remuneration were committed by M/s Aroma under his guidance and supervision and as such, he had a decisive role to play in the present evasion. It is evident that M/s Aroma had received compensation from M/s Ardor Global Ltd. and M/s Rajpath Club Ltd., which fall under the category of Declared service as defined in Section 66E(e) of the erstwhile Finance Act, 1994. The very fact that the details of the said compensation amount received by M/s Aroma during the F.Y. 2015-16 and 2016-17 were not shown in ST-3 returns give strong indication that M/s Aroma wanted to evade the payment of service tax. In addition to the same, non-payment of service tax under RCM on Director's remuneration during the period from October, 2014 to June, 2017 also indicate their intent to evade service tax on this account as well. As Shri Snehal Patel, Managing Director of M/s Aroma is the person, who has to play the decisive role in the affairs of the company, due to the present evasion of service tax on part of M/s Aroma, he has rendered himself liable to penalty under Section 78A of the Finance Act, 1994, for the infractions committed by his company.

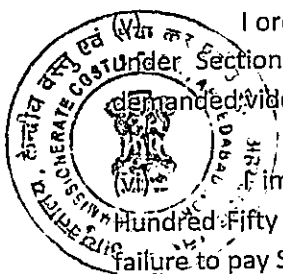
#### Order

On the basis of above discussion and my findings thereon I pass the following order-

- (i) The services, provided by M/s Aroma to M/s Ardor Global Ltd. and M/s Rajpath Club Ltd. are determined to be a taxable service viz. "Declared Service", as defined under Section 66E(e) of Chapter V of the Finance Act, 1994;
- (ii) The extended period envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 is invoked to demand and recover the Service Tax, which they had not paid by reason of willful misstatement and suppression of facts.
- (iii) I order to recover Service Tax (Including Cess) amounting to Rs. 1,28,52,816/- (Rupees One Crore twenty eight lakhs fifty two thousand eight hundred sixteen only), willfully evaded by M/s Aroma, on the consideration of Rs. 10,03,59,440/- received, for providing the Declared Service viz. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", from M/s Ardor Global Ltd. and M/s Rajpath Club Ltd. , under the proviso to Section 73(1) of the erstwhile Finance Act, 1994;
- (iv) I order to recover Service Tax (Including Cess) amounting to Rs. 8,28,342/- (Rupees Eight Lakhs Twenty Eight Thousand Three Hundred Forty Two only), willfully evaded by M/s Aroma, on the amount of Rs. 56,75,000/- paid by them to the Directors of the company, for having received their services, under the proviso to Section 73(1) of the erstwhile Finance Act, 1994;

I order Interest at the appropriate rates and as applicable in force under the relevant periods, under Section 75 of the erstwhile Finance Act, 1994 to be recovered from them on Service Tax demanded vide sr. no. (iii) and (iv) above;

I impose penalty of Rs.1,36,81,158/- (One Crore Thirty Six Lakh Eighty One Thousand One Hundred Fifty Eight Only) upon them under the provisions of Section 78 of the Finance Act, 1994 for failure to pay Service Tax demanded vide Sr. No. (iii) and (iv) above;



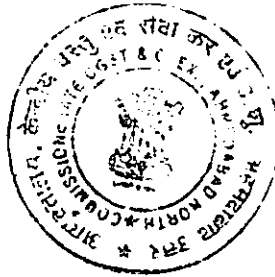
(vii) I impose penalty of Rs.10000/- upon them under Section 77 (1)(a) of the Finance Act, 1994 for not having amended their ST-1 despite having provided taxable services viz. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", to M/s Ardor Global Ltd. and M/s Rajpath Club Limited, in contravention of Section 69 of the Finance Act, 1994 read with Rule 4(5A) of the Service Tax Rules, 1994;

(viii) I impose penalty of Rs.10000/- upon them under the provisions of Section 77 (1)(c) of the Finance Act, 1994 for failure to file correct Service Tax Returns i.e. ST-3 in contravention to the provisions of Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994;

(ix) I impose penalty of Rs.10000/- upon them under Section 77 of the Finance Act, 1994 for failure to issue invoices in respect of the taxable services viz. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", provided by them to M/s Ardor Global Ltd. and M/s Rajpath Club Limited, in contravention of Rule 4A of the Service Tax Rules, 1994.

(x) I impose penalty of Rs.100000/- (one lakh rupees) under Section 78A of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 upon Shri Snehal Patel, Managing Director of M/s Aroma Enterprises (India) Ltd. for willfully suppressing the facts for evading Service Tax liability.

For payment of Service tax, interest and penalty consequent to this order, the timeline and conditions provided under Finance Act, 1994 shall apply and the SCN F.No. DGGI/AZU/Gr-A/36-26/2020-21 dated 31.07.2020 is disposed of on above terms.



(Manoj Tripathi)  
Joint Commissioner  
CGST, Ahmedabad North.

Date: 30 .07.2021

F.No. STC/15-26/OA/2020

To,  
M/s Aroma Enterprises (India) Ltd., First Floor,  
Pipe House, Near HCG Hospital,  
Beside Sola Over bridge,  
S.G. Highway, Ahmedabad

Copy to:

- (1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
- (2) The Deputy/Assistant Commissioner, CGST & Central Excise, Division-VII, Ahmedabad North.
- (3) The Superintendent, Central GST & Central Excise, Range- I, Division-VII, Ahmedabad North.
- (4) The Joint Director, DGGI, Ahmedabad, 6<sup>th</sup> & 7<sup>th</sup> Floor, I-The address Building, Near Sola Flyover, Science City Road, Sola, Ahmedabad-380060.
- (5) Guard File

